

Supply and Delivery of Articulated Water Trucks x3 to Rosherville in Johannesburg

NEC3 Supply Contract (SC3)

Between **ESKOM ROTEK INDUSTRIES SOC Ltd**
(Reg No. 1990/006897/30)

and **.....**
(Reg No. 2007/031781/06)

for **Supply and Delivery of Articulated Water Trucks x3**
to Rosherville in Johannesburg

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

CONTRACT No.	[Insert at award stage]
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Supply and Delivery of Articulated Water Trucks x3 to Rosherville in Johannesburg**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 <i>Employer</i>	[•]	
C1.2b	Contract Data provided by the <i>Contractor</i>	[•]	
	[to be inserted from Returnable Documents at award stage]		

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C1.1 Form of Offer & Acceptance

Offer

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

Supply and Delivery of Articulated Water Trucks x3 to Rosherville in Johannesburg

The tenderer, identified in the Offer signature block, has examined the documents listed in the Tender Data and addenda thereto and by submitting this Offer has accepted the Conditions of Tender.

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 *Contractor* 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.

Options A	The offered total of the Prices exclusive of VAT is	
	Sub total	
	Value Added Tax @ 15% is	
	The offered total of the amount due inclusive of VAT is ¹	
	(in words)	

This Offer may be accepted by the Employer 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 *Contractor* 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

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

Supply and Delivery of Articulated Water Trucks x3 to Rosherville in Johannesburg Acceptance

By signing this part of this Form of Offer and Acceptance, the Employer identified below accepts the tenderer's Offer. In consideration thereof, the Employer shall pay the Contractor 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 Employer 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: Service 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 Returnable Schedules as well as any changes to the terms of the Offer agreed by the tenderer and the Employer 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 Employer's agent (whose details are given in the Contract Data) to arrange the delivery of any, 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)	_____	Sizo Myeni
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Capacity	_____	General Manager, Bulk Material Services
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for the Employer	Eskom RoteK Industries Lower Germiston Road Rosherville 2022 Eskom RoteK Industries
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Name & signature of witness	_____	Date	_____
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Note: No alternative tenders will be entered into by ERI

Supply and Delivery of Articulated Water Trucks x3 to Rosherville in Johannesburg

Schedule of Deviations to be completed by the *Employer* 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 Employer 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 Employer 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 Employer 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 Employer

Signature	_____	_____
Name	_____	_____
Capacity	_____	_____
On behalf of	(Insert name and address of organisation)	Eskom Rotek Industries
Name & signature of witness	_____	_____
Date	_____	_____

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C1.2 SC3 Contract Data

Part one - Data provided by the *Employer*

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

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option:	
		A: Priced contract with price list
	dispute resolution Option	W1: Dispute resolution procedure
	and secondary Options	
		X1: Not Applicable
		X2: Changes in the law
		X7: Delay Damages
		X17: Low service damages
		X18: Limitation of liability
		X19: Task Order
		X20: Key performance indicators
		Z: <i>Additional conditions of contract</i>
	of the NEC3 Term Service Contract April 2013 ² (TSC3)	
	The Works are:	Supply and Delivery of Articulated Water Trucks x3 to Rosherville in Johannesburg
10.1	The <i>Employer</i> is (name):	Eskom Rotek Industries SOC Ltd (Reg no: 1990/006897/30), a state-owned company incorporated in terms of the company laws of the Republic of South Africa
	Address	Roshland Office Park Lower Germiston Road Rosherville
	Tel No.	+27 11 629 4282
10.1	The <i>Service Manager</i> is (name):	Sifiso Mthethwa
	Address	Roshland Office Park

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

Supply and Delivery of Articulated Water Trucks x3 to Rosherville in Johannesburg

Lower Germiston Road
Rosherville

Tel

+27 11 629 4282

e-mail

mthethps@eskom.co.za

The Affected Property is		Eskom Rotek Industries, Rosherville, Cleveland 2022
The <i>language of this contract</i> is		English
The <i>law of the contract</i> is the law of		the Republic of South Africa
The <i>period for reply</i> is		2 days for urgent communication (EW's, NCR's, Safety Related and or other communication deemed to be urgent) 3 days for other general communication
11.2(13)	The <i>goods</i> are	Supply and Delivery of Articulated Water Trucks x3 to Rosherville in Johannesburg
11.2(13)	The <i>services</i> are	N/A
11.2(14)	The following matters will be included in the Risk Register	[•]
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 <i>law of the contract</i> is the law of	the Republic of South Africa
13.1	The <i>language of this contract</i> is	English
13.3	The <i>period for reply</i> is	8 weeks
2	The Supplier's main responsibilities	Data required by this section of the core clauses is provided by the <i>Supplier</i> in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data.

