



ENVELOPE A – TECHNICAL PROPOSAL

TENDER NO: RFP-TKS-001

REQUEST FOR PROPOSAL (RFP) PACK

FOR THE PROVISION OF A TURNKEY SOLUTION TO MANUFACTURE, ERECT, TEST AND
COMMISSION THE ELIDZ WIND FARM WITH THE PROVISION OF A 3 YEAR OPERATIONS
AND MAINTENANCE SERVICE

START DATE: 11 March 2019
CLOSING DATE: 5 April 2019

NAME OF TENDERER: _____

TENDERER'S ADDRESS:

CHECKLIST FOR SUBMISSIONS

ITEM	TICK
Supporting Documentation To Be Submitted	
Accredited Valid Original or Certified B-BBEE Certificate or Letter from an Accountant confirming Annual Turnover for EMES - Sworn Affidavit confirming annual turnover and B-BEE management split of company	
Company Profile	
Three (3) Completed Reference Letters (Annexure 2)	
Proposed Solution and Project Approach to Include timing, resourcing and cashflow. The solution must be broken down into manufacturing, erection testing and commissioning and operation and maintenance	
Project Team Skills Matrix and Curriculum Vitae's	
Completed and Signed ELIDZ Procurement Handbook with all relevant supporting documentation (Tax clearance etc.)	
CSD Registration Certificate	
Valid Tax Clearance Certificate or SARS PIN	
Compulsory Documentation To Be Submitted	
Proposed SMME work package identification for 30% sub contracting portion.	
JV Participation Documentation (If applicable)	

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.

RFP PACK CONTENTS

1. **Section A:** General Guidelines
2. **Section B:** Requirements Specification
3. **Section C:** Service Level Agreement
4. **Annexure 1:** Procurement Handbook
5. **Annexure 2:** Reference Letter



SECTION A: General Guidelines

FOR THE PROVISION OF A TURNKEY SOLUTION TO MANUFACTURE, ERECT, TEST AND
COMMISSION THE ELIDZ WIND FARM WITH THE PROVISION OF A 3 YEAR OPERATIONS
AND MAINTENANCE SERVICE

1 EVALUATION CRITERIA AND COMMERCIAL EQUITY GOALS

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 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:

$$Ps = R \times \left[1 - \frac{Pt - Pmin}{Pmin} \right]$$

Where:

Ps = Points scored for price of tender under consideration

R = Percentage of the price

Pt = Rand value of tender under consideration

Pmin = Rand value of lowest acceptable tender

R must be up to a maximum of 80

Score Breakdown:

Price (R) = 80 points

BBBEE = 20 points

A maximum of twenty (20) points will be awarded to a tenderer for achieving BBBEE objectives.

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. Failure to submit a valid B-BBEE certificate will result in zero points being awarded for preference.

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

Table: B-BBEE Points Conversion

Level Contribution	B-BBEE Score	Points Conversion 20
Level 1	>100%	20
Level 2	85~100%	18
Level 3	75~85%	14
Level 4	65~75%	12
Level 5	55~65%	8
Level 6	45~55%	6
Level 7	40~45%	4
Level 8	30~40%	2
Non-Compliant	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%. All tenders with functionality less than 80% of the total functional requirements will not be considered for the next stage of tender evaluation. Proposals with the total price exceeding the project estimate by 30% will not be considered.

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: 1 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

PLEASE NOTE THE FOLLOWING CONDITIONS ARE APPLICABLE TO ALL TENDERS.

- Questions relating to the RFP will be accepted until 16h00 on the 27 March 2019. All questions must be submitted to Anathi Mgwaza via e-mail to anathi@elidz.co.za
- The closing date for this tender is at 12h00 on the 5 April 2019;
- 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 be 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.
- Tenderers must be registered on CSD database from Treasury.
- The successful tenderer must sub-contract a minimum of 30% of the value of the contract to designated SMME from within the BCMM area. SMME profile with least 51% and above owned by black people, black Women owned, black Youth owned and people with disability and military veterans.
-

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 office, Lower Chester Road, Sunnyridge, East London.

5 SPECIAL CONDITIONS APPLICABLE TO THIS CONTRACT

Service Providers must note the following special conditions of contract will apply to this contract:

Modification of any applicable terms of reference of this contract must be mutually agreed between the parties and reduced to writing.

□ VAT: Unless otherwise stated all prices will be inclusive of **Value Added Tax**.

□ All services provided must comply and be in accordance with pertinent laws and policies of government. Where the SERVICE PROVIDER has incurred any liability to the CLIENT, whether arising from or under this Agreement or otherwise howsoever arising, the CLIENT may, without notice to the SERVICE PROVIDER set-off the amount of such liability against any liability of the CLIENT to the SERVICE PROVIDER arising from or under this Agreement, whether either such liability is liquidated or unliquidated, present or future, accrued or contingent, unless otherwise agreed to in writing by the CLIENT.

6 SUB CONTRACTING TENDER CONDITION

The successful tenderer must sub-contract a minimum of 30% of the value of the contract to designated SMME from within the BCMM area. SMME profile with least 51% and above owned by black people, black Women owned, black Youth owned and people with disability and military veterans.

The tenderer is required to submit with his tender:

Proposed SMME work package identification for 30% sub contracting portion.

Clarification

The 30% to be sub-contracted is the value of the actual works to be undertaken by the sub-contractor inclusive of VAT. If the sub-contractor is entitled to provisional sums and /or preliminaries, such must be added on after evaluation. Contingencies and escalations must only be considered when such become applicable.

For instance – if a Provisional Sum is for a highly specialised piece of Mechanical (imported) equipment, it is then not practical to apply the 30% to it. If a Provisional sum is for (example) Storm water drainage, then it is possible to apply the 30% to it.

For Example:

Value of project - R 10 million

Provisional Sum - R 2 million

Contingencies and escalation - R3 million

If Provisional Sum, contingencies and escalation does not apply, then the 30% would be calculated from the R 5 million which will amount R 1.5 million inclusive of Vat

7 COMPANY PROFILE

A brief company profile is required, to assist ELIDZ in assessing your capabilities, capacity and competitive advantages.

8 INADEQUATE SERVICE LEVELS AND PERFORMANCE

In instances of transgression of a more serious nature, should the ELIDZ during the contract period for any reason regard the Service provider's service levels and performance against this contract as being inadequate or not to the ELIDZ's satisfaction, the details will be reduced to writing, clearly headed "Inadequate performance" and sent to the service provider. In the event that the service provider is unable to remedy the complaints to the ELIDZ's satisfaction within 14 days of such notice of inadequate performance, ELIDZ reserves the right to immediately cancel this contract and recover costs in terms of the Service Agreement.

9 SERVICE LEVEL AGREEMENT

The successful tenderer will be required to enter into a written Service level agreement with the ELIDZ which will be based on the draft Agreement set out herein in Section C, which will include Section A and B and include such terms and conditions as Management may require or prescribe to give effect to in terms of its legal obligations.

