NEC3 Supply Contract (SC3)

Between **ESKOM HOLDINGS SOC Ltd**
(Reg No. 2002/015527/30)

and **[Insert at award stage]**
(Reg No. _____)

for **Design, manufacture, test, supply and delivery of steel HV monopole structures and associated components on an as and when required basis for Dx Gauteng Cluster for a period of five (5) years.**

Contents:		**No of pages**
Part C1	**Agreements & Contract Data**	**[●]**
Part C2	**Pricing Data**	**[●]**
Part C3	**Scope of Work**	**[●]**

CONTRACT No. **[Insert at award stage]**

PART C1: AGREEMENTS & CONTRACT DATA

Contents:		No of pages
C1.1	Form of Offer and Acceptance	[●]
	[to be inserted from Returnable Documents at award stage]	
C1.2a	Contract Data provided by the *Purchaser*	[●]
C1.2b	Contract Data provided by the *Supplier*	[●]
	[to be inserted from Returnable Documents at award stage]	
C1.3	Proforma Guarantees	[●]

C1.1 Form of Offer & Acceptance

Offer

The Purchaser, identified in the Acceptance signature block, has solicited offers to enter into a contract for the procurement of:

Design, manufacture, test, supply and delivery of steel HV monopole structures and associated components on an as and when required basis for Dx Gauteng Cluster for a period of five (5) years.

The tenderer, identified in the Offer signature block, has

By the representative of the tenderer, deemed to be duly authorised, signing this part of this Form of Offer and Acceptance the tenderer offers to perform all of the obligations and liabilities of the *Supplier* under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the *conditions of contract* identified in the Contract Data.

	The offered total of the Prices exclusive of VAT is	**Rate based contract**
	Value Added Tax @ 15% is	**Rate based contract**
	The offered total of the amount due inclusive of VAT is[1]	**Rate based contract**
	Rate based contract as per Price list C2.2	

This Offer may be accepted by the Purchaser by signing the Acceptance part of this Form of Offer and Acceptance and returning one copy of this document including the Schedule of Deviations (if any) to the tenderer before the end of the period of validity stated in the Tender Data, or other period as agreed, whereupon the tenderer becomes the party named as the *Supplier* in the *conditions of contract* identified in the Contract Data.

Signature(s) .....

Name(s) .....

Capacity .....

For the tenderer: .....

(Insert name and address of organisation)

Name & signature of witness .....

Date .....

Acceptance

By signing this part of this Form of Offer and Acceptance, the Purchaser identified below accepts the tenderer's Offer. In consideration thereof, the Purchaser shall pay the Supplier the amount due in accordance with the *conditions of contract* identified in the Contract Data. Acceptance of the tenderer's Offer

[1] This total is required by the *Purchaser* for budgeting purposes only. Actual amounts due will be assessed in terms of the *conditions of contract*.

shall form an agreement between the Purchaser and the tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

The terms of the contract, are contained in:

Part C1 Agreements and Contract Data, (which includes this Form of Offer and Acceptance)

Part C2 Pricing Data

Part C3 Scope of Work: Goods Information including Supply Requirements

and drawings and documents (or parts thereof), which may be incorporated by reference into the above listed Parts.

Deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Returnable Schedules as well as any changes to the terms of the Offer agreed by the tenderer and the Purchaser during this process of offer and acceptance, are contained in the Schedule of Deviations attached to and forming part of this Form of Offer and Acceptance. No amendments to or deviations from said documents are valid unless contained in this Schedule.

The tenderer shall within two weeks of receiving a completed copy of this agreement, including the Schedule of Deviations (if any), contact the Purchaser's agent (whose details are given in the Contract Data) to arrange the delivery of any securities, bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the *conditions of contract* identified in the Contract Data at, or just after, the date this agreement comes into effect. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed and signed original copy of this document, including the Schedule of Deviations (if any).

Signature(s) .....

Name(s) .....

Capacity .....

for the Purchaser **Eskom Holdings SOC Ltd, Megawatt Park, Maxwell Drive, Sandton, Johannesburg, 2199**

(Insert name and address of organisation)

Name & signature of witness ..... Date .....

Note: If a tenderer wishes to submit alternative tenders, use another copy of this Form of Offer and Acceptance.

Schedule of Deviations to be completed by the *Purchaser* prior to contract award

Note:

1. This part of the Offer & Acceptance would not be required if the contract has been developed by negotiation between the Parties and is not the result of a process of competitive tendering.
2. The extent of deviations from the tender documents issued by the Purchaser prior to the tender closing date is limited to those permitted in terms of the Conditions of Tender.
3. A tenderer's covering letter must not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid be the subject of agreement reached during the process of Offer and Acceptance, the outcome of such agreement shall be recorded here and the final draft of the contract documents shall be revised to incorporate the effect of it.

No.	Subject	Details
1	**[●]**	**[●]**
2	**[●]**	**[●]**
3	**[●]**	**[●]**
4	**[●]**	**[●]**
5	**[●]**	**[●]**
6	**[●]**	**[●]**
7	**[●]**	**[●]**

By the duly authorised representatives signing this Schedule of Deviations below, the Purchaser and the tenderer agree to and accept this Schedule of Deviations as the only deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Tender Schedules, as well as any confirmation, clarification or changes to the terms of the Offer agreed by the tenderer and the Purchaser during this process of Offer and Acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the tender documents and the receipt by the tenderer of a completed signed copy of this Form shall have any meaning or effect in the contract between the parties arising from this Agreement.