3 Time

The Starting Date is:		01 February 2024
The Completion Date is:		15 February 2024
Contract duration:		Once Off (Purchase of Items)

4 Testing and defects

There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data

In addition to Sub Cl 4.0:

- A defect caused by the Contractor shall be deemed as rework.
- The man hours spend on a Defect caused by the Contractor shall not be assessed for
- Equipment issued to the Contractor, or brought by

Supply and Delivery of Articulated Water Trucks x3 to Rosherville in Johannesburg

the Contractor, and damaged by the Contractor, shall be assessed, and paid/replaced by the Contractor

The defects date is:	12 Months after delivery
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The defect correction period is:	Within 5 days after notice of defect by the Employer.
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5 Payment

50.1	The currency for this contract is:	South African Rands (ZAR)
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50.2	The <i>assessment interval</i> is:	26th day of each successive month.
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50.3	The period within which payments are made is	30 days.
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51.4	The <i>interest rate</i> is	the publicly quoted prime rate of interest (calculated on a 365-day year) charged by 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
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8 Risks, liabilities, indemnities and insurance

80.1	These are additional <i>Purchaser's</i> risks	1. 2.
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88.1	The <i>Supplier's</i> liability to the <i>Purchaser</i> for indirect or consequential loss, including loss of profit, revenue and goodwill is limited to	R0.0 (zero Rand)
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88.2	For any one event, the <i>Supplier's</i> liability to the <i>Purchaser</i> for loss of or damage to the <i>Purchaser's</i> property is limited to	(1) for the <i>Purchaser's</i> existing and surrounding property in the care, custody and control of the <i>Supplier</i> the amount of the deductible (first amount payable) relevant to the event and (2) for all other existing <i>Purchaser's</i> property the applicable deductible as at contract date
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88.3	The <i>Supplier's</i> liability for Defects due to his design which are not notified before the last <i>defects date</i> is limited to:	R[●]
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88.4	The <i>Supplier's</i> total liability to the <i>Purchaser</i> , for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	R[●]
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88.5	The <i>end of liability date</i> is	12 months after Delivery of the whole of the <i>goods</i> and <i>services</i>.
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9 Termination and dispute resolution

94.1	The <i>Adjudicator</i> 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 <i>Adjudicator nominating body</i> 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 <i>tribunal</i> is:	arbitration
94.4(5)	The <i>arbitration procedure</i> 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 main Option clause

A	Priced contract with price list
20.5	The <i>Contractor</i> prepares forecasts of the final total of the Prices for the whole of the <i>service</i> at intervals no longer than 4 weeks .

11 Data for Option W1

W1.1	The <i>Adjudicator</i>	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	[•]

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Tel No. [•]
Fax No. [•]
e-mail [•]

W1.2(3) 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 (London) (see www.ice-sa.org.za) or its successor body.**
An Adjudicator will be appointed between the Contractor and the Employer should a dispute arises.
The costs that the Adjudicator charge will be divided between both Parties at 50% for each parties account.

W1.4(2) The *tribunal* is: **Arbitration**

W1.4(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.**
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.**

12 Data for secondary Option clauses

X1	Price adjustment for inflation	N/A
X1.1	The <i>base date</i> for indices is	Not Applicable
		0% Non-Adjustable
X2	Changes in the law	There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.
X3	Multiple currencies:	Not Applicable
X3.1	The <i>Employer</i> will pay for these items	Only South African Maximu

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	or activities in the currencies stated	Rands to be used for the contract Items & activities	Other currency	m payment in other currency
		[•] [•] [•] [•]		
X3.2	The <i>exchange rates</i> are those published in	Not applicable		
X4	Parent company guarantee:	Not Applicable		
X7	Delay Damages:	Calculated at 1% daily, capped at 10% of the total contract/task order value.		
X12	Partnering:	Not Applicable		
X12.1(1)	The <i>Client</i> is (Name):	[•]		
	Address	[•]		
	Contact details	[•]		
	Telephone:	[•]		
	Fax	[•]		
	e-mail	[•]		
X12.1(4)	The Partnering Information is in	Part 3 Scope of Work, section C3. [•]		
X12.2(1)	The <i>Client's objective</i> is:	[•]		
X13	Performance bond	Not Applicable		
X13.1	The amount of the performance bond is	R [•]		
X14	Advanced payment to the <i>Supplier</i>	Not Applicable		
X14.1	The amount of the advanced payment is	R[•].		
X14.2	An advanced payment bond	is /is not required.		
X14.3	The <i>Supplier</i> repays the instalments in assessments starting not less than	[•] weeks after the Contract Date.		
X14.3	The instalments are	R[•] (either an amount or a percentage of the payment otherwise due)		
X17	Low service damages:	Refer to TableX17.1 Below of this document		
X18	Limitation of liability			
X18.1	The <i>Contractor's</i> liability to the			