10 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.

11 PAYMENT TERMS

A maximum payment processing period of thirty (30) days will be enforced. The thirty-day period is effective from the date a complete claim is received. A complete claim requires the following to be processed:

- Original invoices;

- Original covering letter of approval by the consultant where applicable;
- Original covering letter of approval by the relevant ELIDZ official where applicable.
- Statement of accounts

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.

12 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.

13 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.

14 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.

15 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".

16 SUPPORTING DOCUMENTATION TO BE SUBMITTED

ITEM	TICK
Accredited Valid Original or Certified B-BBEE Certificate or Letter from an Accountant confirming Annual Turnover for EMES - Sworn Affidavit confirming annual turnover and B-BEE management split of company	
Company Profile	
Three (3) Completed Reference Letters (Annexure 2)	
Proposed Solution and Project Approach to Include timing, resourcing and cashflow. The solution must be broken down into manufacturing, erection testing and commissioning and operation and maintenance	
Project Team Skills Matrix and Curriculum Vitae's	
Completed and Signed ELIDZ Procurement Handbook with all relevant supporting documentation (Tax clearance etc.)	
CSD registration certificate	

17 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-responsiveness.

ITEM	TICK
Compulsory Documentation To Be Submitted	
Proposed SMME work package identification for 30% sub contracting portion.	
JV Participation Documentation (If applicable)	

18 METHOD OF SUBMISSION

It will be the responsibility of the tenderer to ensure that the tender reaches the ELIDZ. Proof of posting will not be taken as proof of delivery. **All tender documents submitted are to be securely bound and submitted in duplicate.** 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 found to be acceptable. The tender should be placed in a sealed envelope marked “RFP-TKS-001” and deposited by hand in the tender box before the closing date and time of 12h00, 5 April 2019. ELIDZ WILL NOT BE RESPONSIBLE FOR DOCUMENTS PLACED IN AN INCORRECT TENDER BOX.

The tender box will be marked tender name “RFP-TKS-001” which can be found in the following location:

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

Tender must be marked:

For the attention of: Anathi Mgwaza: SCM Officer

The ELIDZ reserves the right:

1. To negotiate with the successful tenderer and/or
2. modify the RFP's goods / service(s) and request Respondents to re-bid on any changes;
3. reject any Proposal which does not conform to instructions and specifications which are detailed herein;
4. disqualify Proposals submitted after the stated submission deadline;
5. disqualify Proposals submitted that do not meet the goods or services specifications;
6. disqualify Proposals submitted that do not meet the necessary functionality where required;
7. not necessarily accept the lowest priced Proposal;
8. reject all Proposals, if it so decides;
9. place an order in connection with this Proposal at any time after the RFP's closing date;
10. split the award of the order/s between more than one Supplier/Service Provider; or
11. make no award at all;
12. ELIDZ reserves the right not to award business to the highest scoring bidder/s where objective criteria justify the award to another bidder.
13. 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 A TURNKEY SOLUTION TO MANUFACTURE, ERECT, TEST AND COMMISSION THE ELIDZ WIND FARM WITH THE PROVISION OF A 3 YEAR OPERATIONS AND MAINTENANCE SERVICE

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1. Introduction

1 INTRODUCTION

The ELIDZ, situated in East London, within Buffalo City Metropolitan Municipality (BCMM) of the Eastern Cape Province, it is South Africa's premier development location for new industrial investments. The ELIDZ covers an area of approximately 460 hectares.

The ELIDZ has the intention of developing a 1.8MW windfarm in Berlin consisting of six 300kW wind turbines, interconnected and connected to Kemba substation.

Manufacturing Phase

The main components of the project are as follows:

- Manufacture of wind turbines and spares;
- Manufacture of wind turbine steel towers;
- Installation of wind turbines towers and wind turbines
- Erection of site including roads, fencing, security and weather station
- Electrical installation on site including reticulation, SCADA

Due to various reasons, the manufacturing of the six wind turbines is incomplete and the East London IDZ would like to appoint a service provider to complete the manufacturing of the six wind turbines and spares. All other activities will be done by others. The main components of each wind turbine is as follows.

The status of completion is indicated for each component as well:

- 6 x Generators – 80% complete
- 6 x Blades (set of 3) – 40% complete
- 6 x Hubs with pitch controls – 90% complete
- 6 x Goosenecks – 90% complete
- 6 x Control Rooms – 50% complete
- 6 x Control systems – 0% complete
- 6 x Power converters – 0% complete
- 6 x Yaw controls – 0% complete
- 6 x Power and control cabling – 0% complete

All available design and specification documentation will be made available to the service provider.

The battery limit of the service provider is the terminals of the main switchgear of each unit, located inside each control room.

The following documentation will be made available to the tenders:

- Performance parameters
- Basic design parameters
- Functionality requirements
- All available design documentation

The scope of services includes a design component of the outstanding components and integration of systems. Because of the advanced stage of completion, it is foreseen that the design component will be minimal.

Erection, Testing and Commissioning Phase

The main components of this portion of the project are as follows:

- Installation of 6 wind turbines including foundations, steel towers, wind turbine assembly with blades, prefabricated control rooms and electrical and control cabling and SCADA system
- Supply and install electrical reticulation consisting of underground medium voltage cables and six 11/04kV 315 kVA miniature substations
- Supply and install palisade fencing around each wind turbine
- Supply and install one weather station as per specification
- Construction of temporary access roads (for construction only)
- Complete installation, commissioning and performance testing of the wind farm
- Supply and install fibre optic links between the wind turbines, the weather station, all miniature substations on the site and the circuit breaker at the point of connection with the Buffalo City Metro Municipality network. These links are to form part of the electrical protection system as well as for the operation and control systems for the wind farm (SCADA)
- Supply and install a low voltage supply cable to the weather station on the site.
- Supply and install a circuit breaker at the point of connection with the Buffalo City Metropolitan Municipality network. (This may form an integral part of Mini-sub no. 1 at the point of connection with the Municipality's 11kV network)

All available design and specification documentation will be made available to the service provider.

The battery limit of the service provider is the 11kV terminals of miniature substation no.1 which is to be located on the site boundary next to the main road.

The following documentation will be made available to the tenders:

- Site plan showing with coordinates of each wind turbine
- MV underground cable layout
- Control Room plinth conceptual design

- Performance specification
- Design specification

The scope of services includes a design component of the outstanding components and integration of systems.

