Eskom

NEC3 Supply

Short Contract (SSC3)

A contract between **Eskom Holdings SOC Ltd (Reg No. 2002/015527/30)**

and **.....**

for The Manufacture, Supply and Delivery of 600 Mobile Telephones on a 'once off" order for the Central East Cluster (Kwa-Zulu Natal Operating Unit and Free State Operating Unit)

Contents: Compiled in accordance with CIDB Standard for Uniformity in Construction Procurement (May 2010) amendments)

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Documentation prepared by: **Eskom Holdings SOC Limited**

C1 Agreements & Contract Data

C1.1 Form of Offer and Acceptance

Offer

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

The Manufacture, Supply and Delivery of 600 Mobile Telephones on a 'once off" order for the Central East Cluster (Kwa-Zulu Natal Operating Unit and Free State Operating Unit)

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	**R[●]**
Value Added Tax @ 15% is	**R[●]**
The offered total of the Prices inclusive of VAT is	**R[●]**
(in words)	

This Offer may be accepted by the Purchaser by signing the form of Acceptance overleaf 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 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 1 Agreements and Contract Data, (which includes this Form of Offer and Acceptance)

Part 2 Pricing Data

Part 3 Scope of Work: Goods Information

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 Tender 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, which must be signed by the duly authorised representative(s) for both parties.

The tenderer shall within one week 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 copy of this document, including the Schedule of Deviations (if any) together with all the terms of the contract as listed above.

Unless the tenderer (now *Supplier*) within five working days of the date of such receipt notifies the Purchaser in writing of any reason why he cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the Parties.

Signature(s)		
Name(s)	Harish Raghnandan	
Capacity	Middle Manager - Network Operations	
for the Purchaser	Eskom Holdings SOC Limited	*(Insert name and address of organisation)*
Name & signature of witness		Date

C1.2 Contract Data
Data provided by the *Purchaser*

Clause	Statement	Data
	General	
10.1	The *Purchaser* is (Name):	**Eskom Holdings SOC Limited (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**
10.1	The *Supply Manager* is (name):	**Harish Raghnandan**
	Address	**01 Portland Road, Mkondeni**
	Tel	**+27 33 395 3677**
	e-mail	**raghnah@eskom.co.za**
11.2(5)	The Goods Information is in	**the document called 'Goods Information' in Part 3 of this contract.**
11.2(8)	The *goods* are	The Manufacture, Supply and Delivery of 600 Mobile Telephones on a 'once off" order for the Central East Cluster (Kwa-Zulu Natal Operating Unit and Free State Operating Unit)
12.2	The *law of the contract* is	**the Republic of South Africa**
13.2	The *period for reply* is	**2 days**
30.1	The *starting date* is.	**Will be stated on the purchase order**
41.1	The *defects date* is	**Fifty two (52) weeks after Delivery.**
42.2	The period for the correction of Defects after Delivery is	**2 weeks**
50.1	The *assessment day* is the	**N/A - Once off order**
5	Payment	
50.1	The *assessment interval* is	**the last day of each successive month.**
51.1	The *currency of this contract* is the	**South African Rand**
51.2	The period within which payments are made is	**4 weeks.**

51.2	The interest rate on late payment 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.**
80.1	These are additional *Purchaser's* risks	**1. Late deliveries**
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 described in the "Format A" insurance policy available from Eskom Group Insurance** **and** **(2) for all other existing *Purchaser's* property the highest applicable deductible (first amount payable) namely:** • **R15 million (fifteen million Rand) for Generation Division property;** • **R7.5 million (seven million five hundred thousand Rand) for Transmission Division property and;** • **R1 million (one million Rand) for Distribution Division and all other *Purchaser*'s property**

88.3	The *Supplier's* liability for Defects due to his design which are not notified before the last *defects date* is limited to:	**The total value of the order**
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	**The total value of the order**
88.5	The *end of liability date* is	**One year after Delivery of the whole of the *goods*.**
93.1	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).**
93.2(2)	The *Adjudicator nominating body* is:	**the Chairman of ICE-SA a joint Division of the South African Institution of Civil Engineering and the Institution of Civil Engineers (UK) or its successor body (See www.ice-sa.org.za).**
93.4	The *tribunal* is: If the *tribunal* is arbitration, the arbitration procedure is	**arbitration.** **the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.**

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).**
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	**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	
X2	**Changes in the law**	
X2.1	A change in the law	**is a compensation event if it occurs after the Contract Date**
X7	**Delay damages**	
X7.1	Delay damages for Delivery are	**0.25% per day up to a maximum of 15% per batch order.**

11.1 **The *conditions of contract* are the NEC3 Supply Short Contract (April 2013)[1] [2]and the following additional conditions.**

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 and the Electricity Distribution Industry.

Z2 Change of Broad Based Black Economic Empowerment (B-BBEE) status

Z2.1 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.

Z2.2 The *Supplier* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Purchaser* within thirty days of the notification or as otherwise instructed by the *Purchaser*.

Z2.3 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.

Z2.4 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 the same as for Reason 3 identified in clause 90.3.

Z3 Waiver and estoppel: Add to clause 12.3:

Z3.1 Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties*,* 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.