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	Employer for indirect or consequential loss is limited to	R0.0 (zero Rand)
X18.2	For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to	the amount of the deductibles relevant to the event described in the "Format TSC3" insurance policy available on http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx
X18.3	The <i>Contractor's</i> liability for Defects due to his design of an item of Equipment is limited to	The greater of • the total of the Prices at the Contract Date and • the amounts excluded and unrecoverable from the <i>Employer's</i> insurance (other than the resulting physical damage to the <i>Employer's</i> property which is not excluded) plus the applicable deductibles in the <i>Employer's</i> assets and works / maintenance policies available on http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx
X18.4	The <i>Contractor's</i> total liability to the <i>Employer</i> , for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	The total of the Prices other than for the additional excluded matters. The <i>Contractor's</i> total liability for the additional excluded matters is not limited. The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for • Defects due to his design, plan and specification, • Defects due to manufacture and fabrication outside the Affected Property, • Loss of or damage to property (other than the <i>Employer's</i> property, Plant and Materials), • Death of or injury to a person and • Infringement of an intellectual property right.
X18.5	The <i>end of liability date</i> is	12 months after delivery
X19	Task Order	A Task Order is the <i>Service Manager's</i> instruction to carry out a Task.
X19.2		A Task Order includes but is not limited to the following: • A detailed description of the work in the Task, • A priced list of items of work in the Task in which items taken from the Price List are identified, • The start and completion dates for the Task, • The <i>Service Manager</i> consults the <i>Contractor</i> about the contents of a Task Order before he issues it. When a Task Order is issued • the priced list of items for the Task is inserted in the Price List, and • the work involved is added to the Service

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	Information.
	An instruction to carry out a Task is not a compensation event.
X19.3	The <i>Contractor</i> submits a Task Order programme to the <i>Service Manager</i> within There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data In addition to Sub Cl 4.0: • A defect caused by the Contractor shall be deemed as rework. • The man hours spend on a Defect caused by the Contractor shall not be assessed for • Equipment issued to the Contractor, or brought by the Contractor, and damaged by the Contractor, shall be assessed, and paid/replaced by the Contractor
X20	Key Performance Indicators (not used when Option X12 applies)
X20.1	The <i>incentive schedule</i> for Key Performance Indicators is in Not Applicable
X20.2	A report of performance against each Key Performance Indicator is provided at intervals of Not Applicable
Z	The <i>additional conditions of</i> Z1 to Z19 always apply. contract are:

Z1 Cession delegation and assignment

- Z1.1** The *Contractor* does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Employer*.
- Z1.2** Notwithstanding the above, the *Employer* may on written notice to the *Contractor* 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.

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

- Z3.1** Where a change in the *Contractor's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Contractor's* B-BBEE status, the *Contractor* notifies the *Employer* within seven days of the change.
- Z3.2** The *Contractor* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Service Manager* within thirty days of the notification or as otherwise instructed by the *Service Manager*.
- Z3.3** Where, as a result, the *Contractor's* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Contractor's* obligation to Provide the Service.
- Z3.4** Failure by the *Contractor* to notify the *Employer* of a change in its B-BBEE status may constitute a reason for termination. If the *Employer* terminates in terms of this clause, the procedures on termination are P1, P2 and P4 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93.

Supply and Delivery of Articulated Water Trucks x3 to Rosherville in Johannesburg**Z4 Ethics**

Z4.1 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 Contractor 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 Contractor, 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.

Z4.2 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.

Z4.3 The Employer may terminate the Contractor's obligation to Provide the Service if a Committing Party has taken such Prohibited Action and the Contractor did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the Employer 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 Employer can terminate the Contractor's obligation to Provide the Service for this reason.

Z4.4 If the Employer terminates the Contractor's obligation to Provide the Service for this reason, the procedures and amounts due on termination are respectively P1, P2, P3 and P4, and A1 and A3

Z4.5 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the Employer does not have a contractual bond with the Committing Party, the Contractor ensures that the Committing Party co-operates fully with an investigation.

Z5 Confidentiality

Z5.1 The Contractor 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 Contractor, enters the public domain or to information which was already in the possession of the Contractor at the time of disclosure (evidenced by written records in existence at that time). Should the Contractor disclose information to Others in terms of clause 25.1, the Contractor ensures that the provisions of this clause are complied with by the recipient.

Z5.2 If the Contractor is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the Service Manager.

