



ENVELOPE A – TECHNICAL PROPOSAL
VOL 1 of 2

TENDER NO: **OE/001/2018**

REQUEST FOR PROPOSAL (RFP) PACK

FOR THE PROVISION OF PROFESSIONAL CONSULTING SERVICES TO PERFORM “OWNER’S
ENGINEER” FUNCTIONS FOR THE EAST LONDON INDUSTRIAL DEVELOPMENT ZONE SOC LTD

START DATE: 23 NOVEMBER 2018

CLOSING DATE: 07 DECEMBER 2018

NAME OF TENDERER: _____

DISCIPLINE TENDERED FOR: _____

TENDERER’S ADDRESS:

RFP PACK CONTENTS

ENVELOPE A – TECHNICAL PROPOSAL

VOL 1 of 2

Section A: General Guidelines

Section B: Requirements Specification

Section C: Service Level Agreement

ENVELOPE A – TECHNICAL PROPOSAL

VOL 2 of 2

Returnables Schedules

Annexure 1: Procurement Handbook

ENVELOPE B – FINANCIAL PROPOSAL

Offer and Acceptance

Pricing Instructions and schedule



SECTION A: General Guidelines

FOR THE PROVISION OF PROFESSIONAL CONSULTING SERVICES TO PERFORM
“OWNER’S ENGINEER” FUNCTIONS FOR THE EAST LONDON INDUSTRIAL
DEVELOPMENT ZONE SOC LTD

CHECKLIST FOR SUBMISSIONS

ITEM	
Supporting Documentation To Be Submitted	
CV's of proposed team members including, proof of professional registration and certified qualification certificates	
Accredited Valid Original or Certified B-BBEE Certificate	
Proof of Locality – copy of municipal utility bill, lease agreement, title deed	
A minimum of three signed and stamped reference forms (Provided herein) including company name, contact name, phone number, brief details of work done with dates and analysis of performance) should be submitted which can be verified	
Compulsory Documentation To Be Submitted	
JV Participation Documentation (If applicable)	
Proof of Professional Indemnity Insurance (Min R10 Million)	

Please Note: All the above documents must be submitted with Envelope A - Technical Proposal.

The price schedule and proposed solution costing must be submitted with Envelope B – Financial Proposal.

1. EVALUATION CRITERIA AND COMMERCIAL EQUITY GOALS

1.1. Functionality evaluation matrix

Evaluation Criteria	Total Max Points	Item Max Points	Evaluation Description
Total Points	100		
Registered Commercial Office	25	25	Office in the BCMM
		10	Office in the Eastern Cape
		0	Office outside the Eastern Cape
Company Experiences≤	45	45	Proof of ongoing/completed industrial building projects since within the last 10 years <ul style="list-style-type: none"> 3 completed reference forms as provided can score a max of 45 points (15 points each)
Project Team allocated for this project	30	15	Project Leader/Director – registered professional with between: > 5 < / = 10 years' experience = 5 points; > 10 years' experience = 15 points;
		10	Design Engineer/QS/Architect/PM – registered professional with between: 0 and < / = 5 years' experience = 3 points; > 5 < / = 10 years' experience = 7 points; > 10 years' experience = 10 points;
		5	Professional Technical Staff registered with between: 0 and < / = 5 years' experience = 1 points; > 5 < / = 10 years' experience = 3 points; > 10 years' experience = 5 points;

All tenders with functionality less than 75% of the total functional requirements will not be considered for the next stage of tender evaluation.

1.2. Broad Based Black Economic Empowerment (BBBEE).

The East London Industrial Development Zone (ELIDZ) supports national transformation goals and strives to target its procurement to create opportunities for Historically Disadvantaged suppliers and service providers. In awarding this tender, preference will be given to companies with a better rating in terms of contributions towards Broad Based Black Economic Empowerment (BBBEE).

The “tender” will be evaluated in accordance with the ELIDZ Procurement Policy using the 80/20 rule for tenders up to and including R50 000 000 incl VAT

i.e. 80 of evaluation points will be based on price competitiveness and 20 will be based on BBBEE status.