	For the tenderer:	**For the Purchaser**
Signature		
Name		
Capacity		
On behalf of	*(Insert name and address of organisation)*	**Eskom Holdings SOC Ltd, Megawatt Park, Maxwell Drive, Sandton, Johannesburg, 2199**
Name & signature of witness		
Date		

C1.2 SC3 Contract Data

Part one - Data provided by the *Purchaser*

Completion of this data in full, according to the Options chosen, is essential to create a complete contract.

Clause	Statement	Data
1	**General**	
	The *conditions of contract* are the core clauses and the clauses for Options	
		X1: Price adjustment for inflation
		X2 Changes in the law
		X3: Multiple currencies (if applicable)
		X4: Parent company guarantee (if applicable)
		X7: Delay damages
		Z: *Additional conditions of contract*
	of the NEC3 Supply Contract (April 2013) [2]	(If the December 2009 edition is to be used delete April 2013 and replace by December 2013)
10.1	The *Purchaser* is (name):	**Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state-owned company incorporated in terms of the company laws of the Republic of South Africa**
	Address	**Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg**
	Tel No.	
	Fax No.	**N/A**
10.1	The *Supply Manager* is (name):	**At award**
	Address	**At award**
	Tel	**At award**
	Fax	**At award**
	e-mail	**At award**
11.2(13)	The *goods* are	**Design, manufacture, test, supply and delivery of Steel HV Monopoles and associated components on an as and when required basis for Dx Gauteng Cluster for a period of five (5) years.**

[2] Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 539 1902, www.ecs.co.za.

11.2(13)	The *services* are	**Not applicable**
11.2(14)	The following matters will be included in the Risk Register	**Not applicable**
11.2(15)	The Goods Information is in	**Part 3: Scope of Work and all documents and drawings to which it makes reference.**
11.2(15)	The Supply Requirements as part of the Goods Information is in	**Annexure A to this Contract Data**
12.2	The *law of the contract* is the law of	**the Republic of South Africa**
13.1	The *language of this contract* is	**English**
13.3	The *period for reply* is	**1 week**
2	**The *Supplier's* main responsibilities**	**Data required by this section of the core clauses is provided by the *Supplier* in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data.**
3	**Time**	
30.1	The *starting date* is.	**5 years**
30.1	The *delivery date* of the *goods* and *service*s is:	***goods and services*** / ***delivery date***
		1 **HV steel monopoles and associated components** / **Delivery date will be stated on the Purchase Order**
30.2	The *Supplier* does not bring the *goods* to the Delivery Place more than one week before the Delivery Date.	**Not applicable**
31.1	The *Supplier* is to submit a first programme for acceptance within	**1 week of the Contract Date.**
32.2	The *Supplier* submits revised programmes at intervals no longer than	**1 weeks.**
4	**Testing and defects**	
42	The *defects date* is	**12 Months after Delivery.**
43.2	The *defect correction period* is	**1 week**
	except that the *defect correction period* for	**1 week**
	and the *defect correction period* for	**1 week**
42.2	The *defects access period* is	**1 day**
	except that the *defect access period* for	**Not applicable**
	and the *defect access period* for	**Not applicable**

5	**Payment**	
50.1	The *assessment interval* is	**25 of each and every month / after delivery of all Goods and correct invoices submitted to Eskom finance shared services.**
51.1	The *currency of this contract* is the	**South African Rand**
51.2	The period within which payments are made is	**30 Days after date of submitting correct invoices.**
51.4	The *interest rate* is	**the publicly quoted prime rate of interest (calculated on a 365 day year) charged from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and** **(ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption "Money Rates" in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted *mutatis mutandis* every 6 months thereafter and as certified, in the event of any dispute, by any manager employed in the foreign exchange department of The Standard Bank of South Africa Limited, whose appointment it shall not be necessary to prove.**
6	**Compensation events**	**Refer to the NEC3 Supply Contract: April 2013 Edition.**
7	**Title**	**Refer to the NEC3 Supply Contract: April 2013 Edition.**
8	**Risks, liabilities, indemnities and insurance**	
80.1	These are additional *Purchaser's* risks	**1. Shortage of raw materials**
88.1	The *Supplier's* liability to the *Purchaser* for indirect or consequential loss, including loss of profit, revenue and goodwill is limited to	**R0.0 (zero Rand)**
88.2	For any one event, the *Supplier's* liability to the *Purchaser* for loss of or damage to the *Purchaser's* property is limited to	**(1) for the *Purchaser's* existing and surrounding property in the care, custody and control of the *Supplier* the amount of the deductible (first amount payable) relevant to**

		the event **and** **(2) for all other existing *Purchaser's* property the applicable deductible as at contract date**
88.3	The *Supplier's* liability for Defects due to his design which are not notified before the last *defects date* is limited to:	**R0**
88.4	The *Supplier's* total liability to the *Purchaser*, for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	**Limited to Task Order Value**
88.5	The *end of liability date* is	**12 Months after Delivery of the whole of the *goods* and *service*s.**
9	**Termination and dispute resolution**	
94.1	The *Adjudicator* is	**the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see www.ice-sa.org.za). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).**
	Address	
	Tel No.	
	Fax No.	
	e-mail	
94.2(3)	The *Adjudicator nominating body* is:	**the Chairman of ICE-SA, a Division of the South African Institution of Civil Engineering, or its successor body (See www.ice-sa.org.za)**
94.4(2)	The *tribunal* is:	**arbitration**
94.4(5)	The *arbitration procedure* is	**the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.**
94.4(5)	The place where arbitration is to be held is	**Johannesburg, South Africa**
	The person or organisation who will choose an arbitrator - if the Parties cannot agree a choice or - if the arbitration procedure does not state who selects an arbitrator, is	**the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.**
10	**Data for Option clauses**	