Operations and Maintenance Phase

Operation, Maintenance, Administrative and Other Services

2.1 The Contractor shall for a period of 3 years:

- 2.1.1 Operate the Wind Turbine System in a clean, safe and competent manner in compliance with good electrical and wind industry practices as well as all applicable laws in effect from time to time;
- 2.1.2 Continuously meter the energy output of the Wind Turbine System;
- 2.1.3 Perform all scheduled and unscheduled maintenance activities that are required to maintain the Wind Turbine System in good working condition and repair, consistent with good practice, any warranties as well as any operation and maintenance manuals. In this respect The Contractor shall submit for the approval of the ELIDZ an annual maintenance schedule of activities. In respect of unscheduled maintenance or events that preclude safe operation of any single wind turbine, The Contractor shall provide a response within 48 hours of the event becoming known, with due regard for prevailing weather conditions that would preclude safe work environment.
- 2.1.4 Reset the Wind Turbine System when necessary;
- 2.1.5 Maintain a register of all parts and supplies for the Wind Turbine System;
- 2.1.6 Make available all equipment, tool and clothing as are necessary to accomplish routine maintenance and emergency repairs to the components and parts of the Wind Turbine System;
- 2.1.7 Maintain accurate data and records of all operation, maintenance and repairs relating to the Wind Turbine System, updated daily, in a format reasonably acceptable to the ELIDZ. The project data should include, without limitation, the following information, with records of:
 - 2.1.7.1 At regular intervals throughout each day the energy output and the reactive energy output at each turbine;
 - 2.1.7.2 Any changes in operating status during the day for each turbine;
 - 2.1.7.3 The number of outages in the day and the duration thereof;
 - 2.1.7.4 The reason for each outage; and
- 2.1.8 Prepare and submit for the ELIDZ's approval annual and long term operation and maintenance programs and budgets for the provision of Services in terms of this Agreement. In this respect The Contractor shall be required to submit a provisional budget by 30 November of each year and a final budget by 15 January of each year;
- 2.1.9 Only incur expenditure in accordance with an approved program and budget;

- 2.1.10 Attend periodic meetings with the ELIDZ at least once a quarter. In respect of such periodic meetings:
- 2.1.10.1. Meetings shall take place at the ELIDZ on such date and at such time as the Key Persons may agree;
 - 2.1.10.2. A standard agenda shall developed;
 - 2.1.10.3. Each Party shall be entitled to place additional items on the agenda;
 - 2.1.10.4 The Contractor shall prepare and circulate the minutes of each meeting;
 - 2.1.10.5. The Parties shall be entitled to two (2) business days' notice for each meeting;
 - 2.1.10.6. The Contractor shall entitled to charge any fee for time spent preparing or attending such meetings or any associated therewith.
 - 2.1.10.7. Employ, pay and qualified personnel to oversee the Services and administration of the Wind Turbine System.
 - 2.1.10.8 Assume responsibility for the Wind Farm in accordance with the requirements of the Occupational Health and Safety Act and its Regulations.

2.2 **The Contractor Shall Provide:**

- 2.2.1 Remote monitoring and remote resets of the Wind Farm;
- 2.2.2. The ELIDZ with real time access to the Wind Turbine System information. The licenses for any system used to provide real time access must be acquired by and paid for, where applicable, by The Contractor. Where the ELIDZ require or elect to have their own SCADA system, new or current, the development and licensing costs will be for the ELIDZ and not The Contractor.
- 2.2.3. Such technical support as may be reasonable and necessary for the operation and maintenance of the Wind Turbine System;
- 2.2.4. Notices to the ELIDZ when learning of any violation of any applicable Law, rules or regulations, or the terms of any permit;
- 2.2.5. A report, with supporting records, on the root-cause of failures, defects, their effect, a criticality analysis and the corrective action required once aware of any failure / defect in any Wind Turbine System or any circumstance likely to give rise to a failure / defect;
- 2.2.6. Annual and monthly reports in a form acceptable to the ELIDZ submitted to the ELIDZ within ten (10) business days after the end of each calendar month or year, including the following information for the relevant period:
 - 2.2.6.1. Details of the operation, maintenance and repair activities undertaken;

- 2.2.6.2. Monthly, quarterly and annual cumulative Wind Turbine System availability;
- 2.2.6.3. kWh Produced during period and the variance from a forecasts provided to the ELIDZ;
- 2.2.6.4. A description of outages;
- 2.2.6.5. A list of all parts that have failed;
- 2.2.6.6. A list of spare parts used;
- 2.2.6.7 Condition of the Wind Turbine System;
- 2.2.6.8. Wind conditions and the impact thereof;
- 2.2.6.9. Downtime events;
- 2.2.6.10. Safety violation and incidents;
- 2.2.6.11. Claims and disputes;
- 2.2.6.12. Necessary supporting documentation for such reports (including any logs and/or service reports); and
- 2.2.6.13. Any other information reasonably required by the ELIDZ.

2.3. Spare Parts and Materials

- 2.3.1. The Contractor must before the Commencement Date prepare and submit to the ELIDZ an inventory of spare parts, with costs, necessary for the performance of the Services. Such list shall be capable of review.
- 2.3.2. The ELIDZ shall provide, at its expense, space within the East London Industrial Development to store all such components, consumables and spare parts.
- 2.3.3. For a period two (2) years from the Commencement Date, the Contractor shall provide all spare parts and materials as required for the continued operation of the Wind Turbine System.
- 2.3.4. Spare parts and materials required for the third year will be for the account of the ELIDZ and shall be procured in a manner consistent with the provisions of the Public Finance Management Act, Act I of 1999.

- 2.3.5. The Contractor must ensure that it only uses spare parts and materials that will not adversely affect the rights of the ELIDZ under any warranties.

2.4. Outages

- 2.4.1. Planned power outages for maintenance and repairs are to be planned in advance with the ELIDZ.
- 2.4.2. The Contractor must notify the ELIDZ of any unscheduled outages within thirty (30) minutes thereof via “whatsapp” messenger to an agreed list of group members.

2.5. Safeguard Requirements

The Contractor shall maintain and operate a system, acceptable to the ELIDZ, which shall protect its and the ELIDZ's equipment from any fault condition, including but not limited to phase faults, earth faults, under or over voltage, under or over frequency and open-phase conditions.

2.6. Additional Services

- 2.6.1. In the event that services are required which fall outside of the scope of this Agreement, the prior written approval of the ELIDZ shall be required before The Contractor shall be permitted to undertake any such services.
- 2.6.2. Should the Contractor be aware of any additional services that are required it shall provide the ELIDZ with written notice thereof as promptly as practicable after such occurrence detailing the nature of the services required and the cost for such services.

2.7. Exclusions

- 2.7.1. The following are explicitly excluded from the scope of Services to be performed:
- 2.7.1.1. Attendance to faults caused by use of the Wind Turbine System outside the design or other specifications or outside the provisions laid down in any documentation or manual supplied by the Contractor.
- 2.7.1.2. Repairs or replacements of the Wind Turbine System necessitated
- 5.7.1.2.1. Damage not occasioned by The Contractor;
- 5.7.1.2.2. Abnormal operating conditions or events; or

5.7.1.2.3. Theft or vandalism.

2.7.1.3. The connection of unauthorised peripheral equipment by the ELIDZ.

3. Charges and Payment

3.1. The monthly charges shall be payable by the ELIDZ to the Contractor for the rendering of Services in terms of the Service Agreement for the entire duration of the contract.