The following formula is used:

Calculation of the points for Price:

$$P_s = R \times \left[1 - \frac{P_t - P_{min}}{P_{min}} \right]$$

Where:

P_s = Points scored for price of tender under consideration

R = Percentage of the price

P_t = Rand value of tender under consideration

P_{min} = Rand value of lowest acceptable tender

R must be up to a maximum of 80

Score Breakdown:

Price (R) = 80 points

BBBEE = 20 points

Preference points shall be awarded on the basis of a B-BBEE verification certificate issued by an accredited Verification Agency. Tenderers are required to submit a valid original or certified B-BBEE Certificate, and failure to submit a valid B-BBEE certificate will result in zero points being awarded for preference.

The following tables shall be used to convert the contribution level as per B-BBEE certificate into points

Table: B-BBEE Points Conversion 20 points

Level Contribution	B-BBEE Score	Points Conversion 20
Level 1	>100%	20
Level 2	85~100%	18
Level 3	75~85%	16
Level 4	65~75%	10
Level 5	55~65%	8
Level 6	45~55%	6
Level 7	40~45%	4
Level 8	30~40%	2
Level 9	0~30%	0

Companies with annual turnover less than R10million (Exempted Micro Enterprises or EME's) are automatically awarded a level 4 contributor status, unless the EME is Black Owned (more than 50% black ownership), in which case the enterprise will have a level 2 contributor status. EME which is 100% black owned qualifies for a level 1 contributor. In awarding the EME status, the ELIDZ shall accept a letter from an accounting firm or SARS confirming a company's turnover as less than R10m as well as a sworn affidavit confirming annual turnover and level of black ownership. B-BBEE certificates issued by non-accredited verification agencies will not be accepted as valid proof of a company's B-BBEE status.

No points will be awarded for achieving B-BBEE objectives if the total percentage scored for B-BBEE is less than 30%.

The tender will be awarded to the bid with the highest number of points. A tender may be awarded to a bidder that did not score the highest number of points if reasonable and justifiable grounds exist. Any contract offered by the ELIDZ will be based on the correctness of information submitted by the service providers. Any misrepresentation of facts by a service provider may lead to disqualification. Should such misrepresentation be uncovered after the commencement of the contracted work, the ELIDZ reserves the right to terminate the contract and recover all payments made to that service provider and any costs that may have been incurred in the process.

ELIDZ reserves the right to have the tenderer's Black Economic Empowerment Credentials verified by an independent agency. (Procurement Handbook – Annexure: A must be fully completed and supplementary information may be completed by service providers with a turnover of less than R10m

and be accompanied by letter from an accounting firm or SARS confirming the company's or sworn affidavit turnover is less than R10m).

2. CONDITIONS OF TENDERING

- General Conditions of Tendering;

PLEASE NOTE THE FOLLOWING CONDITIONS ARE APPLICABLE TO ALL TENDERS.

- A compulsory briefing session will be held on the **28 November 2018, 12h00** at the East London IDZ Auditorium, Head Office Building, Lower Chester Road, Sunnyridge, East London.
- Questions relating to the RFP will be accepted until **09h00 on the 30 November 2018**. All questions must be submitted to anathi@elidz.co.za
- The closing date for this tender is at **12h00 on the 07 December 2018**;
- E-mailed, faxed, late, or incomplete proposals will not be considered;
- ELIDZ is not obligated to accept the lowest or any proposal;
- Tender documents are to remain securely bound;
- Any expenses incurred by the tenderer in preparing and submitting the proposal will be for the tenderer's account, as the ELIDZ SOC Ltd will not accept any liability in this regard;
- We reserve the right to correct discrepancies and errors as necessary with the consent of the tenderer; however, the value total of the prices shall remain unaltered;
- Proposals which do not comply with the tender conditions or which are incomplete will, as a general rule, not be considered.
- ELIDZ reserves the right to verify the local operational offices of bidders by way of site visits.

3. SIGNATURES ON TENDERS

All tenders submitted must be signed by that individual, or by someone on his behalf duly authorized and proof of that authority must be attached. All tenders submitted by a company must be signed by a person duly authorized thereto by a resolution of the Board of Directors, a copy of which resolution, duly certified by the Chairman of the company can be submitted with the tender.

If the tender is submitted by a joint venture of more than one person and/or companies and/or firms it shall be accompanied by:

A certified copy of the original document under which the joint venture was constituted. This document must clearly define the conditions under which the joint venture will function, as well as the duration and participation of the several constituent persons and/or companies and/or firms.

A certificate signed by or on behalf of each participating person and/or company and/or firm authorizing the person who signed the tender to do so.

In instances of a joint venture, each participating person and/or company and/or firm must complete and submit Annexure A (Procurement Handbook) with the tender together with all profit sharing percentage information.

