

PROVISION OF HORTICULTURE SERVICES FOR REAL ESTATES PROPERTIES IN STANDERTON AREA ON AN AS AND WHEN REQUIRED BASIS FOR THE PERIOD OF 60 MONTHS



## NEC3 Term Service Contract (TSC3)

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

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

**Provision of Horticulture Services for Real Estates  
Properties in Standerton Area.**

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**CONTRACT No.** \_\_\_\_\_

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## **PART C1: AGREEMENTS & CONTRACT DATA**

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[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:

### **Provision of Horticulture Services for Real Estates Properties in Standerton Area on an as and when required basis for the period of 60 months.**

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 or C	The offered total of the Prices exclusive of VAT is	<b>Rate based</b>
	Sub total	<b>Rate based</b>
	Value Added Tax @ 15% is	<b>Rate based</b>
	The offered total of the amount due inclusive of VAT is	<b>Rate based</b>

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

Tenderer's CIDB registration number:

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**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 securities, bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the *conditions of contract* identified in the Contract Data at, or just after, the date this agreement comes into effect. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

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

Signature(s)

Name(s) \_\_\_\_\_  
Capacity \_\_\_\_\_

**for the Employer**

\_\_\_\_\_  
*(Insert name and address of organisation)*

Name & signature of witness \_\_\_\_\_ Date \_\_\_\_\_

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

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

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)	_____
Name & signature of witness	_____	_____
Date	_____	_____

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# C1.2 TSC3 Contract Data

## Part C1.2a - Data provided by the *Employer*

Clause	Statement	Data
1	<b>General</b>	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option:	
	dispute resolution Option and secondary Options	<p><b>A: Priced contract with price list</b></p> <p><b>W1: Dispute resolution procedure</b></p> <p><b>X1: Price adjustment for inflation</b></p> <p><b>X2 Changes in the law</b></p> <p><b>X17: Low service damages</b></p> <p><b>X18: Limitation of liability</b></p> <p><b>X19: Task Order</b></p> <p><b>Z: Additional conditions of contract</b></p>
	of the NEC3 Term Service Contract April 2013 <sup>1</sup> (TSC3)	
10.1	The <i>Employer</i> is (name):	<b>Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa</b>
	Address	<b>Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg</b>
10.1	The <i>Service Manager</i> is (name):	
	Address	
	Tel	
	e-mail	

<sup>1</sup> Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 539 1902 [www.ecs.co.za](http://www.ecs.co.za)

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11.2(2)	The Affected Property is	<b>Tutuka Properties (Standerton)</b>
11.2(13)	The <i>service</i> is	<b>Provision of horticulture services for Real Estate's Properties in Standerton Area on an as and when required basis for the period of 60 months.</b>
11.2(14)	The following matters will be included in the Risk Register	<b>Labour strikes, Power supply interruptions or failures, Municipal water interruptions, Community Unrest</b>
11.2(15)	The Service Information is in	<b>Part 3: Scope of Work and all documents to which it makes reference.</b>
12.2	The <i>law of the contract</i> is the law of	<b>the Republic of South Africa</b>
13.1	The <i>language of this contract</i> is	<b>English</b>
13.3	The <i>period for reply</i> is	<b>One (1) week</b>
2	<b>The Contractor's main responsibilities</b>	<b>Data required by this section of the core clauses is also provided by the Contractor in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data</b>
21.1	The <i>Contractor</i> submits a first plan for acceptance within	<b>One (1) month prior to the starting date of the Contract Date</b>
3	<b>Time</b>	
30.1	The <i>starting date</i> is.	<b>TBA</b>
30.1	The <i>service period</i> is	<b>60 months</b>
4	<b>Testing and defects</b>	<b>As per requirements stated in the Service Information</b>
5	<b>Payment</b>	
50.1	The <i>assessment interval</i> is	<b>Between the 25th day of each successive month.</b>
51.1	The <i>currency of this contract</i> is the	<b>South African Rand</b>
51.2	The period within which payments are made is	<b>Four (4) weeks.</b>
51.4	The <i>interest rate</i> is	<b>(i) 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 and</b>  <b>(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</b>

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no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted *mutatis mutandis* every 6 months thereafter (and as certified, in the event of any dispute, by any manager employed in the foreign exchange department of The Standard Bank of South Africa Limited, whose appointment it shall not be necessary to prove.

6	<b>Compensation events</b>	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
7	<b>Use of Equipment Plant and Materials</b>	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
8	<b>Risks and insurance</b>	
80.1	These are additional <i>Employer's</i> risks	<b>1. None</b>
83.1	The <i>Employer</i> provides these insurances from the Insurance Table	<b>As stated for in the All Risk Insurance Policy available on request from Eskom Group Insurance with the Contractor responsible for the relevant ERE insurance deductible of R500 000.00 (Five hundred Thousand Rand) per event.</b>
83.1	The <i>Employer</i> provides these additional insurances	<b>As stated for in the Employer`s Assets All Risk Insurance Policy</b>
83.1	The <i>Contractor</i> provides these additional insurances:	<b>Whatever the Contractor deems necessary in addition to that provided by the Employer</b>
83.1	The minimum amount of cover for insurance against loss and damage caused by the <i>Contractor</i> to the <i>Employer's</i> property is	<b>The amount of the deductibles in the sum of R 500 000.00 (Five hundred Thousand Rand) per event and without limit to the number of events that may arise during the course of the Contract.</b>
83.1	The minimum amount of cover for insurance in respect of loss of or damage to property (except the <i>Employer's</i> property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i> ) arising from or in connection with the <i>Contractor's</i> Providing the Service for any one event is:	<b>whatever the <i>Contractor</i> deems necessary in addition to that provided by the <i>Employer</i>.</b>
83.1	The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the <i>Contractor</i>	<b>As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Contractor's</i> common law</b>