3.2. The Parties record that the spares and materials for the first two years from the Commencement Date of the Service Agreement shall be provided as "Free Issue", as the equipment is covered by the warranty. During the course of the third year, the ELIDZ shall procure all necessary spares, materials and services that may be required for the repair or continued operation of the Wind Turbine System.

3.3. The payment of expenses relating to additional services shall be governed by separate agreements.

4. Ownership of Electricity and Other Benefits

4.1. Ownership of all Electricity and any other benefits arising out of the operation and maintenance of the Wind Turbine System shall remain with the ELIDZ at all times.

4.2. The Contractor shall have no legal, equitable title to, interest or entitlement whatsoever in the Electricity or any other benefit, which shall include any marketing rights.

4.3. The fundamental purpose of the entire project is that of a "proving wind farm" for The Contractors locally developed turbine. The Contractor will be entitled to use operational and performance information as a reference in all or any certification, verification or analysis's required to substantiate and validate the product.

5. Undertakings by the Contractor

5.1. The Appointed Contractor shall undertake whilst it is providing the Services that:

5.1.1. The Services will be performed by sufficient number of professional and/or qualified individuals who have the skill and experience required to perform the Services;

5.1.2. The Services will be performed in accordance with the quality and performance standards expected of a service provider of the same stature.

5.1.3. The Services will be provided in accordance with the needs of the ELIDZ.

5.1.4. It will plan, coordinate and manage the Service provisions in consultation with the ELIDZ and deal timeously with the documented results of Service reviews in so far as there is sub-standard performance such that the interests of the ELIDZ's business is not prejudiced; and

5.1S. it will obtain and maintain in effect, at its own expense, such insurance coverage as is required by any Laws and the standards of a reasonable and prudent operator, which shall include public liability insurance and estate insurance.

5.16. The Contractor is to provide CV's and proof of qualifications for all staff employed at to perform maintenance at the Wind Farm. Only suitably qualified personnel are to operate and maintain equipment at the Wind Farm and the Contractor will be held liable for any damage which may arise as a result of the employment of unqualified staff.

6. Undertakings by the ELIDZ

6.1. The ELIDZ shall provide The Contractor with access to the location and the Wind Turbine System as is necessary for it to the Services in terms of this Agreement.

6.2. The ELIDZ shall provide the Contractor with access to the facility where the spare parts and materials are stored. Access is to be prearranged with the ELIDZ's key person and the ELIDZ shall provide The Contractor with contact details and procedures for after hour or emergency access.

6.3. The Employer shall provide The Contractor with copies of all documents in its possession, or for which it has primary responsibility to manage or obtain, necessary for the Contractor to perform its duties under this Agreement.

6.4. The ELIDZ shall arrange for the disposal, transportation, record keeping and reporting of waste generated by or at the location by competent agents in accordance with all applicable Laws. In this respect, the Contractor shall be required to properly place all consumable waste items in the containment units provided by the ELIDZ.

7. Security

7.1. The ELIDZ normally provides security measures for the general protection and safety of persons and goods within Its Industrial Development Zone.

7.2. The ELIDZ will either employ on an in-house basis or on a contractual basis, security personnel at the entrance and exit points of the Wind Farm, and as mobile patrols at the zone (or area) within which the Wind Farm is located.

7.3. Security personnel shall be permitted to enter onto, monitor and assess the location generally and with the written authorization from the Contractor enter the Wind Farm premises for the investigation of suspicious incidences, and to inspect the integrity of the perimeter fencing, lighting and any other security measures.

7.4. The ELIDZ shall bear no responsibility, irrespective of the cause, for acts or omissions of any security firm contracted by the ELIDZ for the purpose of carrying out security services.

7.5. The ELIDZ will maintain a perimeter fence and lighting around the perimeter of the IDZ in which the Wind Farm is located, as well as street lights on the internal roads and inside the populated areas within its perimeter.

7.6. Where deemed necessary by the ELIDZ, boom gates for vehicular traffic will control points of entrance and exit and turnstiles shall control pedestrian traffic.

7.7. Identification badges or tokens shall be required to be worn by all persons. It shall be the responsibility of the appointed Contractor to issue its personnel with the necessary identification badges or tokens.

7.8. Motor vehicles, which are permitted to enter the IDZ Wind Farm on a permanent and regular basis and on an ad hoc basis, shall be required to display at all times within the area, tokens issued by the ELIDZ.

7.9. ELIDZ security personnel shall be permitted to request personal identification from any person in the IDZ Wind Farm and shall have the right to search any vehicles entering or leaving the IDZ Wind farm. Failure to allow such search shall entitle security personnel to refuse entry of the person and/or the vehicle.

8. Penalties for Non-Performance

The Wind Farm will be generating electrical energy into the Buffalo City Metropolitan Network and this energy is to be wheeled via the network to ELIDZ and their nominated Clients.

It is thus of utmost importance that the Wind Farm be fully operational in order to maximum revenue stream.

The successful contractor will thus be liable for payment of penalties in accordance with the following:

	Description of Parameter: Maintenance Schedules Routine Penalties for Non - Compliance	Penalty per day per item not maintained - for Non- Compliance (Routine Maintenance Only)
--	-----------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------

a)	Failure to perform maintenance of miniature substations including integral switchgear and transformers in accordance with Manufacturer's requirements.	R 1500.00
b)	Failure to perform routine maintenance of mechanical plant associated with the wind farm. This is to include but not be limited to turbine blades, variable blade pitch mechanisms, alternator bearings, yaw control mechanisms and turbine tower structures	R 1 500.00
c)	Failure to provide detailed metering data in the required electronic format to ELIDZ	R 1 500.00
d)	Failure to perform routine maintenance checks on the system electronics and control system linking the wind turbines	R 1 500.00
e)	Failure to perform routine checks on the data communications networks and data control networks	R 1 500.00
f)	Failure to maintain the site in a clean tidy condition (This includes keeping the grass cut to prevent damage to equipment by grass fires)	R 500.00
g)	Failure to maintain the security fencing, gates and other access equipment in good working order.	R 500.00

The Contractor will be given a letter giving him 48 hours to remedy any of the above, failing which, the stipulated penalties will be applied. Should the Contractor then fail to comply within a period of 30 days then he will be considered to be in breach of this Contract.