4. AREA OF SERVICE/POINT OF DELIVERY

The delivery of services will be required at the ELIDZ, Lower Chester Road, Sunnyside, East London.

5. SPECIAL CONDITIONS APPLICABLE TO THIS CONTRACT

Successful bidders will not be able to tender for any bids issued by the ELIDZ for goods / services which have been the subject matter of items presented to the over-arching professional team "Owner's Engineer" for review.

6. SERVICE LEVEL AGREEMENT

The successful tenderer(s) will be required to enter into a Services Level Agreement with the ELIDZ as set out herein in Section C.

7. CONFIDENTIALITY AGREEMENT

All information relating to the ELIDZ's customers (and potential customers), systems, operating procedures etc. is confidential and to this end, the successful tenderer will be required to enter into a Confidentiality Agreement with the ELIDZ.

8. PRICE BASIS

ELIDZ requires the tender price to remain firm for the validity period of ninety (90) days after the closing date of the tender. The tender price shall be in South African Rand.

Where prices are subject to variation it must be noted that no prices are to be revised or invoiced, without prior mutual agreement and official modification of the contract.

9. SUFFICIENCY OF TENDER

The tenderer shall satisfy itself before tendering, as to the correctness and sufficiency of its tender for the project. The tenderer shall ensure that the rates and prices it has stated in the schedules cover all the obligations included in the tender and sufficient for the proper completion of the project.

10. TENDERER'S CONDITION

All tenderer's shall be deemed to have waived, renounced and abandoned any terms and conditions printed or written upon any stationery used by the tenderer for the purpose of, or in connection with the submission of this tender.

11. DISQUALIFICATION

Respondents are advised that should there be any contact with ELIDZ staff and the Adjudication Team which could in any way be seen or deemed to constitute a conflict of interest, bribe or otherwise influence the process and the outcome thereof, will result in immediate disqualification.

It must be stressed that any queries relating to this tender must be in writing and within the period of one week from the date of the briefing session, and must be addressed to the Project Manager only. Respondents are not to communicate in any manner or form whatsoever with members of ELIDZ personnel about the RFP until the winning service provider has been selected and such selection has been formally communicated to the public. Any such communications by Respondents with ELIDZ personnel or with persons other than the Project Manager may prejudice a Respondent, and may lead to disqualification from consideration for selection. The ELIDZ cannot accept responsibility for the accuracy of any information obtained outside the formal communication process as stipulated.

Any misrepresentation, in particular as it relates to the truthfulness of involvement of HDI's at both ownership level, management and operational level will also result in immediate disqualification.

12. ACCEPTANCE OF TENDER IN WHOLE OR IN PART

The ELIDZ reserves the right to accept the complete tender as submitted by the tenderer or alternatively, to accept only specific "areas of work" (or parts of "areas of work") of the tender as it sees fit.

Accordingly tenderer's are advised to ensure that all prices submitted against each "area of work" are sufficient to cover the tenderer's entire obligation as defined in these documents, required to provide each specific "area of work".

13. SUPPORTING DOCUMENTATION TO BE SUBMITTED

- ☐ Accredited Valid B-BBEE Original or Certified Certificate
- ☐ Letters of reference (a minimum of three)
- ☐ CV's of the Proposed Project Team including proof of registration
- ☐ Proof of Locality of registered Operational Office – copy of municipal utility bill, lease agreement, title deed

14. COMPULSORY DOCUMENTATION TO BE SUBMITTED

The following documentation is considered as compulsory documentation and is required to be submitted with your tender. Failing to submit the compulsory documentation will lead to disqualification due to non-compliance.

- ☐ JV Participation Documentation (If applicable)
- ☐ Professional Indemnity Insurance (Min of R10 Million or letter of intent from insurer)

15. METHOD OF SUBMISSION

It will be the responsibility of the tenderer to ensure that the tender reaches the ELIDZ.

All tender documents submitted are to be securely bound and Tenderers must submit technical and financial proposals in two separate envelopes clearly marked “Envelope A – Technical Proposal” and “Envelope B – Financial Proposal”. The financial proposal will only be opened should the technical proposal be deemed compliant and the Functionality criteria is met.

The tender should be placed in a sealed envelope and deposited by hand in the tender box before the closing date and time of **12h00, 07 December 2018**.

ELIDZ WILL NOT BE RESPONSIBLE FOR DOCUMENTS PLACED IN AN INCORRECT TENDER BOX.