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- Z5.3 In the event that the *Contractor* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Contractor*, to the extent permitted by law prior to disclosure, notifies the *Employer* 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 *Contractor* 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.
- Z5.4 The taking of images (whether photographs, video footage or otherwise) of the Affected Property or any portion thereof, in the course of Providing the Service and after the end of the *service period*, requires the prior written consent of the *Service Manager*. All rights in and to all such images vests exclusively in the *Employer*.
- Z5.5 The *Contractor* ensures that all his subcontractors abide by the undertakings in this clause.
- Z6 Waiver and estoppel: Add to core clause 12.3:**
- Z6.1 Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the *Service 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.
- Z7 Health, safety and the environment: Add to core clause 27.4**
- Z7.1 The *Contractor* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the *service*. Without limitation the *Contractor*:
- accepts that the *Employer* may appoint him as the "Principal Contractor" (as defined and provided for under the Construction Regulations 2014 (promulgated under the Occupational Health & Safety Act 85 of 1993) ("the Construction Regulations") for the Affected Property;
 - warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with the Construction Regulations, 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 the *service*; and
 - undertakes, in and about the execution of the *service*, to comply with the Construction Regulations and 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 *Contractor's* direction and control, likewise observe and comply with the foregoing.
- Z7.2 The *Contractor*, in and about the execution of the *service*, 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 *Contractor's* direction and control, likewise observe and comply with the foregoing.
- Z8 Provision of a Tax Invoice and interest. Add to core clause 51**
- Z8.1 Within one week of receiving a payment certificate from the *Service Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice in accordance with the *Employer's* procedures stated in the Service Information, showing the amount due for payment equal to that stated in the payment certificate.
- Z8.2 If the *Contractor* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Employer* is to make a payment is extended to the following invoicing month without attracting any interest to the *Employer*. The *Contractor* will ensure that operations are not impacted nor effected its failure to submit valid and correct tax invoices on time.
- Z8.3 The *Contractor* (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 *Employer's* VAT number 4330196330 on each invoice he submits for payment.

Supply and Delivery of Articulated Water Trucks x3 to Rosherville in Johannesburg

Z9 Notifying compensation events

Z9.1 Delete the last paragraph of core clause 61.3 and replace with:

If the *Contractor* does not notify a compensation event within eight weeks of becoming aware of the event, he is not entitled to a change in the Prices.

Z10 *Employer's limitation of liability*

Z10.1 The *Employer's* liability to the *Contractor* for the *Contractor's* indirect or consequential loss is limited to R0.00 (zero Rand)

Z10.2 The *Contractor's* entitlement under the indemnity in 82.1 is provided for in 60.1(12) and the *Employer's* liability under the indemnity is limited to compensation as provided for in core clause 63 and X19.11 if Option X19 Task Order applies to this contract.

Z11 **Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":**

- Z11.1
- Or had a business rescue order granted against it.
 - Or the scope contracted by the Contractor with its Employer to which is subcontracted to the tenderer is terminated for whatever reason.
 - Notwithstanding the Delay damages, failure for the Contractor to deliver the trucks within 15 days after receipt of task order/conclusion of contract then ERI may terminate the contract.
 - Should the Contractor be unable to repair/replace the part(s) within the 5 days as stipulated in the Low Services Damage Table below, The Employer may exercise its right to terminate the contract without notice.
 - The contract amount is depleted before the term of the contract is completed.

LOW SERVICES DAMAGE TABLE X17.1

PLANT ESTABLISHMENT	PLANT MOBILIZATION
Task Order to supply and deliver issued	Supplier to establish within 72 hrs
Failure to supply	First NCR issued for effective after 72 hrs (72 +48)
Failure to supply for 2 nd time	Second NCR issued for effective after 72 hrs (72 +48+ 24)
Failure to supply for 3 rd time	Third NCR issued for effective after 72 hrs (72 +48+ 24 +24)
	After the 3 rd NCR the termination process will be effected

Z12 **Addition to secondary Option X7 Delay damages (if applicable in this contract)**

Z12.1 If the amount due for the *Subcontractor's* payment of delay damages reaches the limits stated in this Contract Data for Option X7 or Options X5 and X7 used together, the *Main Contractor* may terminate the *Subcontractor's* obligation to Provide the Works.

Z12.2 If the *Main Contractor* terminates in terms of this clause, the procedures and payment on termination as those applied for reasons R1 to R15 or R18 stated in the Termination Table.

Supply and Delivery of Articulated Water Trucks x3 to Rosherville in Johannesburg**Z13 Second Tier Procurement**

- Z13.1 The *Main Contractor* requires the *Subcontractor* to maximise the use of regional suppliers surrounding the site.