	Description of Parameter	Penalty per hour - For Non-Compliance (Emergency Repairs)
a)	Failure to respond to an emergency call out and to be available on site within 48 hours of receipt of a message to respond to a breakdown.	R 300.00
b)	Failure to perform breakdown repairs within 72 hours of receipt of a message to respond to a	R 300.00

	breakdown. (This shall only apply if spare components are readily available)	
c)	Failure to maintain a stock of spare components in accordance with the agreed list provided in consultation with ELIDZ. This penalty will be imposed if the repairs cannot be implemented due to non-availability of spares.	R 600.00

Terms and Conditions pertaining to Emergency Repairs and Spare Components

- The Contractor shall make a suitably qualified person available at all times to respond to an emergency call-out. A message will be sent to the nominated person via SMS or Whats App.
- The penalties for emergency repairs and maintenance are only to be applied in relation to normal breakdown repairs.

2. Detailed Scope

Manufacturing

- Provide suitable premises including manufacturing facility, test bay and storage area
- Collect and relocate all components and equipment for the existing facility located in Wilsonia, East London which includes the spares. Alternatively, rent space at the existing facility where equipment is currently located
- Supply all outstanding components necessary for the completion of the units
- Complete the manufacturing of the outstanding items
- Integrate all components including all mechanical, electrical and control gear
- Assemble all six wind turbine units
- Factory test all six wind turbine units
- Pack, prepare and transport to site in Berlin
- Compile full documentation including equipment manuals, operating and maintenance manuals

Erection, Testing and Commissioning

- Establish a construction site with site office, communications, storage area, water, electricity, ablution and security
- SHEQ management
- Receive, off load and lay down all materials on site
- Mark out and construct six wind turbine foundations. Reinforcing steel cages will be free issued
- Mark out and construct six wind turbine control room foundations.
- Mark out and construct six 11/0.4kV 300kVA miniature substation foundations complete, allowing for MV and LV cable entries.
- Supply and install six 30m long 2.1m high galvanised palisade fences, each with pedestrian gate and padlock
- Supply and install six wind turbine earth mats and six miniature substation earth mats
- Supply and install and terminate all underground MV cabling with separate earth cable directly in the ground and at a depth of 1000mm according to the quantities and layout provided
- Supply, install and terminate all underground LV cabling with an ECC earth conductor. Cables to be laid directly in the ground at a depth of not less than 600mm according to the quantities and layout provided
- Supply, install on suitable supports and terminate all power and control cabling including each nacelle and control room as per specification
- Erect and install six wind turbines including all control gear and auxiliaries
- Supply and install one weather station as per specification and including suitable power supply and communications
- Supply and install six 11/0.4kV 300kVA miniature substations as per specification. Miniature substation transformer design to be in accordance with IEC 60076-16 ed1.0 (2011-08) - Power transformers - Part 16: Transformers for wind turbine applications
- Supply, install and grade an electrical protection scheme for the wind farm
- Complete installation, commissioning and performance testing of the entire wind farm including handover documentation

3. Considerations

3.1. Requirements Considerations

The score achieved for quality functionality will be assessed using the following criteria, each of which will be scored individually up to the maximum number of points indicated (failure to submit the relevant information will result in zero score for that section).

FUNCTIONALITY EVALUATION MATRIX

Evaluation Areas	Evaluation Criteria	Total Max Points	Item Max Points	Evaluation Description
Project Approach	Proposed Manufacturing Solution	30	30	The proposed manufacturing solution will result in all required equipment and spares to be manufactured
			0	The solution does not meet the minimum requirement
	Project Management	15	15	Sample project plan provided
			0	No sample project plan provided
	Skills Competency	50	50	20 Points for a project team the has experience in wind turbine manufacturing of more than 3 years. 20 Points for a project team that has experience in erecting, testing and commissioning more than one wind turbine. 10 Points for a project team that has experience in operating and maintaining a wind farm for more than 3 years.
			25	10 Points for a project team the has experience in wind turbine manufacturing of less than 3 years. 10 Points for a project team that has experience in erecting, testing and commissioning one wind turbine. 5 Points for a project team that has experience in operating and maintaining a wind farm for less than 3 years
			0	Project team does not possess experience in all three areas of manufacturing wind turbines, erecting a wind turbine and/or operating and maintaining a wind turbine

Evaluation Areas	Evaluation Criteria	Total Max Points	Item Max Points	Evaluation Description
Service Providers Expertise and Resources	References	5	5	3 Relevant references provided
			0	Less than 3 relevant references provided

NB: Minimum points required to proceed to the next evaluation phase is 80 out of 100.

3.2. Financial Considerations

Payment milestones will be attached to the service level agreement.

3.3. Time Constraints

The East London Industrial Development Zone would like this project to commence on the **2019** after the signing of the service level agreement.

3.4. Area of Service and Facilities

The delivery of equipment will be the ELIDZ owned land in Berlin, East London where the wind farm construction service provider will take over possession.

4. Response Format

4.1 Company profile

- ☐ Provide an overview of your company profile.
- ☐ ~~Provide information on your operation office locations. Do you have local offices in the BCM Metropolitan Area \ Eastern Cape Province \ National or International?~~
- ☐ ~~Provide a Municipal Clearance Certificate~~
- ☐ Provide an organogram for team allocated to this project in terms of roles and responsibilities

4.2 Location evidence

- ☐ ~~Provide information on your operation office locations. Do you have local offices in the BCM Metropolitan Area \ Eastern Cape Province \ National or International?~~
- ☐ ~~Provide a Municipal Clearance Certificate~~

4.3 Service provider skills competency

- Provide a detailed list of personnel whom will form the team for this project, listing similar projects completed by each team member, their relevant skills \ qualifications and years of work experience relevant to this project. Include curriculum vitae's where possible.

4.4 Detailed specification in brochures all equipment offered

- Describe your understanding of the requirements in this tender.

4.5 References

- Provide a minimum of (3) three references relevant to this tender, with completed reference letters, stamped, signed and dated by the referee.
- Provide details of the relevant services offered to these references, establishing a track record as well as provide contactable references at these sites \ clients.

4.7 Project plan and methodology

Describe the proposed engagement model with reference to this tender. Please provide the following:

- Engagement Structure
- Describe your proposed solution in detail in response to the detailed requirements
- Proposed Solution and Project Approach to Include timing, resourcing and cashflow. The solution must be broken down into manufacturing, erection testing and commissioning and operation and maintenance

4.8

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

E-mail: anathi@elidz.co.za

Tel: (043) 702 8200

Fax: (043) 702 8251



SECTION C: Service Level Agreement

FOR THE PROVISION OF A TURNKEY SOLUTION TO MANUFACTURE, ERECT, TEST AND COMMISSION THE ELIDZ WIND FARM WITH THE PROVISION OF A 3 YEAR OPERATIONS AND MAINTENANCE SERVICE



CONTRACT ELIDZ: REFERENCE NUMBER

SERVICE LEVEL AGREEMENT

entered into by and between

EAST LONDON INDUSTRIAL DEVELOPMENT ZONE SOC LTD

Registration No. 2003/012647/30

("The Client")

and

FULL NAME OF SERVICE PROVIDER

Registration No. _____

(The "Service Provider")

(Collectively referred to as "the parties")

for

NAME OF PROJECT

CLIENT: _____

WITNESS 1: _____

WITNESS 2: _____

SERVICE PROVIDER: _____ WITNESS 1: _____

WITNESS 2: _____

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35. SIGNATURES

CLIENT: _____

WITNESS 1: _____

WITNESS 2: _____

SERVICE PROVIDER: _____ WITNESS 1: _____

WITNESS 2: _____

1. INTRODUCTION AND PURPOSE

- 1.1. The CLIENT requires certain services and the SERVICE PROVIDER is willing to provide such services to the CLIENT.
- 1.2. The purpose of this Agreement is to regulate the relationship between the CLIENT and the SERVICE PROVIDER and to ensure that high quality and performance standards are achieved and maintained by the PARTIES.