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	arising out of and in the course of their employment in connection with this contract for any one event is:	<b>liability for people falling outside the scope of the Act with a limit of Indemnity of not less than R500 000 (Five hundred thousand Rands).</b>
9	<b>Termination</b>	<b>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.</b>
10	<b>Data for main Option clause</b>	
<b>A</b>	<b>Priced contract with price list</b>	
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	<b>Four (4) weeks</b>
11	<b>Data for Option W1</b>	
W1.1	The <i>Adjudicator</i>	<b>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 <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a>). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).</b>
W1.2(3)	The <i>Adjudicator nominating body</i> is:	<b>the Chairman of ICE-SA a joint Division of the South African Institution of Civil Engineering and the Institution of Civil Engineers (London) (see <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a> ) or its successor body.</b>
W1.4(2)	The <i>tribunal</i> is:	<b>Arbitration</b>
W1.4(5)	The <i>arbitration procedure</i> is	<b>the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.</b>
	The place where arbitration is to be held is	<b>Mpumalanga Province South Africa</b>
	The person or organisation who will choose an arbitrator	<b>the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.</b>
	<ul style="list-style-type: none"> <li>• if the Parties cannot agree a choice or</li> <li>• if the arbitration procedure does not state who selects an arbitrator, is</li> </ul>	
12	<b>Data for secondary Option clauses</b>	
<b>X1</b>	<b>Price adjustment for inflation</b>	
X1.1	The <i>base date</i> for indices is	<b>The rates can be adjusted using CPI after the anniversary of the contract, upon application from the <i>Contractor</i> and approval by the <i>Employer</i>.</b>

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<b>X2</b>	<b>Changes in the law</b>	<b>There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.</b>
<b>X17</b>	<b>Low service damages</b>	
X17.1	The <i>service level table</i> is in	<b>The Service Information C3.1 - 2.14</b>
<b>X18</b>	<b>Limitation of liability</b>	
X18.1	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to	<b>Value of the Contract</b>
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	<b>the amount of the deductibles relevant to the event described in the "Format A" insurance policy available on request from Eskom Group Insurance</b>
X18.3	The <i>Contractor's</i> liability for Defects due to his design of an item of Equipment is limited to	<b>The greater of</b> <ul style="list-style-type: none"> <li>• <b>the total of the Prices at the Contract Date</b></li> </ul> <b>and</b> <b>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 request from Eskom Group Insurance</b>
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	<b>the total of the Prices other than for the additional excluded matters.</b>  <b>The <i>Contractor's</i> total liability for the additional excluded matters is not limited.</b>  <b>The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for</b> <ul style="list-style-type: none"> <li>• <b>loss of or damage to property (other than the <i>Employer's</i> property, Plant and Materials),</b></li> <li>• <b>death of or injury to a person and</b></li> <li>• <b>infringement of an intellectual property right.</b></li> </ul>
X18.5	The <i>end of liability date</i> is	<b>1 Year after the end of the <i>service period</i>.</b>
<b>X19</b>	<b>Task Order</b>	
X19.5	The <i>Contractor</i> submits a Task Order programme to the <i>Service Manager</i> within	<b>One (1) day of receiving the Task Order</b>
<b>Z</b>	<b>The <i>additional conditions of contract</i> are</b>	<b>Z1 to Z14 always apply.</b>

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## **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.

## **Z2 Joint ventures**

- Z2.1 If the Contractor constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations then these persons or organisations are deemed to be jointly and severally liable to the Employer for the performance of this contract.
- Z2.2 Unless already notified to the Employer, the persons or organisations notify the Service Manager within two weeks of the Contract Date of the key person who has the authority to bind the Contractor on their behalf.
- Z2.3 The Contractor does not alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the Employer having been given to the Contractor in writing.

## **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.

## **Z4 Confidentiality**

- Z4.1 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.
- Z4.2 If the Contractor is uncertain about whether any such information is confidential, it is to be

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regarded as such until notified otherwise by the Service Manager.

- Z4.3 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.
- Z4.4 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.
- Z4.5 The Contractor ensures that all his subcontractors abide by the undertakings in this clause.

**Z5 Waiver and estoppel: Add to core clause 12.3:**

- Z5.1 Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the 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.

**Z6 Health, safety and the environment: Add to core clause 27.4**

- Z6.1 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.
- Z6.2 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.

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

- Z7.1 Within one week of receiving a payment certificate from the 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

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equal to that stated in the payment certificate.

Z7.2 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 by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the Employer in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.

Z7.3 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 4740101508 on each invoice he submits for payment.

## **Z8 Notifying compensation events**

Z8.1 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.

## **Z9 Employer's limitation of liability**

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

Z9.2 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.

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

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

## **Z11 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 *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

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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.

- Z11.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.
- Z11.2 The *Employer* may terminate the *Contractor's* obligation to Provide the Services 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 Services for this reason.
- Z11.3 If the *Employer* terminates the *Contractor'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.
- Z11.4 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.

**Z12 Insurance**

**Z 12 .1 Replace core clause 83 with the following:**

**Insurance cover 83**

- 83.1 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.
- 83.2 The *Contractor* provides the insurances stated in the Insurance Table A from the *starting date* until the earlier of Completion and the date of the termination certificate.

**INSURANCE TABLE A**

Insurance against	Minimum amount of cover or minimum limit of indemnity
Loss of or damage caused by the <i>Contractor</i> to the <i>Employer's</i> property	The replacement cost where not covered by the <i>Employer's</i> insurance.  The <i>Employer's</i> policy deductible as at Contract Date, where covered by the <i>Employer's</i> insurance.
Loss of or damage to Plant and Materials	The replacement cost where not covered by the <i>Employer's</i> insurance.  The <i>Employer's</i> policy deductible as at Contract Date, where covered by the <i>Employer's</i> insurance.
Loss of or damage to Equipment	The replacement cost where not covered by the <i>Employer's</i> insurance.

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	The <i>Employer's</i> policy deductible as at Contract Date, where covered by the <i>Employer's</i> insurance.
The <i>Contractor's</i> liability for loss of or damage to property (except the <i>Employer's</i> property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i> ) arising from or in connection with the <i>Contractor's</i> Providing the Service	<p><b><u>Loss of or damage to property</u></b> The replacement cost</p> <p><b><u>Bodily injury to or death of a person</u></b> The amount required by the applicable law.</p>
Liability for death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract	The amount required by the applicable law

**Z 12.2 Replace core clause 86 with the following:**

**Insurance by the Employer**

86

86.1 The *Employer* provides the insurances stated in the Insurance Table B

**INSURANCE TABLE B**

<b>Insurance against or name of policy</b>	<b>Minimum amount of cover or minimum limit of indemnity</b>
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

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**Z13 Nuclear Liability**

- Z13.1 The *Employer* 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.
- Z13.2 The *Employer* is solely responsible for and indemnifies the *Contractor* or any other person against any and all liabilities which the *Contractor* 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 *Contractor* or any other person or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z13.3 Subject to clause Z13.4 below, the *Employer* 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 *Contractor* or any other person, or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z13.4 The *Employer* 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.
- Z13.5 The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned.