X1	**Price adjustment for inflation**			
X1.1	The *base date* for indices is	**TBC**		
	The proportions used to calculate the Price Adjustment Factor are:	**proportion**	**linked to index for**	**Index prepared by**
		0.45	**Material Table E-EX**	**SEIFSA**
		0.30	**Labour Table C3**	**SEIFSA**
		0.10	**Galvanised material – zinc Table F Metal Prices**	**SEIFSA**
		0.15	**non-adjustable**	
		1.00		

X2	**Changes in the law**	
X2.1	A change in the law of	**In Republic of South Africa is a compensation event if it occurs after the Contract Date**

X3	**Multiple currencies**			
X3.1	The *Purchaser* will pay for these items in the currencies stated	**Items**	**Other currency**	**Total maximum payment in the currency**
		Steel HV Monopole structures and associated components		
X3.1	The *exchange rates* are those published in	**[●] on [●] (date)**		
		The items will be paid in the other currency **- to a foreign Bank account nominated by the *Supplier*** **- to a valid SARB approved CFC account in South Africa** **- in accordance with an alternative payment method agreed with the *Purchaser* before the Contract Date.**		

X4	**Parent company guarantee**	**To be determined by Eskom Finance Department at award.**

X7	**Delay damages**		
X7.1	Delay damages for Delivery are	**Delivery of**	**amount per day**
		Delay lead time is 4 weeks from date of Purchase / Task Order placement	**Delay damages is R1000.00 per day per delay up to a maximum of 10% of the Purchase / Task Order value.**
Z	**The *additional conditions of contract* are**	**Z1 to Z15 always apply for Eskom**	

Z1 Cession delegation and assignment

Z1.1 The *Supplier* does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Purchaser.*

Z1.2 Notwithstanding the above, the *Purchaser* may on written notice to the *Supplier* cede and delegate its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Electricity Supply Industry.

Z2 Joint ventures

Z2.1 If the *Supplier* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations then these persons or organisations are deemed to be jointly and severally liable to the *Purchaser* for the performance of this contract.

Z2.2 Unless already notified to the *Purchaser*, the persons or organisations notify the *Supply Manager* within two weeks of the Contract Date of the key person who has the authority to bind the *Supplier* on their behalf.

Z2.3 The *Supplier* does not alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Purchaser* having been given to the *Supplier* in writing.

Z3 Change of Broad Based Black Economic Empowerment (B-BBEE) status

Z3.1 Where a change in the *Supplier's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Supplier*'s B-BBEE status, the *Supplier* notifies the *Purchaser* within seven days of the change.

Z3.2 The *Supplier* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Supply Manager* within thirty days of the notification or as otherwise instructed by the *Supply Manager*.

Z3.3 Where, as a result, the *Supplier's* B-BBEE status has decreased since the Contract Date the *Purchaser* may either re-negotiate this contract or alternatively, terminate the *Supplier*'s obligation to Provide the Goods and Services.

Z3.4 Failure by the *Supplier* to notify the *Purchaser* of a change in its B-BBEE status may constitute a reason for termination. If the *Purchaser* terminates in terms of this clause, the procedures on termination are P1, P2 and P3 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93.

Z4 Confidentiality

Z4.1 The *Supplier* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Supplier*, enters the public domain or to information which was already in the possession of the *Supplier* at the time of disclosure (evidenced by written records in existence at that time). Should the *Supplier* disclose information to Others in terms of clause 23.1, the *Supplier* ensures that the provisions of this clause are complied with by the recipient.

Z4.2 If the *Supplier* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Supply Manager*.

Z4.3 In the event that the *Supplier* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Supplier*, to the extent permitted by law prior to disclosure, notifies the *Purchaser* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Supplier* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.

Z4.4 The taking of images (whether photographs, video footage or otherwise) of the *goods* or any portion thereof, in the course of Providing the Goods and Services and after Delivery, requires the prior written consent of the *Supply Manager*. All rights in and to all such images vests exclusively in the *Purchaser*.

Z4.5 The *Supplier* ensures that all his subcontractors abide by the undertakings in this clause.

Z5 Waiver and estoppel: Add to core clause 12.3:

Z5.1 Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the *Supply Manager* or the *Adjudicator* does not constitute a waiver of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.

Z6 Health, safety and the environment: Add to core clause 25.4

Z6.1 The *Supplier* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the provision of the *goods* and execution of the *services*.

Without limitation the *Supplier*:

- warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with all applicable health & safety laws and regulations and the health and safety rules, guidelines and procedures provided for in this contract and generally for the proper maintenance of health & safety in and about the execution of supply and
- undertakes, in and about the execution of the supply, to comply with all applicable health & safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Supplier's* direction and control, likewise observe and comply with the foregoing.

Z6.2 The *Supplier*, in and about the execution of the supply, complies with all applicable environmental laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Supplier's* direction and control, likewise observe and comply with the foregoing.

Z7 Provision of a Tax Invoice and interest. Add to core clause 51

Z7.1 Within one week of receiving a payment certificate from the *Supply Manager* in terms of core clause 51.1, the *Supplier* provides the *Purchaser* with a tax invoice in accordance with the *Purchaser*'s procedures stated in the Goods Information, showing the amount due for payment equal to that stated in the payment certificate.

Z7.2 If the *Supplier* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Purchaser* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the *Purchaser* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.

Z7.3 The *Supplier* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Purchaser*'s VAT number 4740101508 on each invoice he submits for payment.