2. DEFINITIONS AND INTERPRETATION

- 2.1. 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.
- 2.2. In this Agreement, unless a contrary intention clearly appears any expression which denotes
- 2.2.1. one gender includes the other gender
- 2.2.2. the singular includes the plural and vice versa, and
- 2.2.3. natural persons includes juristic persons and vice versa.
- 2.3. In this Agreement, unless the context indicates otherwise the following words and expressions will have the meaning assigned to them in this clause:

- 2.3.1. **"Agreement"** refers to this Agreement and all annexures hereto and any amendments recorded in writing and signed by the parties. The annexures to this Agreement consist of the following:

IF THERE IS AN EXCEPTION TO TENDER PROCESS OR REQUISITION REQUIRING SLA

Section	A	-	Request for Quotation / Proposal (not attached),
Section	B	-	Quotation / Proposal (not attached),
Section	C	-	Letter of Award or Purchase Order confirmation and Acceptance (not attached),
Annexure	1	-	Scope of Work,
Annexure	2	-	Payment Schedule.

IF THERE IS AN OPEN TENDER PROCESS

Section	A	–	Response to Tender including, invitation (not attached)
Section	B	–	Letter of Award (not attached),
Section	C	-	Acceptance of award (not attached),
Annexure	1	–	Scope of work,
Annexure	2	–	Payment Schedule,

- 2.3.2. **"CLIENT"** refers to the client, being the EAST LONDON INDUSTRIAL DEVELOPMENT ZONE SOC LTD, Registration No. 2003/012647/30;
- 2.3.3. **"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 this Agreement, provided by the SERVICE PROVIDER to the CLIENT in terms of the services rendered in this Agreement;

CLIENT: _____

WITNESS 1: _____

WITNESS 2: _____

SERVICE PROVIDER: _____

WITNESS 1: _____

WITNESS 2: _____

- 2.3.4. **"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;
- 2.3.5. **"prime rate"** refers to the variable interest rate as charged and calculated by the Client's Bankers from time to time to it;
- 2.3.6. **"professional service provider"** 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;
- 2.3.7. **"professional indemnity"** refers to the professional indemnity, detailing the required level of Professional Indemnity Insurance in respect of the obligations of the SERVICE PROVIDER insofar as these are applicable as set out by the standards of the particular consultancy industry;
- 2.3.8. **"quality and performance standards"** refers to service levels and conditions agreed to between the parties in terms of this, legal requirements promulgated from time to time and industry standards as practiced or observed in the various service industries involved;
- 2.3.9. **"services"** refers to the services that the SERVICE PROVIDER has undertaken to provide in terms of this Agreement and in particular the services as listed in **ANNEXURE 1**;
- 2.3.10. **"SERVICE PROVIDER"** refers to **FULL NAME OF SERVICE PROVIDER**, Registration Number: _____, a _____ duly registered and/or incorporated according to the laws of the Republic of South Africa and having its principal place of business in _____;
- 2.3.11. **"SHE"** refers to safety, health and environment,
- 2.3.12. **"signature date"** refers to the date of signature of this Agreement and, if signed on different dates, the later of the two dates.
- 2.4. 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.
- 2.5. 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.
- 2.6. 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.
- 2.7. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 2.8. 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.

3. APPOINTMENT

- 3.1. The CLIENT appoints the SERVICE PROVIDER to provide the services and the SERVICE PROVIDER accepts such appointment for the duration and on the terms and conditions of the Agreement.
- 3.2. The basis of the appointment in clause 3.1 is in terms of a tender process, a copy of which forms part of this Agreement but not attached hereto, as set out in:
- 3.2.1. **SECTION A**

CLIENT: _____

WITNESS 1: _____

WITNESS 2: _____

SERVICE PROVIDER: _____

WITNESS 1: _____

WITNESS 2: _____

3.2.2. SECTION B**3.2.3. SECTION C****4. PROVISION OF SERVICES**

The SERVICE PROVIDER hereby undertakes in favour of the CLIENT to perform the services in accordance with the provisions of this Agreement, and in particular the services and time frames as set out in hereto marked **ANNEXURE 1**.

5. UNDERTAKINGS BY THE SERVICE PROVIDER**5.1. The SERVICE PROVIDER undertakes whilst it is providing the services that:**

- 5.1.1. the services will be performed by sufficient number of professional service providers who have the skill and experience required to perform the services;
- 5.1.2. the services will be performed in accordance with the quality and performance standards expected of service providers of same stature, or as referenced in clause 2.3.8;
- 5.1.3. the services will be provided in accordance with the needs of the CLIENT;
- 5.1.4. it will plan, coordinate and manage the service provisions in consultation with the CLIENT and deal timeously with the documented results of service reviews in so far as there is sub-standard performance such that the interests of the CLIENT's business is not prejudiced;
- 5.1.5. it will fully comply with all tender / brief specifications and requirements as per entire Agreement herein;
- 5.1.6. it will take out and adhere to its professional indemnity insurance that and as is required by the consultancy industry; and
- 5.1.7. it will consult with the CLIENT with regard to any client competitor tendering of work before such tender is undertaken.

6. DELIVERY

- 6.1. The supply of services shall be in accordance with the general terms of this Agreement and more specifically in terms of **ANNEXURE 1**.
- 6.2. Should the SERVICE PROVIDER fail to complete the services or any part thereof before the date which is stipulated herein, an amount equal to one fourteen percent (1/14%) of the contract value may be deducted per day by the CLIENT for each day falling after stipulated completion date, until the services are complete.
- 6.3. Such penalty shall be in consultation with the Conventional Penalties Act 1962 as amended.

7. TIMING**7.1. Commencement dates**

The Parties agree to the commencement date of _____ for the commencement of the services and accordingly the services shall be completed by _____.

7.2. Delays

CLIENT: _____

WITNESS 1: _____

WITNESS 2: _____

SERVICE PROVIDER: _____ WITNESS 1: _____

WITNESS 2: _____

The SERVICE PROVIDER acknowledges that any delay may impede the business objectives of the CLIENT and will constitute a material breach of its obligations and render the SERVICE PROVIDER liable for damages as well as consequential damages.