Z4 Provision of a Tax Invoice and interest. Add to clause 51

[1] Can be obtained from Engineering Contract Strategies on www.ecs.co.za, Tel 011 803 3008, Fax 086 539 1902
[2] If the December 2009 edition is being used, replace April 2013 with December 2009

Z4.1 The *Supplier* provides the *Purchaser* with a tax invoice in accordance with the *Purchaser*'s procedures stated in the Goods Information, showing the correctly assessed amount due.

Z4.2 If the *Supplier* does not provide a tax invoice by the time required in this contract for his assessment of each amount due, 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.

Z4.3 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.

Z5 *Purchaser's* limitation of liability

Z5.1 The *Purchaser's* liability to the *Supplier* for the *Supplier's* indirect or consequential loss is limited to R0.00 (zero Rand)

Z5.2 The *Supplier*'s entitlement under the indemnity in 83.1 is provided for in 60.1(8) and the *Purchaser*'s liability under the indemnity is limited.

Z6 Termination: Add to clause 90.2 before (Reason 1)

Z6.1 or had a judicial management order granted against it.

Z7 Addition to clause 50.5

Z7.1 If the amount due for the *Supplier*'s payment of *delay damages* reaches the limits stated in this Contract Data (if any), the *Purchaser* may terminate the *Supplier*'s obligation to Provide the Goods using the same procedures and payment on termination as those applied for Reason 3. Identified in clause 90.3.

Z8 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.

Z8.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.

Z8.2 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.

Z8.3 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.

Z8.4 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.

Z9 Insurance

Replace condition of contract 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 in this Insurance Table A from the *starting date* until Delivery and against any risks he carries under this contract between Delivery and the *defects date*.

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	**Loss of or damage to property** *Purchaser*'s property The replacement cost where not covered by the *Purchaser*'s insurance.

the *Supplier*) caused by activity in connection with this contract	The *Purchaser*'s policy deductible as at contract date, where covered by the *Purchaser*'s insurance. <u>Other property</u> 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

84.2 **<u>The *Purchaser* provides the insurances in this Insurance Table B</u>**

<u>INSURANCE TABLE B</u>

Insurance against or name of policy	Minimum amount of cover or minimum limit 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

Z10 Nuclear Liability

Z10.1 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.

Z10.2 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*.

Z10.3 Subject to clause Z10.4 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*.

Z10.4 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.

Z10.5 The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned.

Z11 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.

Z11.1 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.

Z11.2 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 Z11.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.

Z11.3 The *Purchaser* manages asbestos and ACM according to the Standard.

Z11.4 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.

Z11.5 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.

Z11.6 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.

Z11.7 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

1. The requirements for the supply are	Are stated in the specification	
2. The requirements for transport are	Supplier to deliver the goods	
3. The delivery place is	01 Portland Road, Mkondeni, Pietermaritzburg	
4. Actions of the Parties during supply	**Action**	**Party which does it**
	Giving notice of Delivery	Supplier
	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*	Supplier
	Unloading the *goods*	Supplier
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.	

C1.2 Contract Data

Part two - Data provided by the *Supplier*

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	**R To be confirmed by Reverse E-Auction** **(in words)**
11.2(12)	The *price schedule* is in:	**South African Rands in part C2.2 of this document**
11.2(14)	The following matters will be included in the Risk Register	**Late deliveries**
30.1	The *delivery date* of the *goods* and *service*s is:	***As per the order***

C2 Pricing Data

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 Price Schedule

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

Item no.	Description	Unit	Quantity	Rate	Price
1	Mobile Telephones (Androids - Tel MBL: Ulefone Armor 9, Android 10.0,4)	Ea	600	N/A	N/A

The total of the Prices (excluding VAT)	N/A to be confirmed via reverse E-Auction
VAT (15%)	
The total of the Prices (Including VAT)	

Eskom may terminate this Agreement in whole or in part for convenience and without cause at any time by giving the Service Provider at least 60 (sixty) days' prior notice designating the termination date. Eskom shall have no liability to the Service Provider with respect to such termination.

SUPPLIER NAME…….

NAME OF SUPPLIER REPRESENTATIVE……..

SIGNATURE……..DATE……

LEAD TIME……

C3: Scope of Work

C3.1 Goods Information

The Manufacture, Supply and Delivery of 600 Mobile Telephones on a ‘once off” order for the Central East Cluster (Kwa-Zulu Natal Operating Unit and Free State Operating Unit)

1. Description of the *goods*

The Manufacture, Supply and Delivery of 600 Mobile Telephones on a ‘once off” order for the Central East Cluster (Kwa-Zulu Natal Operating Unit and Free State Operating Unit)