Z8 Notifying compensation events

Z8.1 Delete from the last sentence in core clause 61.3 the words, “unless the event arises from the *Supply Manager* giving an instruction, changing an earlier decision or correcting an assumption”.

Z9 *Purchaser's* limitation of liability

Z9.1 The *Purchaser's* liability to the *Supplier* for the *Supplier's* indirect or consequential loss is limited to R0.00 (zero Rand)

Z9.2 The *Supplier*'s entitlement under the indemnity in 83.1 is provided for in 60.1(12) and the *Purchaser*'s liability under the indemnity is limited.

Z10 Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":

Z10.1 or had a business rescue order granted against it.

Z11 Addition to secondary Option X7 Delay damages (if applicable in this contract)

Z11.1 If the amount due for the *Supplier*'s payment of delay damages reaches the limits stated in this Contract Data for Option X7, the *Purchaser* may terminate the *Supplier*'s obligation to Provide the Goods and Services using the same procedures and payment on termination as those applied for reasons R1 to R15 or R18 stated in the Termination Table.

Z12 Ethics

For the purposes of this Z-clause, the following definitions apply:

Affected Party means, as the context requires, any party, irrespective of whether it is the *Supplier* or a third party, such party's employees, agents, or Subcontractors or Subcontractor's employees, or any one or more of all of these parties' relatives or friends,

Coercive Action means to harm or threaten to harm, directly or indirectly, an Affected Party or the property of an Affected Party, or to otherwise influence or attempt to influence an Affected Party to act unlawfully or illegally,

Collusive Action means where two or more parties co-operate to achieve an unlawful or illegal purpose, including to influence an Affected Party to act unlawfully or illegally,

Committing Party	means, as the context requires, the *Supplier*, or any member thereof in the case of a joint venture, or its employees, agents, or Subcontractors or the Subcontractor's employees,
Corrupt Action	means the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party,
Fraudulent Action	means any unlawfully or illegally intentional act or omission that misleads, or attempts to mislead, an Affected Party, in order to obtain a financial or other benefit or to avoid an obligation or incurring an obligation,
Obstructive Action	means a Committing Party unlawfully or illegally destroying, falsifying, altering or concealing information or making false statements to materially impede an investigation into allegations of Prohibited Action, and
Prohibited Action	means any one or more of a Coercive Action, Collusive Action Corrupt Action, Fraudulent Action or Obstructive Action.

Z12.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.

Z12.2 The *Purchaser* may terminate the *Supplier*'s obligation to Provide the Services if a Committing Party has taken such Prohibited Action and the *Supplier* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Purchaser* has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the *Purchaser* can terminate the *Supplier*'s obligation to Provide the Services for this reason.

Z12.3 If the *Purchaser* terminates the *Supplier*'s obligation to Provide the Services for this reason, the amounts due on termination are those intended in core clauses 92.1 and 92.2.

Z12.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Purchaser* does not have a contractual bond with the Committing Party, the *Supplier* ensures that the Committing Party co-operates fully with an investigation.

Z13Insurance

Z__13.1 Replace core clause 84 with the following:

Insurance cover **84**

84.1 When requested by a Party, the other Party provides certificates from his insurer or broker stating that the insurances required by this contract are in force.

84.2 The *Supplier* provides the insurances stated in the Insurance Table A for events which are at the *Supplier*'s risk from the *starting date* until the last *defects date* or a termination certificate has been issued.

INSURANCE TABLE A

Insurance against	**Minimum amount of cover or minimum limit of indemnity**
Loss of or damage to the *goods*, plant and materials	The replacement cost where not covered by the *Purchaser*'s insurance. The *Purchaser*'s policy deductible as at Contract Date, where covered by the *Purchaser*'s insurance.
Liability for loss of or damage to property (except the *goods*, plant and materials and equipment) and liability for bodily injury to or death of a person (not an employee of the *Supplier*) caused by activity in connection with this contract	**Loss of or damage to property** *Purchaser*'s property The replacement cost where not covered by the *Purchaser*'s insurance. The *Purchaser*'s policy deductible as at Contract Date, where covered by the *Purchaser*'s insurance. Other property The replacement cost **Death of or bodily injury** The amount required by the applicable law.
Liability for death of or bodily injury to employees of the *Supplier* arising out of and in the course of their employment in connection with this contract	The amount required by the applicable law

Z 13.2 Replace core clause 87 with the following:

Insurance by the *Purchaser*

87

87.1 The *Purchaser* provides the insurances stated in the Insurance Table B

INSURANCE TABLE B

Insurance against or name of policy	**Minimum amount of cover or minimu of indemnity**
Assets All Risk	Per the insurance policy document
Contract Works insurance	Per the insurance policy document
Environmental Liability	Per the insurance policy document
General and Public Liability	Per the insurance policy document
Transportation (Marine)	Per the insurance policy document
Motor Fleet and Mobile Plant	Per the insurance policy document
Terrorism	Per the insurance policy document
Cyber Liability	Per the insurance policy document
Nuclear Material Damage and Business Interruption	Per the insurance policy document

Nuclear Material Damage Terrorism	Per the insurance policy document

Z14 Nuclear Liability

Z14.1 The *Purchaser* is the operator of the Koeberg Nuclear Power Station (KNPS), a nuclear installation, as designated by the National Nuclear Regulator of the Republic of South Africa, and is the holder of a nuclear licence in respect of the KNPS.