Z14 Delays By The Main Contractor

- Z14.1 Delays in access to the site, if notified by the *Main Contractor* within one week of the event, will be compensated as an extension of time without additional costs

Z15 Change of Legal Status

- Z15.1 The *Subcontractor* immediately notifies the *Main Contractor* in writing of any change in its legal status. Failure on the part of the *Subcontractor* to notify the *Main Contractor* of a change in legal status will constitute a reason for termination. The *Main Contractor* assesses the impact of the change on the contract and reserves the right to terminate the contract.
- Z15.2 If the *Main Contractor* 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 per A1 and A3 as stated in Clause 93

Z16 Payment of Employee's Wages

- Z16.1 It is understood and agreed between the parties that wages for work carried out by the *Subcontractor's* employees shall be paid by the *Subcontractor* to all workmen employed by or on behalf of the *Subcontractor*. The *Subcontractor* shall remain liable for payment of his employee's remuneration even in the event of non-payment by the *Main Contractor*. Failure to meet the aforesaid payment of the employee's remuneration will result in the termination of this subcontract agreement

Z17 Entire agreement

The Contract comprises the entire agreement between the Contractor and the Subcontractor relating to the Works (as hereinafter defined) and subject matter hereunder and supersedes all prior negotiations, representations, arrangements, understandings, agreements and/or contracts relating thereto whether written or oral except to the extent that they are expressly incorporated in the Contract. The Parties shall not be entitled to rely upon nor claim at law whether in contract, delict, for breach of statutory duty or on any other legal basis in relation to any statements, representations or warranties made or given by either Party during the course of negotiations which are not contained in or referred to in this Contract. The Parties agree and confirm that they have placed no reliance upon each other and shall not claim against the other in respect of any statement, representation or warranty made or given by or on behalf of either Party (whether during the course of negotiations or otherwise) which is not included as a term in this Contract and/or the Contract Documents.

Z18 Solicitation

A Party may not, without the prior agreement of the other Party, solicit for employment any employee of the other party who has been involved in this contract at any time while that employee is working for the other Party on this contract, or for a period which is the lesser of (i) 6 months following termination of such employee's employment with the other Party; and (ii) 6 months from expiry of the contract.

Z19 Retention

The *retention* free amount is R NIL

Supply and Delivery of Articulated Water Trucks x3 to Rosherville in Johannesburg

The retention percentage is 10% (50% released on completion of the works and the approval of a Completion Certificate and the balance released at the end of the defects period and the submission of a Hand Over Certificate)

Annexure A: Insurance provided by the Employer

These notes are provided as guidance to tendering contractors and the Contractor about the insurance provided by the Employer. The Contractor must obtain its own advice. Details of the insurance itself are available from the internet web link given below.

1. Services provided in a TSC3 contract could include some element of construction or refurbishment as well as a continuous maintenance or operational service activity. If an event occurs which causes loss or damage, a claim could be made either against the *Employer's* "works" type policy which may be in place for the *Employer's* portion of the Affected Property concerned or against the *Employer's* assets policy which may be in place for the *Employer's* portion of the Affected Property concerned, or both.
2. The cover provided and the deductibles under the works policy are different to those under the assets policy. Each policy has a range of applicable deductibles depending on the location of the Affected Property and the nature of the insurable event.
3. The *Contractor* is required in terms of Contract Data for clause 83 to provide cover for the deductibles in the insurance provided by the *Employer*. This can be provided from his own resources on a 'self insured' basis or obtained by him from his own insurers. In order to assess the extent of this cover, tendering contractors and their brokers should consult the internet web link given below and scroll to '**Format TSC3**' to establish both the cover and the deductibles in relation to the service provided in terms of this contract.
4. Tendering contractors should note that cover provided by the *Employer* is only per the policies available on the internet web link listed below and may not be the cover required by the tendering contractor or as intended by each of the listed insurances in the left hand column of the Insurance Table in clause 83.2. In terms of clause 83.1 "the *Contractor* provides the insurances stated in the Insurance Table except any insurance which the *Employer* is to provide". Hence the *Contractor* provides insurance which the *Employer* does not provide and in cases where the *Employer* does provide insurance the *Contractor* insures for the difference between what the Insurance Table requires and what the *Employer* provides.
5. Further information and full details of all Eskom provided policies and procedures may be obtained from:

http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx

Supply and Delivery of Articulated Water Trucks x3 to Rosherville in Johannesburg

C1.2 Contract Data

Part two - Data provided by the *Contractor*

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

Clause	Statement	Data
10.1	The <i>Contractor</i> 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 , (in words)
11.2(12)	The price schedule is in:	Rands
11.2(14)	The following matters will be included in the Risk Register	Delivery lead times Warranty
25.2	The restrictions to access for the <i>Supply Manager</i> and Others to work being done for this contract are	
30.1	The <i>delivery date</i> of the <i>goods</i> and <i>services</i> is:	<i>goods and services</i> <i>delivery date</i>
		FEL 25 March 2024
31.1	The programme identified in the Contract Data is contained in:	
63.2	The <i>percentage for overheads and profit</i> added to the Defined Cost is	%

Supply and Delivery of Articulated Water Trucks x3 to Rosherville in Johannesburg**PART 2: PRICING DATA****SC3 Option A**

Document reference	Title	No of pages
C2.1	Pricing assumptions: Option A	2
C2.2	The <i>price list</i>	