Z14 | 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 *Employer's* Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.

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**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.

- Z14.1 The *Employer* ensures that the Ambient Air in the area where the *Contractor* 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.
- Z14.2 Upon written request by the *Contractor*, the *Employer* 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 *Contractor* may perform Parallel Measurements and related control measures at the *Contractor'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 Z14.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.
- Z14.3 The *Employer* manages asbestos and ACM according to the Standard.
- Z14.4 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.
- Z14.5 The *Contractor'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.
- Z14.6 The *Contractor* 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, 2001.
- Z14.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Employer* at the *Employer's* expense, and conducted in line with South African legislation.

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## **Annexure A1: Insurance provided by the *Employer***

*These notes are provided as guidance to tendering contractors and the Contractor about the insurance provided by the Employer.*

- 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.
- 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.
- 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.
- Further information and full details of all Eskom provided policies and procedures may be obtained from: Eskom Group Insurance.

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# C1.2 Contract Data

## Part C1.2b - Data provided by the Contractor

Clause	Statement	Data
10.1	The <i>Contractor</i> is (Name): Address Tel No. Fax No.	
11.2(8)	The <i>direct fee percentage</i> is The <i>subcontracted fee percentage</i> is	
11.2(14)	The following matters will be included in the Risk Register	
11.2(15)	The Service Information for the <i>Contractor's</i> plan is in:	
21.1	The plan identified in the Contract Data is contained in:	
24.1	The key people are:  1 Name: Job: Responsibilities: Qualifications: Experience:  2 Name: Job: Responsibilities: Qualifications: Experience:	
<b>CV's (and further key person's data including CVs) are in _____ .</b>		
<b>A</b>	<b>Priced contract with price list</b>	
11.2(12)	The <i>price list</i> is in	
11.2(19)	The tendered total of the Prices is	

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**Part C2: Pricing Data**  
**TSC3 Option A**

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

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## C2.1 Pricing assumptions: Option A

### How work is priced and assessed for payment

Clause 11 in NEC3 Term Service Contract (TSC3) core clauses and Option A states:

<b>Identified and defined terms</b>	11 11.2	(12) The Price List is the <i>price list</i> unless later changed in accordance with this contract.
		(17) The Price for Services Provided to Date is the total of <ol style="list-style-type: none"> <li>1. the Price for each lump sum item in the Price List which the <i>Contractor</i> has completed and</li> <li>2. where a quantity is stated for an item in the Price List, an amount calculated by multiplying the quantity which the <i>Contractor</i> has completed by the rate.</li> </ol>
		(19) The Prices are the amounts stated in the Price column of the Price List. Where a quantity is stated for an item in the Price List, the Price is calculated by multiplying the quantity by the rate.

This confirms that Option A is a priced contract where the Prices are derived from a list of items of service which can be priced as lump sums or as expected quantities of service multiplied by a rate or a mix of both.

### Function of the Price List

Clause 54.1 in Option A states: "Information in the Price List is not Service Information". This confirms that instructions to do work or how it is to be done are not included in the Price List but in the Service Information. This is further confirmed by Clause 20.1 which states, "The *Contractor* Provides the Service in accordance with the Service Information". Hence the *Contractor* does **not** Provide the Service in accordance with the Price List. The Price List is only a pricing document.

### Link to the *Contractor's* plan

Clause 21.4 states "The *Contractor* provides information which shows how each item description on the Price List relates to the operations on each plan which he submits for acceptance". Hence when compiling the *price list*, the tendering contractor needs to develop his first clause 21.2 plan in such a way that operations shown on it can be priced in the *price list* and result in a satisfactory cash flow in terms of clause 11.2(17).

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## Preparing the *price list*

Before preparing the *price list*, both the *Employer* and tendering contractors should read the TSC3 Guidance Notes pages 14 and 15. In an Option A contract, either Party may have entered items into the *price list* either as a process of offer and acceptance (tendering) or by negotiation depending on the nature of the *service* to be provided. Alternatively the *Employer*, in his Instructions to Tenderers or in a Tender Schedule, may have listed some items that he requires the *Contractor* to include in the *price list* to be prepared and priced by him.

It is assumed that in preparing or finalising the *price list* the *Contractor*:

- Has taken account of the guidance given in the TSC3 Guidance Notes relevant to Option A;
- Understands the function of the Price List and how work is priced and paid for;
- Is aware of the need to link operations shown in his plan to items shown in the Price List;
- Has listed and priced items in the *price list* which are inclusive of everything necessary and incidental to Providing the Service in accordance with the Service Information, as it was at the time of tender, as well as correct any Defects not caused by an *Employer's* risk;
- Has priced work he decides not to show as a separate item within the Prices or rates of other listed items in order to fulfil the obligation to complete the *service* for the tendered total of the Prices.
- Understands there is no adjustment to items priced as lump sums if the amount, or quantity, of work within that item later turns out to be different to that which the *Contractor* estimated at time of tender. The only basis for a change to the (lump sum) Prices is as a result of a compensation event.

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## C2.2 the *price list*

**NB: Prices to include labour, supply of all materials, overheads, safety, protective clothing, profits, hiring of equipment.**

The *price list* is contained in **Annexure A2**.