The tender box will be marked **“OE/001/2018 - PROVISION OF PROFESSIONAL SERVICES – OWNER’S ENGINEER”** which can be found in the following location:

The ELIDZ, Head Office Reception, Lower Chester Road, Sunnyridge, East London, 5201

Tenders must be marked:

CONFIDENTIAL TENDER

“OE/001/2018 - PROVISION OF PROFESSIONAL SERVICES – OWNER’S ENGINEER”

For the attention of:

ELIDZ SCM

16. ELIDZ RIGHTS

The ELIDZ reserves the right:

- a. To negotiate with the successful tenderer and/or
- b. modify the RFP’s goods / service(s) and request Respondents to re-bid on any changes;
- c. reject any Proposal which does not conform to instructions and specifications which are detailed herein;
- d. disqualify Proposals submitted after the stated submission deadline;
- e. disqualify Proposals submitted that do not meet the goods or services specifications;
- f. disqualify Proposals submitted that do not meet the necessary functionality where required;
- g. not necessarily accept the lowest priced Proposal;
- h. reject all Proposals, if it so decides;
- i. place an order in connection with this Proposal at any time after the RFP’s closing date;
- j. award only a portion of the proposed goods / service/s which are reflected in the scope of this RFP;
- k. split the award of the order/s between more than one Supplier/Service Provider; or
- l. make no award at all;

- m. ELIDZ reserves the right not to award business to the highest scoring bidder/s where objective criteria justify the award to another bidder.
- n. The ELIDZ does not bind itself to accept your (or any) proposal, nor will it disclose any information regarded as confidential.



SECTION B: Requirements Specification

FOR THE PROVISION OF PROFESSIONAL CONSULTING SERVICES FOR OVER-
ARCHING CONSULTING TEAM – “OWNER’S ENGINEER” FOR THE EAST LONDON
INDUSTRIAL DEVELOPMENT ZONE SOC LTD

Table of Contents

1. Introduction	15
2. Scope	15
2.1. The Scope of This RFP Includes the Following:	15
3. Considerations.....	17
3.2. Area of Service & Facilities	17
4. Conclusion.....	17

1. Introduction

The East London Development Zone SOC LTD (ELIDZ) is a “greenfields” development project that is part of a sub-regional economic growth and employment creation initiative driven by the government’s micro-economic reform strategy, as implemented by the South African Department of Trade and Industry.

The development and operation of the Zone are managed by the East London Industrial Development Zone SOC LTD, under authorization by the State. The company was established to plan and implement the East London IDZ in a phased manner for manufacturing and other industrialists and features world class infrastructure and dedicated utility and other services.

The primary objective of the ELIDZ is to be able to attract local as well as international investors. The ELIDZ should reflect South Africa as a high-calibre and world-class competitive investment destination

2. Scope

2.1. The Scope of This RFP Includes the Following:

The East London IDZ would like to appoint suitably qualified and competent service providers in the Built Environment, for the provision of professional consulting services for an over-arching professional team “Owner’s Engineer” to oversee the planning, design and implementation of infrastructure and superstructure project program of the ELIDZ over an anticipated period of 3 years.

The Owner’s Engineer shall provide the function of Review of all Development Projects within the ELIDZ on an adhoc basis as well as Master Planning of space allocated for the ASP2 program. A further high-level breakdown of the scope of the proposal is as follows:

□ **Owner’s Engineer** to consist of:

- Project Manager: control of various programs and secretariat function
- Architect: understanding of user requirements for master planning, building design and specification control and review
- Quantity Surveyor – program financial control, review and budgeting
- Electrical/Mechanical Engineer: planning, review and specification control of electrical, mechanical and fire services
- Civil/Structural Engineer: planning, review and specification control of bulk services, platforms etc.
- Town Planner – master planning review and implementation of land use.

- **Development Review Function** – The ELIDZ is required, in its development practices, to observe the highest standards of design, functionally efficient services, and acceptable levels of environmental protection, safety, security and aesthetic considerations.

The ELIDZ has developed standard development guidelines aimed at addressing and promoting these standards and recognizes the need to revise these from time to time. Recognizing its obligation to exercise its functions in an open and transparent manner and the need for acceptable standards of accountability, the ELIDZ deems it necessary to constitute an Over-Arching Team of Built Environment Professionals for the review of development projects in order to ensure adherence to the development guidelines it has developed.