8. OBSERVANCE OF QUALITY AND STANDARDS

8.1. Quality standards

8.1.1. The SERVICE PROVIDER acknowledges 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.

8.1.2. The SERVICE PROVIDER undertakes to perform the services of this Agreement in terms of quality and performance standards expected of a SERVICE PROVIDER as set out in clause 2.3.8 and as set out in **SECTION A** herein and the SERVICE PROVIDER furthermore undertakes not to do anything or to omit to do anything that may, in anyway, compromise the commitment of the CLIENT to its standards.

8.2. Disclosure

8.2.1. The SERVICE PROVIDER undertakes to make full disclosure of any and all breaches, shortcomings, errors or defects in materials or performance 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 including the disclosure of work or potential work to be received for and by or on behalf of the CLIENT'S competitor.

8.2.2. The SERVICE PROVIDER acknowledges that the services provided in terms of this Agreement may fall within the business objectives of the CLIENT and is aware of the implications of this and its exposure to consequential damages.

9. REPORT BACK MEETINGS

9.1. 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 reasonable meetings as it may be required to and, there, provide such reports and other documentation as may be reasonably required for the purposes contemplated by this Agreement.

9.2. Traveling costs in respect of report back meetings as referred to above shall be agreed to prior to such meetings and shall be paid by the SERVICE PROVIDER and shall be regarded as not budgeted for in terms of the **ANNEXURE 2**.

10. BY-LAWS AND REGULATIONS

10.1. In the performance of its obligations, as provided for by this Agreement, the SERVICE PROVIDER undertakes:

10.1.1. to comply and ensure compliance with all local, statutory, governmental and other laws and

CLIENT: _____

WITNESS 1: _____

WITNESS 2: _____

SERVICE PROVIDER: _____ WITNESS 1: _____

WITNESS 2: _____

- 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,
- 10.1.2. to indemnify 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 10.1.1, and
- 10.1.3. to take out any professional indemnity for all professional service provider and key persons for the purposes of rendering the services provided for in terms of this Agreement.

11. PAYMENT

- 11.1. The CLIENT undertakes to pay the SERVICE PROVIDER the total sum of R _____ (IN WORDS) including VAT, as set out in ANNEXURE 2 for the diligent services rendered
- 11.2. Payment will only be due and payable once the SERVICE PROVIDER has performed the necessary deliverables set out in ANNEXURE 1 and has issued the correct invoice.
- 11.3. 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 and with the agreed price set out in ANNEXURE 2, on or before the 25th day of the month.
- 11.4. All amounts reflected on invoices shall strictly be as per the agreed terms contained in ANNEXURE 2.
- 11.5. The SERVICE PROVIDER shall not be paid for any additional 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.
- 11.6. 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 11.3.
- 11.7. All invoices are to be submitted for the attention of Accounts delivered to the ELIDZ at the EAST LONDON IDZ HEAD OFFICE, LOWER CHESTER ROAD, SUNNYRIDGE, EAST LONDON or PO BOX 5458, GREENFIELDS, EAST LONDON 5208 or by email to accounts@elidz.co.za or facsimile to 043-702-8255.
- 11.8. The CLIENT shall not be in breach of clause 11.6 in the event of it failing to pay any invoice submitted that does not comply with any provisions contained under this clause 11.
- 11.9. 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.
- 11.10. Where the SERVICE PROVIDER has incurred any liability to the CLIENT, whether arising from or under this Agreement or otherwise howsoever arising, the CLIENT may, without notice to the SERVICE PROVIDER set-off the amount of such liability against any liability of the CLIENT to the SERVICE PROVIDER arising from or under this Agreement, whether either such liability is liquidated or unliquidated, present or future, accrued or contingent, unless otherwise agreed to in writing by the CLIENT.

12. KEY PERSONS

- 12.1. The SERVICE PROVIDER shall, by Agreement with the CLIENT, identify one key person whose

CLIENT: _____

WITNESS 1: _____

WITNESS 2: _____

SERVICE PROVIDER: _____

WITNESS 1: _____

WITNESS 2: _____

contribution is, in the discretion of the CLIENT, critical to the objects contemplated by this Agreement.

12.2. Such Key Persons:

- 12.2.1. 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,
- 12.2.2. shall personally attend all meetings contemplated in terms of this Agreement unless, by Agreement, an alternative person is agreed to;
- 12.2.3. shall be responsible for the provision of all reports which the CLIENT may reasonably require from time to time; and
- 12.2.4. shall be responsible for the certification of all works executed in terms of this Agreement.

12.3. 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.

12.4. Key person for the CLIENT is: _____

12.5. Key person for the SERVICE PROVIDER is: _____

13. INTELLECTUAL PROPERTY, COPYRIGHT AND OWNERSHIP OF DOCUMENTS

- 13.1. 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.
- 13.2. The SERVICE PROVIDER waives his rights to any claimed hypothec or any other right of retention over the Contract Documentation for any cause whatsoever.
- 13.3. In the event of the SERVICE PROVIDER claiming that it has any further claim, irrespective the nature of such claim, the SERVICE PROVIDER 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 procedure provided for in this Agreement.
- 13.4. 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.

14. CONFIDENTIALITY

- 14.1. Subject to the provisions of clause 14.2 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.
- 14.2. The foregoing paragraph shall not apply to information which:
 - 14.2.1. is in the public domain,
 - 14.2.2. is received from a third party who did not obtain such information from the CLIENT,
 - 14.2.3. may be disclosed with the consent of the CLIENT.
 - 14.2.4. is required in terms of law to be disclosed, provided that the SERVICE PROVIDER gives the CLIENT reasonable notice before any disclosure, to enable it to attempt to prevent such disclosure should it so wish.

15. SOLICITING EMPLOYEES

CLIENT: _____

WITNESS 1: _____

WITNESS 2: _____

SERVICE PROVIDER: _____ WITNESS 1: _____

WITNESS 2: _____

- 15.1. The SERVICE PROVIDER undertakes that it will not induce, encourage or procure any employee/s of the CLIENT to:
- 15.2. leave the services of the CLIENT with a view to their being employed or in any other way associated with the SERVICE PROVIDER; or
- 15.3. 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.
- 15.4. Nothing in the foregoing subparagraph will prevent the transfer of employees from the CLIENT to the SERVICE PROVIDER by written agreement between the parties.
- 15.5. Breach of this clause, resulting in the loss of an employee by CLIENT, will without prejudice to its other rights, entitle the CLIENT to claim and recover from the SERVICE PROVIDER damages suffered by the CLIENT.

16. FORCE MAJEURE

The SERVICE PROVIDER shall not be liable for any failure to meet any obligations in terms of this Agreement to the extent to which that failure is caused by the circumstances whatsoever which is beyond the SERVICE PROVIDERS control including, but not limited to labour disputes, strike, war, riot, civil commotion, or any order or regulations of any Government or other lawful authority and or and act which constitutes as an act of God.