Notes to the *price list*

1. The rates in the Price List exclude VAT.
2. The rates will remain fixed and firm for the first 12 months of the contract period, thereafter escalation may be applied for, in writing, annually based on CPI by the Contractor.
3. The escalation will only be applicable from the date of approval.
4. CPI will not apply to items relating to % Markups
5. Where quotations are required, Eskom will not pay the *Contractor* to supply quotes

PROVISION OF HORTICULTURE SERVICES FOR REAL ESTATES PROPERTIES IN STANDERTON AREA ON AN AS AND WHEN REQUIRED BASIS FOR THE PERIOD OF 60 MONTHS

**Price List**

PRICES MUST INCLUDE FOR ALL PROFITS, CONSUMABLES, EQUIPMENT, PRODUCTS, LABOUR AND TRANSPORT ETC:

Item No.	Description	Frequency	Rate	Unit
1	Cut vacant stands Standerton (173)	As and when		Each
2	Clean offices	Once a week		Each
3	Clean vacant houses Standerton (69)	Once a month		Each
4	Clean Entrances	Every 2nd month		Each
5	Cut Pavement	As and when		Each
6	Clean Eskom Hall	Twice a month		Each
7	Clean Flats	Twice a month		Each
8	Clean Hub	Twice a month		Each
9	Clean Club	Twice a month		Each
10	Clean Bus Shelters	Every 2nd month		Each
11	Removal of Trees	As and when		Each
12	Pick up Waste Removal	Once a month		Each

**The rates should include PPE, Transport, Medicals and Safety File.**

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### Part C3: Scope of Work

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C3.2	<i>Contractor's Service Information</i>	
	Total number of pages	

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## 1. Description of the service

### 1.1 Executive overview

The purpose of this contract is to appoint a suitably qualified *Contractor* for the Provision of Horticulture Services for real estate properties in Standerton area.

#### SCOPE OF WORK

##### Provision of Horticulture Services for Standerton Area.

The purpose of this Contract is to provide Horticulture Services for Standerton Area.

- The contractor will be responsible to deliver the services as required in the scope of work “as and when required”.
- The contractor will be required to supply sufficient personnel and transport as and when required to service this contract.
- The Contractor to provide management of labour, transport, equipment, tools and consumables to carry out the services as specified in compliance with the clients environmental policy and other conditions he may have deemed fit to impose.
- The Contractor will comply with the rules, regulations and standards in force at the workplace. (Emphasis on Safety, Health and Environmental compliance to regulations)
- The agreement will be enhanced by regular and open communication, joint planning, co-operation and sharing of responsibilities around the image and specific culture of the business unit

Mowing/trimming/fertilizing.

Mowing, trimming, brush cutting and cleaning tasks must be performed as a unity at all times to ensure a uniform length and aesthetic acceptable appearance.

Although the service calendar details the number of times a given area needs to be cut,, these may vary in numbers due to climatic factors.

Weather permitting, the contractor will schedule his/her mowing and trimming in accordance with the service calendar in order to achieve an acceptable clean cut, groomed and “finished off” look.

The height of mowing may differ from place to place and the method of mowing and trimming may vary according to the type of grass and the standard of finish required.

The result must comply with professional gardening standards and with the client’s requirements (uniform length & aesthetic acceptable appearance).

Where mowing has taken place in wet conditions, ride-on and push- mowers may leave tread marks and windrows of half or uncut grass.

These conditions may necessitate extra mowing care that the contractor will undertake as soon as the soil has dried out sufficiently for him to do so successfully.

No overgrown grass in drains, water meters (to be kept clean of litter etc.) and/or road edges.

Fertilizing; as per specifications in (August, November & February

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All Flowerbeds

Beds differ in character and in the quantity of plant material they carry. Different bed cleaning methods are used to achieve an end result of conformance to standards, neatness, and cleanliness and having a pleasing appearance.

The Contractor will adapt his/her cleaning method to the requirements of the bed.

Exposed soil will be weed free with no foreign objects and levelled out. Where beds are covered with mulch or any other soil additive this must also be weed free and free of foreign objects.

Beds totally covered with ground cover planting may have to be cut back periodically and removed to stimulate new growth.

Weed & Pest Control (Manual or Chemical)

The eradication of weeds whether manually, mechanically or by chemical means is the responsibility of the contractor.

The Contractor will determine the most effective method of weed eradication and remove such weeds when required according to the rules of normal professional garden practice.

The contractor will ensure that herbicides will cause no long-term soil imbalance / or detrimental effect as a result of the indiscriminate use of such herbicides.

The eradication of weeds applies to all specified areas within the contract. (An Environmental clause might be stipulated on the MSDS or alternatively else the product must be accompanied by a report from the supplier relating to probable impacts)

Application of herbicides must adhere to all safety, environmental and health legislation and regulations.

A suitable qualified person who is registered in terms of the Chemicals Control Act (Act 36 of 1947) must handle the application of these chemicals (PCO license). Only approved herbicides may be utilized. Material safety data sheets (MSDS) are a requirement.

The control of pests applies to outdoor areas only, lawns, flowerbeds, trees, shrubs and other foliage.

The Contractor will, under the rules of normal professional garden practice, control such pests as and when their appearance becomes evident or in the interests of the plants affected so as not to detract from the general appearance of the contracted areas.

The Contractor undertakes to limit the use of such pesticides as to avoid any long term's adverse effects such chemicals may have on plant growth and soil fertility.

Pests are identified as insects that may invade plant material. As with the application of chemicals for weed, a suitable qualified person who is registered in terms of the Chemicals Control Act, must apply / utilize chemicals used for the control of pests. PCO License is a requirement.

Daily update of the chemical usage registrar is required (Haz. Substance, amount, person, key control).

A report of all hazardous substances used with MSD's needs to be forwarded to the environmental co-ordinator on six monthly bases. (Required for the BI-annual environmental report)

Thinning out / removal of dead flowers

Thinning out particularly in flowerbeds.

Thinning out where overgrowth results in an unsightly appearance.

PROVISION OF HORTICULTURE SERVICES FOR REAL ESTATES PROPERTIES IN STANDERTON AREA ON AN AS AND WHEN REQUIRED BASIS FOR THE PERIOD OF 60 MONTHS

Thinning out when plant matter grows uncontrolled and not in accordance with professional gardening practice.

This activity will be undertaken timorously to check unfavourable growth and maintain correct "fullness and appearance" of the area while avoiding any adverse effects on the recovery of the remaining plants and their long term ability to mature.

The Contractor may choose to thin out annually or as an ongoing exercise depending on the growth and development of the plants.

#### Raking / Sweeping

Debris in the form of leaves, grass cuttings, twigs and other garden waste will be swept or raked into a pile, bagged and removed by the Contractor before such debris becomes unsightly.