Z14.2 The *Purchaser* is solely responsible for and indemnifies the *Supplier* or any other person against any and all liabilities which the *Supplier* or any person may incur arising out of or resulting from nuclear damage, as defined in Act 47 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Supplier* or any other person or the presence of the *Supplier* or that person or any property of the *Supplier* or such person at or in the KNPS or on the KNPS site, without the permission of the *Purchaser* or of a person acting on behalf of the *Purchaser*.

Z14.3 Subject to clause Z14.4 below, the *Purchaser* waives all rights of recourse, arising from the aforesaid, save to the extent that any claims arise or liability is incurred due or attributable to the unlawful intent of the *Supplier* or any other person, or the presence of the *Supplier* or that person or any property of the *Supplier* or such person at or in the KNPS or on the KNPS site, without the permission of the *Purchaser* or of a person acting on behalf of the *Purchaser*.

Z14.4 The *Purchaser* does not waive its rights provided for in section 30 (7) of Act 47 of 1999, or any replacement section dealing with the same subject matter.

Z14.5 The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned.

Z15 Asbestos

For the purposes of this Z-clause, the following definitions apply:

AAIA means approved asbestos inspection authority.

ACM means asbestos containing materials.

AL means action level, i.e. a level of 50% of the OEL, i.e. 0.1 regulated asbestos fibres per ml of air measured over a 4 hour period. The value at which proactive actions is required in order to control asbestos exposure to prevent exceeding the OEL.

Ambient Air means breathable air in area of work with specific reference to breathing zone, which is defined to be a virtual area within a radius of approximately 30cm from the nose inlet.

Compliance Monitoring means compliance sampling used to assess whether or not the personal exposure of workers to regulated asbestos fibres is in compliance with the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.

OEL means occupational exposure limit.

Parallel Measurements means measurements performed in parallel, yet separately, to existing measurements to verify validity of results.

Safe Levels means airborne asbestos exposure levels conforming to the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.

Standard means the *Purchaser*'s Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.

SANAS means the South African National Accreditation System.

TWA means the average exposure, within a given workplace, to airborne asbestos fibres, normalised to the baseline of a 4 hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA.

Z15.1 The *Purchaser* ensures that the Ambient Air in the area where the *Supplier* will Provide the Services conforms to the acceptable prescribed South African standard for asbestos, as per the regulations published in GNR 155 of 10 February 2002, under the Occupational Health and Safety Act, 1993 (Act 85 of 1993) ("Asbestos Regulations"). The OEL for asbestos is 0.2 regulated asbestos fibres per millilitre of air as a 4-hour TWA, averaged over any continuous period of four hours, and the short term exposure limit of 0.6 regulated asbestos fibres per millilitre of air as a 10-minute TWA, averaged over any 10 minutes, measured in accordance with HSG248 and monitored according to HSG173 and OESSM.

Z15.2 Upon written request by the *Supplier*, the *Purchaser* certifies that these conditions prevail. All measurements and reporting are effected by an independent, competent, and certified occupational hygiene inspection body, i.e. a SANAS accredited and Department of Employment and Labour approved AAIA. The *Supplier* may perform Parallel Measurements and related control measures at the *Supplier*'s expense. For the purposes of compliance the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z15.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.

Z15.3 The *Purchaser* manages asbestos and ACM according to the Standard.

Z15.4 In the event that any asbestos is identified while Providing the Services, a risk assessment is conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air monitoring conducted in order to declare the area safe.

Z15.5 The *Supplier*'s personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.

Z15.6 The *Supplier* continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations.

Z15.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Purchaser* at the *Purchaser*'s expense, and conducted in line with South African legislation.

Annexure A: Supply Requirements

[Notes: The example given in the NEC3 Supply Contract Guidance Notes pages 15 to 20 inclusive is based on Incoterms 2000. However users will probably wish to use Incoterms 2010 which the details below are based on. Users may need to adjust the information to comply with actual requirements. First decide whether Incoterms will be used or not, then delete the arrangement below which does not apply and delete these notes]

The Supply Requirements for this contract are as follows:

1. The requirements for the supply are	Design, manufacture, test, supply and delivery of steel HV monopole structures and associated components on an as and when required basis for Dx Gauteng cluster for a period of five (5) years.	
2. The requirements for transport are	Supplier's responsibility	
3. The delivery place is	Steel HV monopole structures and associated components shall be delivered at various operating units, the delivery place shall be indicated on each Purchase Order.	
4. Actions of the Parties during supply	**Action**	**Party which does it**
	Giving notice of Delivery	Purchaser
	Checking packing and marking before dispatch	Supplier
	Contracting for transport	Supplier
	Pay costs of transport	Supplier
	Arrange access to delivery place	Supplier
	Loading the *goods*	Not applicable
	Unloading the *goods*	Not applicable
For international procurement	Undertake export requirements	Not applicable
	Undertake import requirements	Not applicable
5. Information to be provided by the *Supplier*	**Title of document**	
	Packing lists for cases and their contents	
	Copy of invoice for the *goods*	
	Delivery Note	
	Test results and maintenance manuals	
For international procurement	Licences, authorisations and other formalities associated with export of the *goods*	
	Air Waybill or Bill of Lading with associated landing, delivery and forwarding order	
	The Bill of Entry endorsed by the importation authority	
	Customs work sheets, showing tax, duties and surcharges which the law of the country into which the *goods* are being imported requires the importer to pay	
	Invoice from the importation clearing agent showing airline fees, landing charges, wharfage and dock dues as applicable	
	Specify other import documents required by authorised officials.	

All other information NOT pertinent to the above is given in the balance of the Goods Information

C1.2 Contract Data

Part two - Data provided by the *Supplier*

Notes to a tendering supplier:

Completion of the data in full, according to Options chosen, is essential to create a complete contract.