Generally, the terms of the development review function shall be to serve as a "think tank" aimed at providing guidance, but not limited to:

- Identification of potential needs, weaknesses, threats and opportunities, relative to the overall development of the ELIDZ.
- The provision of comment on the environmental guidelines generated for the IDZ
- The provision of comment and advice in respect of any other matters referred to the committee, these may include, amongst others, special advice on the highly specialized production facilities prior to any board approvals and/or investor commitments

3. Considerations

3.1. Area of Service & Facilities

The delivery of services will be required at the East London IDZ, Lower Chester Road, Sunnyridge, East London.

4. Conclusion

This document seeks to provide comprehensive information for the purposes of supporting the proposal of a solution that meets the requirements of the ELIDZ.

Please forward any queries to **Ms Anathi Mgwaza** at the following contact details:

Tel: (043) 702 8200

anathi@elidz.co.za



SECTION C: Service Level Agreement

FOR THE PROVISION OF PROFESSIONAL CONSULTING SERVICES FOR OVER-ARCHING CONSULTING TEAM – “OWNER’S ENGINEER” FOR THE EAST LONDON INDUSTRIAL DEVELOPMENT ZONE SOC LTD



SERVICE PROVIDERS' AGREEMENT

Concluded between

EAST LONDON INDUSTRIAL DEVELOPMENT ZONE SOC LTD

(Registration Number: 2003/012647/30)

("The Client")

And

FULL NAME OF SERVICE PROVIDER

Registration No. _____

(The "Service Provider")

Whereas:

- (i) The Service Provider and Client have agreed to contract for the provision of services;
- (ii) The parties wish to record the terms of agreement;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

PART A

1. Interpretation and preliminary

1.1 The headings of the clauses in this agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this agreement nor any clause hereof. In this agreement, unless a contrary intention clearly appears,

1.1.1 one gender includes the other gender;

1.1.2 the singular includes the plural and vice versa; and

1.1.3 natural persons include created entities (corporate or non-incorporated) and vice versa;

1.2 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

1.2.1 "**Agreement**" refers to this Agreement as well as annexure to it and any amendments recorded in writing and signed by the parties;

1.2.2 "**The Client**" refers to the client, being the East London Industrial Development Zone SOC Ltd which, for the purposes of this Agreement, appoints its domicilium citandi et executandi as ELIDZ Corporate Head offices, Lower Chester

Road, Sunnyridge, East London.

1.2.3 "**Client's nominee**" refers to the individual or Officer of the client nominated as such in writing to the service provider in terms of the provisions of this Agreement;

1.2.4 "**Contract documentation**" refers to contracts documentation, agreements, minutes, drawings, specifications, designs and models, electronic matter in the nature of computer software, programmes, computer data and other matter and information relating to the contract.

1.2.5 "**E L I D Z**" refers to those areas designated as such on the West Bank of East London, Buffalo City Metropolitan Municipality together with all infrastructural development for which the client has assumed responsibility or control over;

1.2.6 "**E L I D Z Management Team**" refers to those employees of the ELIDZ SOC Ltd charged with management of the performance of the obligations that the service provider has agreed to perform;

1.2.7 "**Goods**" refer to the goods that the Service Provider has undertaken to provide in terms of agreement and which are detailed in the Appointment Letter / Form of Agreement.

1.2.8 "**Key persons**" refers to employees, agents or representatives of the service provider whose contribution is, in terms of this Agreement, agreed to be critical to the compliance of the service provider's obligations in terms of this Agreement.

1.2.9 "**Prime rate**" refers to the variable interest rate as charged and calculated by the Client's Bankers from time to time to it;

1.2.10 "**Professional consultant**" refers to **service** providers whose services are generally considered to be professional in their nature and are overseen by a supervisory Body recognised in terms of the South African Law.

1.2.11 "**Professional indemnity schedule**" refers to the Appointment letter / Form of Agreement, detailing the required level of Professional Indemnity Insurance in respect of the obligations of the service provider insofar as these are applicable;

1.2.12 "**Remuneration schedule**" refers to the Form of Agreement / Appointment Letter which sets out details of remuneration that will be due in terms of this **Agreement**;

1.2.13 "**Services**" refer to the **services** that the **Service Provider** has undertaken to provide in terms of this agreement and which are detailed in the Appointment Letter/Form of Agreement.