The Contractor will remove all garden waste to a site designated for this purpose (municipal dumping site).

#### Management of litter

Removal of litter throughout the year is a requirement. Ground litter needs to be uplifted from the contract maintenance areas and placed in appropriate plastic bags / bins, as per task order/request.

#### Garden refuse uplifting and removal

Garden refuse is that which is generated by the contractor during the course of his normal activities.

The refuse will include grass clippings, branches, leaves and other plant matter that may also consist of other objects (rocks, bricks, cement etc.) that need to be disposed of from the contract maintenance areas according to the service agreement.

This refuse is disposed of within 24 hours to a designated dumping site

#### Removal of Trees and Shrubs:

To be removed as per request

#### Water

An adequate supply of water under pressure and in close proximity to the various areas (where applicable) will be supplied to the Contractor for the duration of this agreement

#### Paved Areas

Includes all paved areas where gardening activities are executed, in areas maintained as per scope. Should be controlled by usage of a suitable, acceptable and registered chemical (see clause 1.2 .3 in Scope). All dead plant matter to be removed

#### Maintenance Program

The service frequency calendar at the discretion of the Employer can be changed to cater for inconsistencies in climatic conditions and other factors that may influence the schedules services. Certain other services are not specifically scheduled and are undertaken as and when they may be required according to the rules of professional garden practice.

#### **Hazardous waste**

Waste declared as hazardous substances in terms of the Hazardous Substances Act no 15 of 1973 is the responsibility of the Contractor to ensure safe removal from the property to a registered Class 1 site

PROVISION OF HORTICULTURE SERVICES FOR REAL ESTATES PROPERTIES IN STANDERTON AREA ON AN AS AND WHEN REQUIRED BASIS FOR THE PERIOD OF 60 MONTHS

- The contractor shall comply with Eskom environmental management procedures and Environmental legislation
- Environmental incidents shall be reported to the Eskom Environmental Department as per incident management requirements.

**Recommended equipment, tools and materials to perform all activities, to be provided by the Contractor:**

- \* 2 X Push mowers
- \* 2 X Ride-on tractors
- \* 3 X Lawnmowers
- \* 10 X Brush cutters (2 X fire extinguishers requirement)
- \* 1 x Tractor with the slather for vacant stand and entrance etc.
- \*1 X Chainsaw industrial
- \* 1 X designated vehicles one to transport all personnel and equipment in accordance with Eskom rules and regulations. Note: Contractor to supply a vehicle to remove rubble on a daily basis.
- \*1 X designated Vehicle for the supervisor.

All other equipment required for Horticulture

**Staff**

The Service provider should make provision for rainy days. Employees can work extra hours or overtime to cover the time lost during the rainy day

- \* 1 X Designated supervisor per specific area
- \*12 X designated daily workers
- \* 2 X General labourers to assist with vacant stands
- \* 1 X Tractor drivers with authorized driver
- \*3 X daily workers for Eskom Offices (six offices)

The Contractor should supply his own refuse bags.

Note: The Contractor should come to site with the required tools/equipment in the morning and leave with it in the afternoon. Eskom will not be liable for the loss of tools and the equipment of the Contractor.

**PPE**

Correct PPE per year as per prescribed Eskom Safety Regulations

- Safety boots
- Gumboots
- 2 X overalls (with company engraved on it)
- safety goggles – garden services
- gloves
- Rain coats
- Two Golf shirts for summer (with company engraved on it)

Protective equipment to be marked with company name.

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Personnel protective equipment to be maintained in a good and clean condition and if torn needs to be replaced.

Records for issuing of personnel protective equipment to employees to be kept by contractor for audits by Eskom when required.

### **Safety**

The *Contractor* complies with the provision of the Occupational Safety and Health Act(OSH ACT) as laid down by the Inspectorate of the Department of Manpower and endeavors to uphold the principals and requirements of the act at all times.

The Contractor should be a registered weed and pest control operator, thereby conforming to all regulations of the Department of Agriculture Act 36 of 1947.

Relevant PPE to be worn at all times & PCO License is a requirement.

All vehicle drivers to be in possession of a valid driver's license and competence clearance, pertaining operating of all grass cutting equipment (ride-on mowers, push mowers, brush cutters etc.) and cleaning equipment (buildings)

All employees to complete induction and have medical certificates prior to commencement date of contract.

The Supervisor and his team will be required to conduct a site specific risk assessment, to determine any risks and challenges, which maybe encountered in terms of the space, position, location (surrounding environment) and work that needs to be performed

Contractors Employees shall undergo a medical screening examination before being allowed on site and all employees' medical fitness shall be kept in the contractors safety file. ( Medical screening examinations costs are the responsibility of the contractor ).

Contractor Safety files to be approved by the Eskom risk management before work may commence on site and be available at any time for audits by Eskom.

Contractors to supply employees with all required personal protective equipment and the costs are the responsibility of the contractor.

Personnel protective equipment must be clearly marked with company name and logo as well as to issue each employee with a permit that is clearly visible for identification.

Contractor to ensure that toolbox talks and a signed risk assessment has been conducted and that all employees have signed both documents for work that is to be conducted and ensure that they are signed by the Eskom responsible supervisor before work commences.

Contractor responsible person to attend a morning meeting held at the Eskom properties maintenance office Monday to Friday at 07h00 for daily works requests and feedback on defects completed, Contractor also responsible to attend the monthly safety meeting as well as any other meeting requested by Eskom.

### **1.2 Employer's requirements for the service**

The scope includes the provision of the following facilities management services:

- Horticulture Services
- The detailed requirements for this contract are contained in **Annexure A2**.

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- The *Contractor* shall provide all labour, supervision, administration and management, equipment, tools, supplies and material required to perform the facilities management services specified herein.
- Eskom reserves the right to award any works detailed in the bill to any other supplier it deems necessary.
- The response time for the *Contractor* to supply quotations is 7 working days from the date of request. Eskom will not pay the *Contractor* for obtaining quotations.
- The Contractor will be subject to performance approvals based on Eskom's key performance indicators. Based on outcomes of these performance appraisals, the *Employer* reserves the right to withhold allocation of works to non-performing contractors.