Supply and Delivery of Articulated Water Trucks x3 to Rosherville in Johannesburg

C2.1 pricing assumptions: Option A

How work is 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 <i>price schedule</i> 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 <i>Supplier</i> has completed, - where a quantity is stated for an item in the Price Schedule, an amount calculated by multiplying the quantity which the <i>Supplier</i> has completed by the rate, - plus other amounts to be paid to the <i>Supplier</i>, - less amounts to be paid by or retained from the <i>Supplier</i>.
		Any tax which the law requires the <i>Purchaser</i> to pay to the <i>Supplier</i> 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 *services* which can be priced as lump sums or as expected quantities of *goods* and *services* 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*

Supply and Delivery of Articulated Water Trucks x3 to Rosherville in Johannesburg

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 *services* 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*

Item nr	Description	Unit	Quantity	Rate	Price
1	Articulated Water Trucks	each	3		

Supply and Delivery of Articulated Water Trucks x3 to Rosherville in Johannesburg**C2.2 the *price list***

Include detailed BoQ for internal vetting only. Must include the items required according to scope of work below.

Item nr	Description	Unit	Quantity
1	Articulated Water Trucks	each	3

PART 3: SCOPE OF WORK

Document reference	Title	No of pages
C3.1 C3.2	This cover page <i>Employer's Service Information</i> <i>Contractor's Service Information</i>	1
	Total number of pages	

Supply and Delivery of Front - End Loaders x3 to Rosherville in Johannesburg

C3.1: EMPLOYER'S SERVICE INFORMATION

Contents

C3.1: EMPLOYER'S SERVICE INFORMATION	25
1 Description of the <i>service</i>	26
1.1 Executive overview.....	Error! Bookmark not defined.
1.2 <i>Employer's</i> requirements for the <i>service</i>	Error! Bookmark not defined.
2 Management strategy and start up.....	29
2.1 The <i>Contractor's</i> plan for the <i>service</i>	29
2.2 Management meetings.....	29
2.3 Invoicing and payment	29
3 Health and safety, the environment and quality assurance	29
3.1 Health and safety risk management.....	29
3.2 Quality assurance requirements	30
4 Working on the Affected Property	30
4.1 <i>Employer's</i> site entry and security control, permits, and site regulations	30
4.2 Records of <i>Contractor's</i> Equipment	30
5 List of drawings.....	30
5.1 Drawings issued by the <i>Employer</i>	30

Supply and Delivery of Articulated Water Trucks x3 to Rosherville in Johannesburg

1. Description of the goods

The services required are for the supply, delivery of new Articulated Water Trucks (x3) yellow plant fleet, with warranty services, to the ERI BMS mobile plant, Rosherville, Johannesburg.

2. Specifications

Below listed, are the technical specifications that further describe the required equipment:

No.	Boundary/Equipment	Specification
2.1	Engine	• Tier 3/Stage IIIA emissions equivalent • Six-cylinder; turbocharged, Diesel • Gross Engine power– 200 to 300 Kw range • Gross Torque range – 1000 to 2000 Nm @1300rpm • Displacement range 6.5 to 10 L
2.2	Tank Water Tank Plumbing	• Water Tank SAE Capacity - 27000 - 30000 Liters • Tank must be filled in no more than 20 minutes. • Head of 50m • Water tank to be fitted with canon • Water delivery control system to be inside the driver's cab
2.3	Transmission	• 6 to 16 Forward / 1 reverse • With free wheel stator torque convertor
2.4	Fuel Tank Refill Capacity and system	• Fuel Tank Range – more than 350 Liters, with lockable fuel cap
2.5	Axle	• High input limited slip differential with spiral bevel gears • Outboard heavy duty planetary on all axles
2.6	Steering system	• Power assisted steering type
2.7	Electrical	• 24v negative earth return tension • 28v, 80A, Alternator • 2 x 12v, 75Ah batteries
2.8	Water tanker plumbing	• rate of flow 1800 l/min • 50m head

Supply and Delivery of Articulated Water Trucks x3 to Rosherville in Johannesburg

2.9 Operator Environment

- ROPS cab:
- All-weather, enclosed pressurized, Sound suppressed panel glass, Meets ISO 3471 standards
- Air suspended 3-way adjustable driver's seat
- Advisor operator interface; Electronic monitoring system; Diagnostic service information
- Full colour LCD monitor with analogue gauge
- Heater, defroster and ventilation
- Visibility – Rear vision camera / rear view mirrors
- Lighting – LED lights package
- Interior LED courtesy lights
- Radio ready
- Power supply – 24V
- Sun visor – front/rear
- Hydraulic cab tilt to 60 deg.