Clause	Statement	Data
10.1	The *Supplier* is (Name): Address Tel No. Fax No.	
11.2(8)	The Goods Information for the *Supplier's* design is in:	
11.2(11)	The tendered total of the Prices is	
11.2(12)	The *price schedule* is in:	
11.2(14)	The following matters will be included in the Risk Register	**Raw material shortage**
25.2	The restrictions to access for the *Supply Manager* and Others to work being done for this contract are	**N/A**
30.1	The *delivery date* of the *goods* and *service*s is:	***goods and services*** / ***delivery date*** **1** **Delivery lead time is six (6) weeks from the date of Purchase / Task Order placement** / **Six (6) weeks from the date of Purchase / Task Order placement**
31.1	The programme identified in the Contract Data is contained in:	**1 week**
63.2	The *percentage for overheads and profit* added to the Defined Cost is	**%**

PART 2: PRICING DATA

NEC3 Supply Contract

Document reference	Title	No of pages
C2.1	Pricing assumptions	2
C2.2	The *price schedule*	**[•]**

C2.1 Pricing assumptions

How *goods* and *service*s are priced and assessed for payment

Clause 11 in NEC3 Supply Contract, (SC3) core clauses states:

Identified and defined terms	11 11.2	(11) The Prices are the amounts stated in the price column of the Price Schedule. Where a quantity is stated for an item in the Price Schedule, the Price is calculated by multiplying the quantity by the rate. (12) The Price Schedule is the *price schedule* unless later changed in accordance with this contract.
Assessing the amount due	50.2	The amount due is • the Price for each lump sum item in the Price Schedule which the *Supplier* has completed, • where a quantity is stated for an item in the Price Schedule, an amount calculated by multiplying the quantity which the *Supplier* has completed by the rate, • plus other amounts to be paid to the *Supplier*, • less amounts to be paid by or retained from the *Supplier*. Any tax which the law requires the *Purchaser* to pay to the *Supplier* is included in the amount due.

This confirms that the Supply Contract is a priced contract where the Prices are derived from a list of items of *goods* and *service*s which can be priced as lump sums or as expected quantities of *goods* and *service*s multiplied by a rate, or a mix of both.

Function of the Price Schedule

Clause 53.1 states: “Information in the Price Schedule is not Goods Information”. This confirms that instructions to do work or how it is to be done are not included in the Price Schedule but in the Goods Information. This is further confirmed by Clause 20.1 which states, “The *Supplier* Provides the Goods and Services in accordance with the Goods Information”. Hence the *Supplier* does **not** Provide the Goods and Services in accordance with the Price Schedule. The Price Schedule is only a pricing document.

Preparing the *price schedule*

Items in the *price schedule* may have been inserted by the *Purchaser* and the tendering supplier should insert any additional items which he considers necessary. Whichever party provides the items in the *price schedule* the total of the Prices is assumed to be fully inclusive of everything necessary to Provide the Goods and Services as described at the time of entering into this contract.

It will be assumed that the tendering supplier has

- Read Pages 8, 11, 12 and Appendix 5 of the SC3 Guidance Notes before preparing the *price schedule;*
- Included in his Prices and rates for correction of Defects (core clause 43.1) as there is no compensation event for this unless the Defect is due to a *Supplier’s* risk;

- Spread the cost of doing work he chooses not to list as separate items in the *price schedule* across other Prices and rates in order to fulfil the obligation to Provide the Goods and Services for the tendered total of the Prices;
- Understood that there is no adjustment to lump sum prices in the *price schedule* if the amount, or quantity, of work within that lump sum item later turns out to be different to that which the *Supplier* estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event per clause 60.1;
- Understood that the *Supplier* does not have to allow in his Prices and rates for matters that may arise as a result of a compensation event.

Format of the *price schedule*

Entries in the first four columns in the *price schedule* in section C2.2 are made either by the *Purchaser* or the tendering supplier.

If the *Supplier* is to be paid an amount for the item which is not adjusted if the quantity of work in the item changes, the tendering supplier enters the amount in the Price column only, the Unit, Quantity and Rate columns being left blank.

If the *Supplier* is to be paid an amount for the item which is the rate for the item multiplied by the quantity completed, the tendering *Supplier* enters the rate which is then multiplied by the Quantity to produce the Price, which is also entered.

If the *Supplier* is to be paid an amount for an item proportional to the length of time for which the *goods* and *service*s are provided, a unit of time is stated in the Unit column and the length of time (as a quantity of the stated units of time) is stated in the Quantity column.

C2.2 The *price schedule*

The rates entered for each item includes for all work and other things necessary to supply the item.

Material Number	Description	Unit	Rate	Price
164679	POLE, PWR:132 SUSP 20M	Each		
164683	POLE, PWR: LG STR 20M	Each		
164685	POLE, PWR:132 SUSP 21M	Each		
164701	POLE, PWR: LG STR 21M	Each		
164686	POLE, ST 132kV SUSP 22m 23kN D1700	Each		
164702	POLE, PWR: LG STR 22M	Each		
164687	POLE, PWR:132 SUSP 23M	Each		
164703	POLE, ST 132kV STRAIN 23m D7104	Each		
164688	POLE, PWR:132 SUSP 24M	Each		
164704	POLE, PWR: LG STR 24M	Each		
255622	POLE, ST 24M INCL BASEPLATE 2WT1267	Each		
255623	POLE, ST 24M PLANTED 2WT1267	Each		
164680	POLE, ST 132KV SUSP 20m 37kN D7101	Each		
164689	POLE, ST 132KV SUSP 21m 37kN D7101	Each		
164690	POLE, ST 132KV SUSP 22m 37kN D7101	Each		
164691	POLE, ST 132KV SUSP 23m 37kN D7101	Each		
164692	POLE, ST 132KV SUSP 24m 37kN D7101	Each		