2. Specifications

Material Number	Short text	Description
0687090	Androids - Tel MBL: Ulefone Armor 9, Android 10.0,4)	TELEPHONE, MOBILE: TYPE: ULEFONE ARMOR 9; OPERATING SYSTEM: ANDROID 10.0; SCREEN SIZE: TOUCHPAD 4.7 INCH OR BIGGER; SCREEN TYPE: ICD PANEL JDI TOUCH; BATTERY TYPE: 4000 MAH LI-ION OR GREATER; COLOR: BLACK; GRY; ACCESSORY COMPONENTS: VEHICLE CHARGER, POWER SUPPLY, EXTRA BATTERY, STYLUS, 64 GB SD CARD, PORTABLE VEHICLE MOUNTING BRACKET; MEMORY CAPACITY: 4GB MINIMUM; DATA TRANSFER RATE: GSM, GPRS, 3G, 4G, LTE MHZ; CAMERA TYPE: FRONT 16.0MP REAR THERMAL IMAGERY; BATTERY STANDBY TIME: 4 DAY; SPECIAL FEATURES: GPS, SENSORS, GYROSCOPE, MAGNETIC; ULE-RGPN-A9-BLK, ULEFONE ARMOR 9; THERMAL CAMERA RUGGED ANDROID 10.0; SMARTPHONE - 8GB, 128GB, DUAL-SIM, IP68 BLACK; USB-C, USB TYPE C CABLE DATA/CHARGE; UCL-2U-BK-PRO, VEHICLE 2 PORT 5V; 2.4A CHARGER; URAM-B-166-UN, RAM X GRIP PHONE; MOUNT WITH RAM TWIST LOCK AND SUCTION CUP

3. Constraints on how the *Supplier* Provides the Goods

3.1 FUNCTIONALITY

Technical Evaluation Criteria

The technical scoring included in the enquiry document will form part of the contractual commitment with the successful supplier.

3.1.2 Subcontracting

The supplier must declare upfront if there is any potential subcontracting to be done in the execution of this once off order

Health and safety risk management

The *Supplier* shall comply with the health and safety requirements stated here and maintain compliance for the duration of the contract.

1	Is the acknowledgement of Eskom's OHS rules and requirements form (Annexure B) signed by the tenderer
2	Occupational, Health and Safety Plan (OHS Plan) This must be relevant to the Scope of work, addressing the Eskom Health and Safety Specification. To be signed off by the Owner / CEO / MD The OHS Plan must include but is not limited to how the company deals with Incident Management, SHE Communication and Emergency Management
3	Baseline Risk Assessment to be in line with the Scope of Work The baseline Risk Assessment must as a minimum include Driving
4	Valid Letter of Good Standing or equivalent, i.e. COID, RMA or FEMA, (Nature of Business to be applicable) The letter of good standing must state the relevant services rendered by the company, in line with the Scope of Work applicable for this tender
5	Health and Safety Policy signed by the Owner / CEO or MD,

Quality

The *Supplier* shall comply with the Category 1 Quality requirements stated and maintain compliance for the duration of the contract.

2.3 Skills Development

Tenderers are required to propose against the following training initiatives which will then form part of their contractual obligations:

Category	Eskom Target	Tenderers Proposal
Not Applicable		

Eskom will apply a penalty of 2.5% of the Contract Value for failure to meet SDL&I obligations.

One of the following options will apply for SDI&L performance security:

- For the duration of the contract, Eskom will retain 2.5% of every invoice (excluding VAT) as security for the fulfilment of all SDL&I Obligations. The retained amounts shall only be released to the Contractor upon fulfilment of all SDL&I obligations at the end of the contract.
- Alternatively the Contractor shall submit a bond equivalent to 2.5% of the Contract Value and shall only be released to the Contractor upon fulfilment of all SDL&I Obligations.

SDL&I Undertaking

Tenderers who complete and submit the undertaking as required, but who do not meet Eskom's targets, will not be disqualified. SD&L undertakings do not form part of scoring but commitments will form part of contractual obligations.

Job Opportunities
Tenderer to indicate number of Jobs to be created and/or retained from this contract.

Number of Jobs to be created	Number of Jobs to be retained

Reporting and Monitoring

- The suppliers shall on a quarterly basis submit a report to Eskom in accordance with Data Collection Template on their compliance with the SDL&I obligations described above
  Eskom shall review the SDL&I reports submitted by the suppliers within 60 (sixty) days of receipt of the reports and notify the suppliers in writing if their SDL&I obligations have not been me.
- Upon notification by Eskom that the suppliers have not met their SDL&I obligations, the suppliers shall be required to implement corrective measures to meet those SDL&I obligations before the commencement of the following report, failing which Retention clauses shall be invoked.
  Every contract shall be accompanied by the SDL&I Implementation Schedule which must be completed by the suppliers and returned to SDL&I representative for acceptance 28 days after contract award.

2.1 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;

All invoices must be submitted via this process any invoices physically received will now be returned.

To ensure payment is made the following must be done:

1. Email pdf copies to invoiceseskomlocal@eskom.co.za
2. Each pdf (attachment) must contain **only one invoice**
3. Each **email** sent must contain **only one attachment**
4. It must be an original invoice from your system. If a word or excel document, convert it to PDF. No invoice must printed then scanned and emailed or have hand writing on it, **It will not be accepted.**
5. Please make sure you **received a valid and correct purchase order** from your end user which must be quoted on the invoice.
6. Encourage your end users to do the GR's on time to insure speedy processing.

All invoices must meet the Tax requirements.