### 1.3 Interpretation and terminology

The following abbreviations are used in this Service Information:

Abbreviation	Meaning given to the abbreviation
ERE	Eskom Real Estate Department
N/A	Not Applicable
SAP	System Application Product
CPA	Cost Price Adjustment
OHSACT	Occupational Health and Safety Act
PPE	Personal Protective Equipment
LAR	Local Access Register
COC	Certificate of Compliance
SOW	Scope of work
YTD	Year to date
B-BBEE	Broad Based Black Economic Empowerment
PPPFA	Preferential Procurement Policy Framework Act
RP	Responsible Person
ISO	International Organization for Standardization
QMS	Quality Management Systems
SABS	South African Bureau of Standards

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2. Management strategy and start up

**2.1 The *Contractor's* plan for the *service***

The *Contractor* must detail below a plan which stipulates how he intends on performing the *service* throughout the *service* period, as required by clause 21.2.

Staff structure

List technical reporting and scheduling requirements which are to be incorporated into the *Contractor's* plan.

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## 2.2 Management meetings

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

<b>Title and purpose</b>	<b>Approximate time &amp; interval</b>	<b>Location</b>	<b>Attendance by:</b>
Overall contract progress/feedback in terms of contract obligations	Monthly intervals or when deemed required by the <i>Service Manager</i> .	Standerton / Thuthukani	<i>Employer / Service Manager / relevant Eskom representatives and appointed Contractor</i>
Safety Meeting	Monthly	Standerton / Thuthukani	Employer, Site manager and supplier supervisor as well as safety officer.
Daily defects	Daily	Standerton / Thuthukani	Site manager and supplier supervisor as well as safety officer, Contractor employees
Toolbox Talk and Risk Assessment	Every morning before starting work	Standerton / Thuthukani	Site manager and supplier supervisor as well as safety officer, Contractor employees
Work Stoppage Meeting	When required by the Employer	Standerton / Thuthukani	Employer, Site manager and supplier supervisor as well as safety officer, Contractor employees

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.

## 2.3 Contractor's management, supervision and key people

The *Contractor* must include an organogram of the structure that will be supporting with contract. The names, identity numbers, qualifications and experience must be listed.

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## 2.4 Provision of bonds and guarantees

N/A

## 2.5 Documentation control

The *Contractor* to ensure that all documentation relating to this contract is filed and kept on site for viewing by the *Service Manager* at any time. The *Contractor* must ensure that all documents are also kept in soft copy and backed up on a hard drive which must be handed to the *Service Manager* at the end of the contract. Files are to be neatly labelled and indexed.

All correspondence shall be dated and sequentially numbered and distributed in accordance with a procedure as agreed and accepted by the *Service Manager*.

Any required service will be communicated to the *Contractor* via a Task Order.

Feedback questionnaires must be duly completed by all delegates and forwarded to the **Generation Real Estate Department**.

Eskom will periodically request detailed reports from the *Contractor* regarding the gaps, problems and highlights. Possible solutions will be required with this detailed report.

## 2.6 Invoicing and payment

The *Contractor* provides a statement on the 15<sup>th</sup> and 25<sup>th</sup> of every month for the duration of the contract. The statement will reflect the following information on all invoices submitted for payment, from the start of the contract:

- Date of Invoice
- Date of delivery of Service
- Invoice Number
- Invoice Amount excluding VAT
- PO Number
- Task Order Number
- GR Number
- Payment Status (either Paid or Unpaid)

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 HOLDINGS SOC LIMITED  
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 **4740101508**;
- Description of service provided for each item invoiced based on the Price List or accepted quotations;
- Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;

The *Contractor* shall comply with the *Employer's* E-Invoicing process when submitting invoices for payment.

### 2.6.1 Payment Item Descriptions

The descriptions given for the payment items in the Price List, indicate the work to be allowed for in the tendered rates and prices for such payment items, and are for the guidance of the *Contractor* and do not necessarily repeat all the details of work and materials required by and described in the Service Information.

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### 2.6.2 Prices to be Inclusive

The *Contractor* shall accept the payment provided in the Contract and represented by the rates and prices tendered by him in the Price List, as payment in full for executing and completing the work as specified.

Where the *Contractor* has priced an item as "nil" or "0-00" it will be deemed that no charges are or will be incurred against such an item. In the event of no price having been entered against any item, the tendered rate, price or sum will be taken as "nil" or "0-00".

### 2.6.3 Measurement Meetings

The *Contractor* shall attend monthly meetings with the *Service Manager* and Supervisor where all matters concerning payment shall be discussed. In particular the *Contractor* shall submit for the meeting a monthly statement together with all calculations and supporting data in substantiation of any payments.

## 2.7 Contract change management

- Templates in terms of NEC3 as prepared by the *Service Manager* for *payment* certificates, early warnings and defect notifications can only be used in this contract.
- The *Contractor* shall request this form from the *Service Manager*.

## 2.8 Records of Defined Cost to be kept by the *Contractor*

All records as required to back up any defined costs must be kept on file by the *Contractor* and be made available when requested by the *Service Manager*.

## 2.9 Insurance provided by the *Employer*

See Annexure A1 above

## 2.10 Training workshops and technology transfer

- The *Contractor* shall provide training for personnel at dates as agreed upon by the *Contractor* and the *Service Manager*.
- All SHEQ training to be risk based and in accordance with Eskom Procedures and National Regulations
- The *Contractor* shall ensure that the employees are adequately to execute the services required in this contract.

## 2.11 Design and supply of Equipment

The *Contractor* takes full liability for the use of all equipment in the execution of *Services* for this contract.

## 2.12 Things provided at the end of the *service period* for the *Employer's* use

### 2.12.1 Equipment

None

### 2.12.2 Information and other things

- Summary of all quantity of items supplied by *Contractor* as per the Price List and accepted quotations for the duration of the contract.
- Summary of lessons learnt during the contract period.
- Summary of training undertaken by the *Contractor's* employees over the duration of the contract.