The total of the Prices

PART 3: SCOPE OF WORK

Document reference	Title	No of pages
	This cover page	1
C3.1	*Purchaser*'s Goods Information	
C3.2	*Supplier*'s Goods Information	
	Total number of pages	

C3.1: *PURCHASER'S* GOODS INFORMATION

Contents

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Overview and purpose of the *goods* and *service*s

The HV steel Monopole structures are required for overhead power line applications and shall be manufactured, tested, supplied and delivered in accordance with applicable Eskom standards (240-75883378 Rev 2), designed to SANS 10280 and tested in accordance to IEC 60652.

HV Monopoles restore power line supports after failures and are also used preventatively before lines fall. This transaction will serve to cater for the demand in the Gauteng Cluster for both maintenance and Capital projects. Due to the impact of such failures in the distribution network, these structures are deemed critical thus it is the responsibility of Plant M&A to ensure that spares/material is available.

Specification and description of the *goods*

Material Number	Description
164679	POLE, PWR:132 SUSP 20M
164683	POLE, PWR: LG STR 20M
164685	POLE, PWR:132 SUSP 21M
164701	POLE, PWR: LG STR 21M
164686	POLE, ST 132kV SUSP 22m 23kN D1700
164702	POLE, PWR: LG STR 22M
164687	POLE, PWR:132 SUSP 23M
164703	POLE, ST 132kV STRAIN 23m D7104
164688	POLE, PWR:132 SUSP 24M
164704	POLE, PWR: LG STR 24M
255622	POLE, ST 24M INCL BASEPLATE 2WT1267
255623	POLE, ST 24M PLANTED 2WT1267
164680	POLE, ST 132KV SUSP 20m 37kN D7101
164689	POLE, ST 132KV SUSP 21m 37kN D7101
164690	POLE, ST 132KV SUSP 22m 37kN D7101
164691	POLE, ST 132KV SUSP 23m 37kN D7101
164692	POLE, ST 132KV SUSP 24m 37kN D7101

Refer to the technical specifications attached (document 240-75883378).

Procedure for submission and acceptance of *Supplier*'s design

All Steel HV Monopole structures and associated components shall be designed according to the applicable specifications stated in the specification and description of the goods section of this document.

The design of Steel HV Monopole structures and associated components shall be evaluated in accordance with the required specifications as detailed in the following documents:

- Technical evaluation criteria document 240-143268939

Manufacture & fabrication

Not applicable.

Factory acceptance testing (FAT)

Not applicable.

Other tests and inspections and commissioning in place of use

Not applicable.

Operating manuals and maintenance schedules

The Supplier shall provide all operating manuals for steel HV Monopole structures and associated components to the Purchaser on delivery of the Goods.

- All equipment shall be supplied with instruction manuals that shall be detailed enough to enable Eskom staff to install, maintain, test, configure and use each item of equipment.
- Service manuals shall be in loose-leaf form and electronic Acrobat pdf form. Any modifications thereto shall be described in detail, as a supplement to the service manual.
- Copies of each manual shall be supplied to the Purchasers group as requested.

Supply Requirements

The Supply Requirements for this contract are in an Annexure to the Contract Data provided by the *Purchaser*.

Specification of the *service*s to be provided

Design, manufacture, test, supply and delivery of steel HV monopole structures and associated components on an as and when required basis for Dx Gauteng Cluster for a period of five (5) years.

Suppliers shall hold responsibility for their design and products and acceptance by Eskom does not absolve the supplier from the any risk pertaining to the Monopole structures once delivered.

ISO 9001:2015 must govern the quality testing and manufacturing of the Monopole structures.

Constraints on how the *Supplier* Provides the Goods

Programming constraints

A delivery schedule should be provided and is subject to adjustment and agreement with the Materials Warehouse Manager.

Work to be done by the Delivery Date

To be discussed with the Supply Manager prior to the conclusion of the Purchase Order.

Marking the *goods*

As per specification.

Constraints at the delivery place and place of use

No delivery constraints.

Cooperating with Others

The *Supplier* of the steel HV Monopole structures and associated components shall be required to inform the Supply Manager of the expected delivery and date.

Services & other things to be provided by the *Purchaser* or *Supplier*

The *Supplier* to propose process mechanisms and facilities t guarantee that Eskom receives the required technical and logistical support.

Management meetings

Regular meetings of a general nature may be convened and chaired by the *Supply Manager* as follows:

Title and purpose	Approximate time & interval	Location	Attendance by:
Risk register and compensation events	Weekly	Specified by the Supply Manager / MS Teams	*Purchaser, Supplier* and all required stakeholders.
Overall contract progress and feedback	Monthly as agreed by both parties	Specified by the Supply Manager / MS Teams	*Purchaser, Supplier* and all required stakeholders.
Early Warning	As and when required	Specified by the Supply Manager / MS Teams	*Purchaser, Supplier* and all required stakeholders.
Performance Evaluation Meeting	Quarterly	Specified by the Supply Manager / MS Teams	*Purchaser, Supplier* and all required stakeholders.

Meetings of a specialist nature may be convened as specified elsewhere in this Goods Information or if not so specified by persons and at times and locations to suit the Parties, the nature and the progress of the manufacture of the *goods*. Records of these meetings shall be submitted to the *Supply Manager* by the person convening the meeting within five days of the meeting.