1.2.14 "**Service Provider**" refers to the service provider whose name appears on the face of this Agreement and whose further details are fully set out in the Acceptance Letter/ Form of Agreement;

1.2.15 "**Service Provider's key and necessary person schedule**", where applicable, refers to those persons identified as key and necessary to the obligations of the service provider whose names may be listed in the Staff Organogram / Acceptance Letter, together with any additions and/or alterations that may be made, by agreement, from time to time;

1.2.16 "**signature date**" refers to the date of signature of this **agreement** and, if signed on different dates, the later of the two dates.

- 1.3 any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;
- 1.4 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the agreement;
- 1.5 when any number of days is prescribed in this agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 1.6 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.7 expressions defined in this agreement shall bear the same meanings in schedules or annexures to this agreement which do not themselves contain their own definitions.

2. **Provision of Services and Goods**

The Service Provider hereby undertakes in favour of **the Client** to perform the **Services** in accordance with the provisions of this Agreement, as well as in accordance with any agreement dealing specifically with the provision of the particular service and within the time frames stipulated by **the Client** in writing from time to time.

3. **Delivery**

The supply of **Services** shall be in accordance with the general terms of this **Agreement** and, more specifically, in respect of;

Professional Services - in accordance with the provisions of the Appointment Letter / Form of Agreement,

4. **Observance of Quality and Standards**

4.1 Quality standards

It is acknowledged that the Client is committed to the highest standards of performance in the conduct of its affairs, including the observance of ISO 14001 requirements in its environmental management and of OHSAS 18001 in the implementation of Occupational Health and Safety standards. The Service Provider undertakes not to do any thing or to omit any thing that may, in anyway, compromise the commitment of the Client to its standards.

4.2 Disclosure

The Service Provider undertakes to make full disclosure of any and all breaches, shortcomings, errors or defects in materials or performance caused as a direct result of non performance by the Service Provider, as soon as they come to the notice of the Service Provider who acknowledges that it will in all events hold itself liable for such breaches, shortcomings, errors or defects in materials or performance including any consequential damages that might flow there from. The Service Provider acknowledges that the services provided in terms of this agreement may fall within the critical path of works and is aware of the implications of this and its exposure to consequential damages.

5. **Timing**

5.1 Commencement dates

The Parties agree to the commencement date of _____ as set out in the Appointment Letter for the commencement of the **services** or for the commencement of delivery of the **goods** contemplated in this agreement.

5.2 Delays and the critical path

The Service Provider acknowledges that any delay as a direct result of non performance by the Service Provider, that may impede the critical path of works of the Client will constitute a material breach of its obligations and render it liable damages as well as consequential damages.

5.3 Completion

The Service Provider undertakes to complete the **services** detailed in the Appointment Letter / Form of Agreement by _____ as specified by the client.

5.3.1 The supply of **services** shall be in accordance with the general terms of this Agreement and more specifically in terms of the Appointment Letter.

5.3.2 Such penalty shall be in consultation with the Conventional Penalties Act 1962 as amended.

6. **Precedence over Standard Form Terms of Business Standard Agreements, Etc**

Where the Client is required to sign any standard form agreement for the provision of services, to the extent that the standard form agreement may be in conflict or contradiction with the terms of this agreement, this agreement, together with its attachments shall take precedence unless otherwise agreed, recorded in writing and signed by the parties.

7. **Report Back Meetings**

Where required by the Client and communicated to the Service Provider in the manner provided for in this agreement, the Service Provider shall, attend all such meetings as it may be required to and, there, provide such reports and other documentation as may be reasonably required the purposes contemplated by this agreement.

8. **By-Laws and Regulations**

In the performance of its obligations, as provided for by this agreement, the Service Provider undertakes;

- 8.1 to comply and ensure compliance with all local, statutory, governmental and other laws and regulations in force and of application to the **Service Provider**, its employees, contractors and other persons or institutions subject to its control for the purposes of this agreement;
- 8.2 indemnifies **the Client** against any loss, damages or punitive fines that it may suffer or have imposed on it by reason of its failure to comply with the provisions of Clause **8.1**.