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**Signature:** \_\_\_\_\_ **Signature:** \_\_\_\_\_

## 2.14 Low service damages table

<b>Item</b>	<b>Amount</b>
Non-compliance to Eskom's Cardinal Rules	R1000 per finding
Non-compliance to Eskom Procedures and Policies	R500 per finding
Non-compliance to the OHSACT	R500 per finding
Penalty for late completion of task orders	R500 per day
Non-payment to subcontractors causing disruption of service to Eskom	R1000 per incident

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### 3. Health and safety, the environment and quality assurance

#### 3.1 Health and safety risk management

In addition to the requirements of the laws governing health and safety, Eskom may have some additional requirements particular to the service and the Affected Property for this contract. The text below provides for these being attached as an Annexure to this Service Information.

The Divisional/Regional Safety Risk Manager or his representative having jurisdiction over the service must provide the relevant safety, health and environmental (SHE) criteria for incorporation into this Service Information. The SHE specification / scope must be signed off by the Divisional/Regional Safety Risk Manager or his representative confirming that the applicable safety criteria have been taken into account.

The Commodity Manager / Buyer must refer the tender to the Divisional/Regional Safety Risk Manager or his representative in order to evaluate against enquiry-specific safety criteria

#### 3.2 Environmental constraints and management

The *Contractor* shall comply with the environmental criteria and constraints stated in Annexure B to this Service Information.

#### 3.3 Quality assurance requirements

##### Quality management

##### System requirements

**Clause 3.3.1 requires that the *Contractor* operate a quality management system as stated in the Scope.**

The *Contractor* shall control his activities and processes in accordance with Eskom's Quality Assurance Standard **QM58: Supplier contractor quality requirements specification**

The *Contractor* will be responsible for the verification and signing of the quality inspection points which must be maintained by the *Contractor* and presented to Eskom on request.

##### Information in the quality plan

**Clause 3.3.2 requires that the *Contractor* provide a quality policy statement and quality plan which complies with requirements stated in the Scope.**

- (a) The *Contractor* shall demonstrate, provide and maintain a Quality Management System (QMS) that is ISO 9001 compliant or provide Quality Policy and Method statement or Contract Quality Plan
- (b) The *Contractor* agrees to control and professionally preserve and store appropriate documents, records and recordings to guarantee the traceability of the services rendered and inspection thereof;
- (c) The delivered services shall be uniform in Quality and condition, consistent with good industry practices and adhere to requested Eskom requirements, without deviation.
- (d) Service provider might be subjected to audits (Internal/external)

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- (e) Eskom reserves the right to inspect any or all of the work. Verification by Eskom shall not absolve the *Contractor* of the responsibility to provide acceptable services, nor shall it preclude subsequent rejection by
- (f) The services must comply with the agreed specifications and the applicable directives set out in the agreement. Defects notified by Eskom shall be remedied by the *Contractor* upon demand by Eskom without undue delay and at no extra cost. The *Contractor* shall continuously monitor and identify non-conformances, relating to the scope of work, as signals of opportunities for improvement making process and other relevant changes to prevent recurrence
- (g) The Contractor / Consultant shall further identify potential problems before they occur by identifying deviations in patterns or trends in service or process performance.
- (h) Nothing contained in the Contract shall relieve in any way the Contractor / Consultant from the obligation of Quality control thereof.
- (i) The Contractor / Consultant guarantees that the quantity, Quality and outward appearance of the delivered services will comply with the requirements of the contract and/or relevant specifications.
- (j) The Contractor / Consultant shall prove its ability, on request, to relate to the proposed scope of work which establishes the manner in which the Contractor / Consultant intends to perform the Contract.
- (k) The Contractor / Consultant shall, on request, prove its organisational, logistics and support resources to ensure the requirements of the contract can be achieved.

Eskom reserves the right to assess and measure , in the selection process, the qualifications , capability and competence of the key staff (assigned personnel ) in relation to the scope of work and to interview any / all Contractor / Consultant to confirm the Quality evaluation

## 4. Procurement

### 4.1 People

- The *Contractor* is solely responsible for the resolution of any dispute or problems that may occur between himself and his staff.
- The *Contractor* undertakes to hold the *Employer* harmless against any determination or award made in terms of the Labour Relations Act No.66 of 1995 as amended.

#### 4.1.1 Minimum requirements of people employed

- All of the *Contractor's* staff must to be able to communicate in English.
- All of the *Contractor's* staff must have the necessary qualifications to execute the designated functions
- All of the *Contractor's* staff who are not South African citizens, must have valid work permits.

#### 4.1.2 BBBEE and preferencing scheme

SANAS accredited BBBEE certificate (certified copy) or valid original sworn affidavit (DTI template, stamped by commissioner of oath) for EME/QSE level 1

#### 4.1.3 Accelerated Shared Growth Initiative – South Africa (ASGI-SA)

The *Contractor* complies with and fulfils the *Contractor's* obligations in respect of the Accelerated and Shared Growth Initiative - South Africa.

#### 4.2.1 Preferred subcontractors

In certain sites there are specialist equipment and services that are required, and Eskom reserves the right to choose the subcontractor that is required to execute such function.

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Eskom also reserves the right to choose subcontractors based on quality and price.

**4.2.2 Subcontract documentation, and assessment of subcontract tenders**

N/A

**4.2.3 Limitations on subcontracting**

The use of Sub Contractors by the *Contractor* must be approved in writing by the *Service Manager* before commencement on site.

**4.2.4 Attendance on subcontractors**

is the sole responsibility of the *Contractor*. The *Contractor* is to ensure that any upfront payments or deposits required by the subcontractor are fulfilled by the *Contractor* such that the service is executed by the subcontractor timeously.

**4.3 Plant and Materials**

**4.3.1 Specifications**

N/A

**4.3.2 Correction of defects**

N/A

**4.3.3 Contractor's procurement of Plant and Materials**

N/A

**4.3.4 Tests and inspections before delivery**

N/A

**4.3.5 Plant & Materials provided "free issue" by the *Employer***

The *Employer* will not provide any materials for use by the *Contractor*.

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## 5. Working on the Affected Property

### 5.1 Employer's site entry and security control, permits, and site regulations

The *Contractor* and all of his staff shall undergo Eskom induction prior to entering the Affected Property.

#### 5.1.1 Roads and Vehicles

- All vehicles used on site, by the *Contractor* will be compliant with Eskom Standards.
- All road signs and traffic laws / regulations on site will be adhered to. Employees of the *Contractor* failing to comply will be removed from site and denied any further access.