1. Equipment monitoring hardware/software

The equipment must be fitted with hardware / software to facilitate online real monitoring of the following:

Location tracking

- Hours
- Fuel usage
- Productivity
- Diagnostic codes

2. Warranty

- One year/0 – 2500 hours standard, extended to 6000 hours on power train components
- Service to be conducted every 250 worked hours, with a lenient gap of 50 hours for the service to be conducted before the warranty becomes obsolete

Supply and Delivery of Articulated Water Trucks x3 to Rosherville in Johannesburg**3. Delivery of Equipment**

- Delivery of fully finished product within agreeable timelines from order
- Supplier must deliver/transport the machine to Rosherville, Johannesburg
- Commissioning of product must be within 3 days after delivery on site.

4. After Sales/Market Support

No.	Service
1.	24/7 technical support and parts/spares sales
2.	Average response time of 9 to 24 hours on warranty breakdowns and warranty services and confirmation of aftermarket support for next 6 years minimum
3.	95% OEM Parts availability in stock
4.	Seven (7) days turn-around time to import spares if not available locally
5.	Supplier to provide free technical training for Artisans
6.	Provide free Operator and Supervisor training within 30 days of delivery
7.	Technical training on specific equipment to Eskom mechanical technician
8.	Supplier to conduct quarterly machine health monitoring inspections and submit reports to Plant Management

5. Recommendations

Recommendations from a technical perspective, will be based on the following conditions:

- Machine complies with the required specifications
- Price
- Product availability
- Technical specification compliance

Supply and Delivery of Articulated Water Trucks x3 to Rosherville in Johannesburg

1 Management strategy and start up.

1.1 The *Contractor's* plan for the service

The contractor is required to submit plan for service within 7 days after receiving a work instruction from the service manager

1.2 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	Site offices or Head Office	Employer and Contractor
Overall contract progress and feedback	Weekly	Site offices or Head Office	Employer and Contractor

Meetings of a specialist nature may be convened as specified elsewhere in this Service Information or if not so specified by persons and at times and locations to suit the Parties, the nature and the progress of the service. Records of these meetings shall be submitted to the *Service 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.

1.3 Invoicing and payment

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

The *Contractor* shall address the tax invoice to
Eskom RoteK Industries,
And include on each invoice the following information:

- Name and address of the *Contractor* and the *Service Manager*;
- The contract number and title;
- *Contractor's* VAT registration number;
- The *Employer's* VAT registration number 4330196330;
- Description of service provided for each item invoiced based on the Price List;
- Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;
- (add other as required)

Add procedures for invoice submission and payment (e. g. electronic payment instructions)

2 Health and safety, the environment and quality assurance

2.1 Health and safety risk management

The Maintenance Service provider complies with the requirements of the OHS Act 85 of 1993 as well as the Employer's Standards and Procedures regarding 'Health and Safety at Eskom Power Stations'

Supply and Delivery of Articulated Water Trucks x3 to Rosherville in Johannesburg

Note: Requirements to be met by Maintenance Service provider "Contractor SHE Specifications.

The Maintenance service provider co-operates fully with the Employer's accident prevention procedure Document 32-95 as provided to mobile plant service provider on site by site management.

Note: The Maintenance service provider adheres to any additional safety requirements of the Employer on site as specified by site management.

2.2 Quality assurance requirements

The Maintenance service provider conforms to the Quality Management requirements as stipulated in the User Requirement specification.

The quality requirements are as per ISO 9001 and Eskom Standard QM-58 Quality Requirements for Engineering and Construction works (Annexure A and B for the applicable section)

All work carried out must have a quality control plan completed

All employer quality requirements to be adhered to by the contractor.

The service provider submits the following items when changes occur:

- Resources on site (no changes are allowed prior to the Project Manager's acceptance)
- Copy of risk management associated with cleaning services of plant including all work instructions or procedures

3 Supplier Development Localisation and Industrialisation Commitment

N/A for Once off (Purchase Contract)

4 Working on the Affected Property

4.1 Employer's site entry and security control, permits, and site regulations

The service provider applies for access permits at the security gate when access to Eskom Power Stations/Construction sites is required.

The service provider's personnel are in the possession of their access permits at all times when on the Site.

The service provider provides security for protection of construction their equipment and Materials required in providing the Works.

4.2 Records of Contractor's Equipment

The Maintenance service provider keeps records of all tasks executed by the service provider as specified by the original equipment manufacturers.

5 List of drawings

5.1 Drawings issued by the Employer

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

Drawing number	Revision	Title
TBC	TBC	TBC

Supply and Delivery of Articulated Water Trucks x3 to Rosherville in Johannesburg**6 Key Performance Indicators**

Not Applicable for Once off contract

Supply and Delivery of Articulated Water Trucks x3 to Rosherville in Johannesburg**CONFIDENTIALITY AGREEMENT**

This Confidentiality Agreement ('Agreement') is entered into between the Employer and the Contractor.

WHEREAS, the Employer and the Contractor (the Parties) desire to exchange certain confidential information; and consider further business dealings with each other.