9. **Limitation of Responsibilities of the Service Provider**

The liability of the Service Provider shall be limited or excluded (depending on the facts and circumstances) in one or more of the following circumstances;

- 9.1 where the **Service Provider** acts or desists from acting in accordance with the instruction of **the Client**, its Professional Consultants where such **Service Provider** is obliged to act in

accordance with the instructions;

- 9.2 in matters of professional or technical judgment where the **Service Provider** can demonstrate on a balance of probability that it exercised due diligence and that the consequences or outcome could not have reasonably been foreseen;

10. **Payment**

- 10.1 **The Client** undertakes to pay the rates as they may be applicable for the **services** of **PROFESSIONAL DISCIPLINE**. The fee structure shall be based on tendered rates for works instructed by the Client as offered in the tender submission by the **Service Provider**.
- 10.2 Payment will only be due and payable once the **Service Provider** has performed the necessary deliverables of the project stages as set out in the appointment letter and has issued the correct invoice.
- 10.3 The **Service Provider** shall, in respect of the **services** provided render an original VAT compliant invoice (where applicable), containing sufficient information to enable **the Client** to determine whether the charges have been debited in accordance with this Agreement, on or before the 25th day of the month.
- 10.4 The **Service Provider** shall not be paid for any work unless such work has been agreed to before execution thereof in writing and confirmed by way of an addendum to this Agreement and signed by both parties.
- 10.5 **The Client** undertakes to make payment of all amounts due within 30 days from receipt of an invoice which complies with the provisions of clause 10.3.
- 10.6 All invoices are to be submitted for the attention of: Project Manager: Operations, delivered to the ELIDZ at the EAST LONDON INDUSTRIAL DEVELOPMENT ZONE HEAD OFFICE, LOWER CHESTER ROAD SUNNYRIDGE, EAST LONDON.
- 10.7 **The Client** shall not be in breach of clause 10.6 in the event of it failing to pay any invoice submitted that does not comply with any provisions contained under this clause 10.
- 10.8 In the event that the **Service Provider** has submitted an invoice in

contravention of this clause, **the Client** shall notify the **Service Provider** within 5 (five) working days of the non-compliant invoice, together with the reasons, and the **Service Provider** shall thereafter withdraw the non-compliant invoice and submit a further original VAT compliant invoice.

11. **Key Persons**

In respect of the provision of agreements relating to the provision of professional and non-professional **services**, if indicated in the Appointment letter, the **Service Provider** shall, by agreement with **the Client**, identify **one key** person whose contribution is, in the discretion of **the Client**, critical to the objects contemplated by this agreement. Such Key Persons;

11.1 Shall, unless it is agreed otherwise, personally attend to all instructions arising out of this agreement or shall personally oversee the performance of all instructions and shall accord due priority to the obligations of the **Service Provider** arising from this agreement;

11.2 Shall personally attend all meetings contemplated in terms of this agreement unless, by agreement, an alternative is agreed to;

11.3 shall be responsible for the provision of all reports which **the Client** may reasonably require from time to time; and

11.4 shall be responsible for the certification of all works executed in terms of this agreement.

Should the Key Person discontinue to serve in this role for any cause whatsoever, then and in that event the Client may, without prejudice to its other rights, summarily, and on such terms and notice as it may be deemed fit, terminate the agreement.

12. **Intellectual Property, Copyright and Ownership of Documents**

12.1 It is agreed that the Contract Documentation shall be and shall remain the property of **the Client** and shall, upon written request addressed to the **Service Provider**, be delivered over to **the Client**.

12.2 The **Service Provider** waives his rights to any claimed hypothec or any other right of retention over the Contract Documentation for any cause whatsoever. In the event of the **Service Provider** claiming that it has any further claim, irrespective the nature of such claim, it shall upon written request, deliver over the Contract

Documentation to **the Client** and such claim shall then be dealt with in accordance with the dispute resolution procedure provided for in this agreement.

12.3 It is agreed that, upon payment by **the Client** to the **Service Provider** of such remuneration as it is entitled to in terms of this agreement, the copyright and the ownership of the Contract Documentation shall vest in **the Client**.

13. **Confidentiality**

13.1 Subject to the provisions of Sub-clause 2 hereof, the service provider shall keep secret all and any matter disclosed to it in connection with this agreement and/or contained in the documents relating to the agreement.

13.2 The foregoing paragraph shall not apply to information which;

13.2.1 Is in the public domain;

13.2.2 Is rightfully received from a third party;

13.2.3 may be disclosed with the consent of **the Client**.

14. **Soliciting Employees**

14.1 The Service Provider undertakes that it will not induce, encourage or procure that employee of **the Client**;

14.1.1 leave the **services** of **the Client** with a view to their being employed or in any other way associated with the Service Provider;

14.1.2 provide any information or advice held by that employee of **the Client** in his capacity as such to any party who should not be privy to that information.