All meetings shall be recorded using minutes or a register prepared and circulated by the person who convened the meeting. Such minutes or register shall not be used for the purpose of confirming actions or

instructions under the contract as these shall be done separately by the person identified in the *conditions of contract* to carry out such actions or instructions.

Documentation control

Contractual communications will be in the for of properly compiled letters or forms attached to e-mails.

Health and safety risk management

The fabricator shall demonstrate adoption of appropriate adherence to safety in terms of the Occupational Health and Safety Act 85 of 1993, incorporating the Construction Regulations, and Electrical Machinery Regulations. Published by South African Government Press, under auspices of the Department of Labour.

Workmen are expected to be equipped with appropriate personal protective equipment. Visitors to the premises should be briefed on safety issues and provided with appropriate protective equipment. Appropriate safety related signage shall be posted in the workshop, and housekeeping within the working areas should be of acceptable standard.

In accordance with Eskom's commitment to safety, inspectors delegated by Eskom

Environmental constraints and management

The *Supplie*r to comply with applicable legislation, (i.e. National Environmental Management Act No. 107 of 1998 including all applicable regulations) – Eskom SHEQS policy, procedures, specification and guidelines, and adhere to Environmental Requirements for Contractors and/or Suppliers in Eskom Distribution.

Quality

ISO 9001:2015 must govern the quality testing and manufacturing of the Monopole structures.

The fabricator shall demonstrate the adoption and utilisation of his quality assurance system. The QA plan will include traceability of workmanship, and specifically all critical welds shall be traceable.

During the course of fabrication, Eskom may elect to conduct an inspection of completed sections. During such inspections, the following documentation should be made available for witness by the inspector:

- The fabrication QA plan
- Relevant fabrication drawings for the poles being inspected
- Relevant welding inspection results
- Certification of welders
- Mill certificates for steel

Invoicing and payment

Within one week of receiving a payment certificate from the *Supply Manager* in terms of core clause 51.1, the *Supplier* provides the *Purchaser* with a tax invoice showing the amount due for payment equal to that stated in the *Supply Manager's* certificate.

The *Supplier* shall address the tax invoice to *Purchaser* and include on each invoice the following information:

- Name and address of the *Supplier* and the *Supply Manager;*
- The contract number and title;
- *Supplier*'s VAT registration number;
- The *Purchaser*'s VAT registration number.
- Description of *goods* and *service*s provided for each item invoiced based on the Price Schedule;
- Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;
- (add other as required)

General Information	**X**
- No Pro-forma Invoice	
- Check Vendor number against the Address and name on Tax invoice	
- Insert the Vendor number on Tax invoice (Top right-hand corner)	
- Bank details must be on the invoice or on a attach sheet, but it does not require a bank stamp just a letter)	
- Check banking details on invoice against SAP system. If more than one banking account check bank account against banking details on invoice. If banking details not on invoice, write the bank code next to the vendor account (bank code 0002)	
- Check Vendor VAT number against the vendor master. (FK03) If VAT number not on master records, prepare a list and forward to Vendor Management to check and update the vendor master records	
- No fax copies of Tax invoices allowed	
- No copies of Tax invoices allowed unless originally printed by the Vendor if a photocopy tax invoice, it must be an original “certified copy” (i.e. not a copy of a “certified copy” invoice) from the vendor and check in system if not previously be paid. Put stamp “not previously paid” on invoice and sign.	
- Ensure that date received stamp is clear on invoice	
- Stamp all Invoices with the Vat stamp, complete and sign (only when VAT is applicable)	
- The stamp should not be stamped over any written information	
- When scanning invoices, check the quality before linking in SAP (inboxes)	
With Reference Invoices	**X**
- Goods receipt must be done (payment with reference)	
- Ensure that the SAP purchase order number is clear and correct on the invoice	
- GR number to be written on the Invoices	
- If multiple lines on invoice write the line number of the order against the line to ensure that the processors match the correct lines (to ensure that 191100 is matched correctly)	

Contract change management

The Employer may instruct changes to the scope at any time; each instruction shall set out the change and the date on which it becomes effective; and must be issued to the Contractor in writing to be valid.

Provision of bonds and guarantees

The form in which a bond or guarantee required by the *conditions of contract* (if any) is to be provided by the *Supplier* is given in Part 1 Agreements and Contract Data, document C1.3, Sureties.

The *Purchaser* may withhold payment of amounts due to the *Supplier* until the bond or guarantee required in terms of this contract has been received and accepted by the person notified to the *Supplier* by the *Supply Manager* to receive and accept such bond or guarantee. Such withholding of payment due to the *Supplier* does not affect the *Purchaser*’s right to termination stated in this contract.

Records of Defined Cost, payments & assessments of compensation events to be kept by the *Supplier*

Supplier required to keep all records of defined cost for the duration of the contract and to provide the Supply Manager access to the records in hard copy or electronically.

Procurement

Subcontracting

Preferred subcontractors

Not Applicable.

Limitations on subcontracting

Not Applicable.

Spares and consumables

Not Applicable.

Other requirements related to procurement

Refer to the SDL&I Undertaking document published in the tender. This section will be finalised upon contract award based on the agreement reached.

Cataloguing requirements by the *Supplier*

Not applicable.

List of drawings

Drawings issued by the *Purchaser*

This is the list of drawings issued by the *Purchaser* at or before the Contract Date and which apply to this contract.

Drawing number	Revision	Title

C3.2 *SUPPLIER*'S GOODS INFORMATION

This section could also be compiled as a separate file.