WHEREAS, the parties desire to evidence their agreements governing the exchange of certain confidential information as set forth below.

Now therefore, for good and valuable consideration, including the mutual agreements hereinafter recited, the parties hereby agree as follows:

1. The parties contemplate an exchange, either orally, in writing or by inspection, of certain confidential proprietary information possessed or owned separately by them and not readily available or otherwise known to the public and which may be helpful in evaluating further business dealings. Such confidential information (the 'Subject Information') may include but not be limited to the parties' inventions, trade secrets, know-how, technical information on products and manufacturing processes, and information concerning their business assets, financial condition, operations, plans and prospects.
2. The purpose of the exchange of Subject Information is to enable the parties to evaluate the Subject information for the purpose only of considering further business dealings with each other.
3. The parties each agree that they shall maintain in secrecy in accordance with the terms of this Agreement all of the Subject Information each party receives (the 'Receiving Party') from the other party (the 'Proprietor') and shall not disclose or use other than for the purpose specified herein the Subject Information without the written consent of the Proprietor of the Subject Information. All Subject Information communicated from one party to the other shall be deemed to be proprietary and confidential to the Proprietor whether marked or identified as such or not.
4. The duty of care to safeguard Subject Information shall be the same as that which the parties each use to safeguard their own respective proprietary and confidential information.
5. The Receiving Party of Subject Information shall not be obligated to maintain Subject Information received from its Proprietor in secrecy or refrain from using it to the extent that any such information is or rightfully becomes publicly available information other than through a breach of this Agreement, or which the Receiving Party later obtains lawfully from anyone else who is not known by the Receiving Party to be obligated under any secrecy agreement with Proprietor to maintain the information in secrecy. The Receiving Party also shall not be obligated to maintain in secrecy any information it receives from the Proprietor which it can demonstrate was already in its possession when the information was disclosed to the Receiving Party by the Proprietor.
6. The Receiving Party shall promptly return to its Proprietor any Subject Information in tangible form it has received from the Proprietor immediately upon the Proprietor's request, without retaining any copies, summaries, analyses or extracts thereof. All documents, memoranda, notes and other writings prepared by the parties, or their advisors, based on the Subject

Supply and Delivery of Articulated Water Trucks x3 to Rosherville in Johannesburg

Information of each other, shall be destroyed, and such destruction shall be certified in writing by an authorised officer supervising such destruction.

7. If a party, with the written consent of the Proprietor of Subject Information, discloses any Subject Information received from its Proprietor to any third party, it shall do so only under a secrecy agreement having a scope similar to and which is consistent with this Agreement, and the disclosing party shall be primarily responsible for any compromise of the secrecy of Subject Information by such third party
8. Each party agrees that it shall not, while and for so long as it is obligated to maintain Subject Information in secrecy, use for its own benefit, or for the benefit of others or exploit, commercialise, develop, test promote, sell, lease, market or otherwise dispose of any products or services using, incorporating or relying on Subject Information received from its Proprietor without the written consent of the Proprietor.
9. The obligations of the party receiving Subject Information pursuant to this Agreement shall be effective with respect of each item of Subject Information for a term of five (5) years from the date of submission of the Subject Information to the Receiving Party by its Proprietor, unless the Proprietor agrees otherwise in writing.
10. For purposes of this Agreement, each party shall include (to the extent applicable) the officers, directors, employees, agents, representatives, attorneys, joint ventures, partnerships, affiliates, subsidiaries, and divisions of the party, and any other entity or entities which such party controls or which controls it, and, further, shall include any transferee, successor and assign of the assets of the party.
11. This Agreement shall be construed (both as to validity and performance) and enforced in accordance with, and governed by, the laws of Republic of South Africa.
12. Neither this Agreement nor the exchange of Subject Information between the parties shall create or be relied on by either party as a basis for creating any license between the parties under any patent, or other industrial or intellectual property rights of the Proprietor of the Subject Information, or any other license between the parties in the absence of any express written license agreement between them
13. The parties agree that no contract or agreement providing for a transaction shall be deemed to exist between them unless and until a definitive agreement has been executed and delivered, the parties hereby waive, in advance, any claim (including, without limitation, breach of contract) in connection with a possible transaction with each other unless and until they shall have entered into a definitive agreement. The parties also agree that unless and until a definitive agreement between them has been executed and delivered, neither party has any legal obligation of any kind whatsoever with respect to any such transaction by virtue of this Agreement or any other written or oral expression with respect to such transaction, except, in the case of this Agreement, for the matters specifically agreed to herein. For purposes of this paragraph, the term 'definitive agreement'; does not include an executed letter of intent, memorandum of understanding.

IN WITNESS WHEREOF, and intending to be legally bound, this Agreement has been executed by the parties as of and effective from the date first written above.