14.2 nothing in the afore going subparagraph will prevent the transfer of employees from **the Client** to the **Service Provider** by written agreement between the parties.

14.3 Breach of this clause, resulting in the loss of an employee by Client, will, without prejudice to its other rights, entitle it to claim and recover from the **Service Provider** an amount equal to one year's salary of the employee as an agreed pre-estimation of the damages suffered thereby by **the Client**.

15. **Insolvency and Judicial Management**

Should the **Service Provider** be placed in liquidation, be sequestrated, placed under an order of judicial management or under any other legal disability, either provisionally or finally, then and in that event, **the Client** shall, without prejudice to its other rights, be entitled to summarily cancel this agreement.

16. **Disputes**

16.1 Should any disputes arise between **the Client** and the **Service Provider** arising out of any cause whatever, or as to the disputed existence of this agreement, it shall, in the first place and within seven

days of one or other party declaring the dispute by notice to the other in writing, be referred to mediation at which;

16.1.1 neither party shall be entitled to legal representation;

16.1.2 a mediator agreed to by the parties or appointed by the chairman for the time being of the East London Attorneys Association presides;

16.1.3 the parties will seek ways and means of resolving disputes in a manner most expedient to both parties;
and;

16.1.4 in the event of the dispute being resolved, the parties shall reduce such settlement to writing and sign it.

16.2 Should the dispute not be resolved within seven days of the commencement of the procedure set out in Clause 16.1, then and in that event, the matter shall be referred to arbitration as provided for herein.

16.3 The dispute shall then, at the instance of the party complaining of the breach or claiming the grounds for reference to arbitration, be resolved finally in accordance with the rates of the Arbitration Foundation of South Africa by an arbitrator agreed to by the parties alternatively, in the absence of agreement, nominated by the chairman for the time being of the East London Attorneys Association.

16.4 Nothing contained herein shall prevent one or other party approaching and being granted an interdict from a competent court having jurisdiction.

16.5 This clause is severable from the remainder of the agreement and notwithstanding any cancellation or claimed cancellation, or disputes about the validity of it shall remain binding on the parties.

17. **Breach**

In the event of one or other party breaching this agreement or failing to perform any of the terms conditions thereof and remaining in default notwithstanding written notice to comply within 14 days, calculated from the date of delivery of the notice, then and in that event, the party complaining of the breach or non-performance shall be entitled to cancel the agreement without prejudice to any other rights in terms hereof to recover damages arising from the breach.

18. **Whole Agreement**

It is agreed that this document together with its Attachments constitutes the whole agreement as between the parties unless supplemented by further agreements, which are reduced to writing and signed by the parties, constitutes the sole record of the agreement between the parties.

The parties agree that any amendment to this agreement shall be reduced to writing and signed by the parties, failing which it shall be of no force or effect.

19. ***Domidium Citandi et Exutandi***

19.1 The parties choose as their domicilia citandi et executandi for all purposes under this agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature the address set out in Form of Agreement.

19.2 Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing but it shall be competent to give notice by telefax. :

19.3 Any party may, by notice to any other party change the physical address chosen as its domicilium citandi et executandi vis-a-vis that party to another physical address in (state if there is a territorial limitation) or its telefax number; provided that the change shall become effective vis-a-vis that addressee on the 10th business day from the deemed receipt of the notice by the addressee.

19.4 Any notice to a party

19.4.1 sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at its domicilium citandi et executandi shall be deemed to have been received on the 10th business day after posting (unless the contrary is proved);

19.4.2 delivered by hand to a responsible person during ordinary business hours at its domicilium citandi et executandi shall be deemed to have been received on the day of delivery.

SIGNED AT EAST LONDON ON THIS ____ DAY OF _____ 20__

FOR EAST LONDON INDUSTRIAL DEVELOPMENT ZONE SOC LTD

SIMPHIWE KONDLO

CHIEF EXECUTIVE OFFICER, who warrants that he is duly authorised hereto

AS WITNESSES:

1. _____ 2. _____

SIGNED AT EAST LONDON ON THIS ____ DAY OF _____ 20__

FOR NAME OF COMPANY: _____

NAME OF PERSON: _____

CAPACITY: _____, who warrants that he is duly authorised
hereto

AS WITNESSES:

1. _____ 2. _____