#### 5.1.2 Security

- The *Contractor's* staff will be subject to all security measures, rules and regulations of the Eskom Security Services
- Vehicles and staff agree and accept the searching of all staff, bags, briefcases and vehicles.

#### 5.1.3 Access to and Departure from the Site

- Access to the site will be via the main security gate. The *Employer* informs the *Contractor* of the access procedures, and it should be expected that such procedures may change depending on the prevailing security situation.
- The *Employer* reserves the right for its Security personnel to search persons or vehicles entering or leaving the premises. This includes, but is not limited to staff, briefcases, bags and toolboxes.
- All persons entering Eskom sites are subjected to alcohol testing.

#### 5.1.4 Temporary Gate Permits

- The *Contractor* provides the *Employer* with the personal details of their staff at least two weeks prior to the contract start date. All names and details to be submitted to the *Employer* who arranges for all gate permits.
- If an employee is no longer in the employ of the *Contractor*, the *Contractor* shall notify the *Employer* in advance, and replacements communicated to the *Employer* as well, whereby they will have to attend induction as well.
- The *Contractor* ensures that all equipment and materials brought through the security gate is signed in at the main security gate on the approved Eskom security form.

#### 5.1.5 Removal

- The *Contractor* is not allowed to remove any equipment or materials from site without producing the relevant Eskom security forms and the equipment lists.
  - If the equipment or material is to be removed the same day, on which they were brought on to site, then the security form will need to be produced at the gate when leaving the site.
  - The removal of any item at a later stage of the contract will require a security form with the necessary approval and responsible manager's signature.
  - If the equipment or material is removed after this time then a Non-Returnable Gate Release will be provided by the *Employer's Representative*, on receipt of the original security form, with which the *Contractor* brought the equipment on site.

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## 5.2 People restrictions, hours of work, conduct and records

- The *Contractor* is responsible for the provision of meals of his own personnel, and the cost thereof.
- The *Contractor* is responsible for the provision of transportation for all personnel to site, from site and on Site.
- The *Contractor* is responsible for the training and development of his staff whilst employed.
- The *Contractor* keeps records of his people working on the Affected Property, including those of his Subcontractors and the *Service Manager* shall have access to these records at any time.

## 5.3 Health and safety facilities on the Affected Property

*Contractor* to provide own Emergency preparedness procedure and align to site emergency procedure.

## 5.4 Environmental controls, fauna & flora

### 5.4.1 Protection of Flora

The removal, damage and disturbance of indigenous flora are prohibited.

### 5.4.2 Protection of the Fauna

The *Contractor* shall protect fauna living within the Site and shall ensure that hunting, snaring, poisoning, shooting, nest raiding or egg collecting and disturbance does not occur.

The *Contractor* is to ensure that his employees are instructed not to feed wild animals.

The use of pesticides is prohibited unless accepted by the *Service Manager*.

No domestic pets or livestock are permitted on site.

## 5.5 Cooperating with and obtaining acceptance of Others

The *Contractor* will cooperate with the *Service Manager*, his delegates and support structures, in matters relating to this contract.

The *Contractor* will cooperate with the management staff of the Affected Property.

The *Contractor* will cooperate with all statutory authorities or inspection agencies.

## 5.6 Records of *Contractor's* Equipment

Prior to starting work on the Affected Site, the *Contractor* will compile a list his equipment, either owned or hired, which will be used for the execution of this contract. It should include the make, type, year of manufacture, colour and function or use. This list will be signed off by the *Contractor* and the *Service Manager*.

- Any electrical equipment or appliances used by the *Contractor* must comply with all relevant safety regulations and requirements and be maintained in safe and proper working condition.

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- The *Employer* has the right to stop the *Contractor's* use of any electrical equipment or appliance, which in the *Employer's* opinion does not conform to the foregoing.

## 5.7 Equipment provided by the *Employer*

Prior to starting work on the Affected Site, the *Contractor* will compile is list of the *Employer's* equipment which is on site and will be used for the execution of the contract. This list will be signed off by the *Contractor* and the *Service Manager*.

All of the *Employer's* equipment will be returned to the *Employer* by the *Contractor* upon completion of the task.

## 5.8 Site services and facilities

### 5.8.1 Provided by the *Employer*

#### 5.8.1.1 Water and Electricity usage

- Water and Electricity will be supplied by the *Employer*,if available, and must be used in accordance with the Eskom Environmental objectives.
- Where Water and Electricity is not available, this must be provided for by the *Contractor*.

#### 5.8.1.2 Offices, Workshops and Stores

- None

### 5.8.2 Provided by the *Contractor*

- The *Contractor* shall provide everything else necessary for providing the service.

## 5.9 Control of noise, dust, water and waste

Comply to the Occupational Health and Safety Act, Act 85 of 1993 and the applicable Regulations relating to noise and dust .The Water Act, Act 54 of 1956 for water and the Waste Act, Act 107 of 1998

Having due regard for local communities and dwellings, the *Contractor* shall restrict any of his operations which result in undue noise disturbance to those communities and dwellings.

The *Contractor* shall take appropriate measures to minimise the generation of dust as a result of his works, operations and activities to the satisfaction of the *Service Manager*.

The management of waste on site shall be strictly controlled and monitored. Only accepted waste disposal methods shall be allowed;

Littering shall be avoided;

#### (a) Domestic waste

All domestic waste shall be disposed of in an accepted domestic waste disposal site.

#### (b) Organic waste

All organic waste shall be disposed of in an accepted organic waste disposal site.

#### (c) Hazardous waste

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All hazardous waste shall be disposed of in an accepted hazardous waste disposal site and a disposal certificate supplied to the *Service Manager*.

### **5.10 Hook ups to existing works**

Should the *Contractor* require interfacing his equipment to the Affected Facility, this will be done at the *Contractor's* cost based on approval by the *Service Manager*.

Compliance to the Eskom Life Saving procedure and Work at Height Standard, 32-418.

All securing points and necessary equipment required to Work at Heights must be provided for by the *Contractor*.

### **5.11 Tests and inspections**

#### **5.11.1 Description of tests and inspections**

N/A

#### **5.11.2 Materials facilities and samples for tests and inspections**

N/A