17. DISPUTES

- 17.1. Any dispute arising out of or in connection with this Agreement, or related thereto, whether directly or indirectly, or any alleged breach and / or repudiation thereof, its interpretation, application and /or termination, shall be resolved in accordance with the provisions of this clause.
- 17.2. A dispute shall arise once the dispute is communicated by one party to the other in writing, ("the dispute notice").
- 17.3. Within twenty one (21) days of the dispute arising, the parties shall seek an amicable resolution to such dispute by referring such dispute to representatives of each of the parties concerned for their negotiation and resolution of the dispute.
- 17.4. In the event that the parties representatives fail to resolve the dispute by way of negotiation, either party may refer the dispute for resolution by way of arbitration as envisaged in the clauses below.
- 17.5. The Arbitration will be held as an expedited arbitration in accordance with the then current rules for expedited arbitration of the Arbitration Foundation in South Africa (AFSA) by one arbitrator appointed by agreement between the Parties. If the parties cannot agree on the arbitrator within a period of ten (10) days after the referral of the dispute to arbitration, the arbitrator shall be appointed by the secretariat of AFSA;
- 17.6. Nothing contained in this clause shall preclude either Party from seeking interim relief from any competent court having jurisdiction pending the institution of any mediation or arbitration proceedings in terms of this clause.
- 17.7. The provisions of this clause shall survive the termination for whatever reasons of this Agreement.
- 17.8. Unless otherwise agreed, the party appointed to determine the dispute shall act as an expert, rather than an arbitrator, shall conduct proceedings in an informal manner and procedure with a view to

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resolving its expeditiously as the circumstances permit with due adherence to a fair procedure and to a just solution.

17.9. The decision of the expert shall be final and binding and capable of being made an order of court in accordance with the provisions of the Arbitration Act

17.10. The person appointed to determine the dispute shall, in his discretion be permitted to

17.10.1. determine the disputes between the parties;

17.10.2. determine whether to permit the parties to be represented by attorneys and / or advocates;

17.10.3. determine the procedure;

17.10.4. determine the amount that should be deposited as security for his expenses prior to the commencement of proceedings; and

17.10.5. make such order as to costs, if any, including the applicable tariff.

17.11. The provisions of this Clause shall constitute and irrevocable consent, on the part of the parties, to the resolution of this dispute in the manner provided for herein.

18. BREACH AND PENALTY

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 fourteen (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.

19. TERMINATION

19.1. Notwithstanding the other grounds for termination referred to in this Agreement, and without prejudice to any right of the relevant party, this Agreement may immediately be terminated by a party if the other party:

19.2. ceases to carry on business;

19.3. is wound up, is placed under liquidation, is sequestrated, placed under business rescue proceedings, placed under an order of judicial management or under any other legal disability, either provisionally or finally; or

19.4. materially breaches the terms of this Agreement.

20. SUMMARY TERMINATION

20.1. The CLIENT shall, without prejudice to any right of the CLIENT claim damages from the SERVICE PROVIDER be entitled to summarily or immediately terminate, without notice, this Agreement in the event that:

20.2. false information is furnished by the SERVICE PROVIDER at any time on any material details that might result in losses to the CLIENT;

20.3. the SERVICE PROVIDER breaches any of the terms of this Agreement;

20.4. the SERVICE PROVIDER perpetrates a fraud of any nature upon the CLIENT or performing an act in the nature of fraud; or

20.5. any of the SERVICE PROVIDER'S employees rendering services to the CLIENT in terms of this

CLIENT: _____

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Agreement are guilty of conduct justifying a summary dismissal according to common law and the SERVICE PROVIDER fails, neglects and/or refuses to take the necessary action against such employees.

21. WARRANTIES

- 21.1. The SERVICE PROVIDER warrants that there is no conflict of interest between the CLIENT and itself and that it shall take steps to avoid any future potential conflict of interest.
- 21.2. The SERVICE PROVIDER warrants that the SERVICE PROVIDER has the capacity to enter into this Agreement and to perform the services as per this Agreement.
- 21.3. The SERVICE PROVIDER shall be deemed that it has satisfied itself before tendering as to the correctness and sufficiency of its tender and of the rates and prices stated in its quotation / tender, as being sufficient to cover the SERVICE PROVIDER'S obligations under this Agreement and everything necessary for the proper completion of this Agreement and maintenance thereof within the required timeframe.

22. INDEMNITY

- 22.1. The SERVICE PROVIDER hereby undertakes to indemnify the CLIENT and hold it harmless against:
 - 22.1.1. any loss or damage to the CLIENT'S own property, whether movable or immovable;
 - 22.1.2. liability in respect of any loss of or damage to the property whether movable or immovable of third parties;
 - 22.1.3. liability in respect of death and or injury to any third party; or
- 22.2. any claims or legal costs or expenses incurred in connections with claims or actions arising out of any of the foregoing, whenever loss, damage, injury, death, referred to above is due or arises out of the use of the CLIENT'S property by the SERVICE PROVIDER, provided that such loss, damage or liability is not due to the willful misconduct of the CLIENT or any of its employees whilst performing duties allocated to them by the CLIENT.
- 22.3. The CLIENT shall notify the SERVICE PROVIDER forthwith upon receipt of information of any occurrence of any loss, damage, or the receipt of any claim or demand for or against, which the SERVICE PROVIDER is prima facie liable to indemnify the CLIENT for in terms of the above, and shall in respect of such claim or demand abide by the directions of the CLIENT as to what terms it shall be settled, compromised or contested, it being agreed that whatever action may be taken by the SERVICE PROVIDER pursuant to such directions of the CLIENT, but not in so far as acting in a principle / agent relationship, and shall be at the risk and expense of the SERVICE PROVIDER.
- 22.4. The CLIENT reserves the right to institute civil proceedings to recover any damages occasioned by the negligence of the SERVICE PROVIDER, his employees, sub-contractors or agents.
- 22.5. The SERVICE PROVIDER shall not be liable to the CLIENT for any loss or damage of whatsoever nature suffered by the CLIENT as a result of the performance of the services in accordance with this Agreement, save where such loss or damage is as a direct result of the negligence of the SERVICE PROVIDER, its employees or agents, performing the services.
- 22.6. The SERVICE PROVIDER AND ITS SUBCONTRACTORS further indemnifies the CLIENT against Section 37(2) of the Occupational Health and Safety Act, if applicable:
 - 22.6.1. The SERVICE PROVIDER and its subcontractors shall bear full responsibility for ensuring that the provisions of the Occupational Health and Safety Act and its regulations are properly

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implemented in the areas designated for contractual work in respect of all aspects of the work to be undertaken and that all other laws that pertain to that work will also be complied with and hereby indemnifies the CLIENT from any responsibility legally for injury or claim

22.6.2. The SERVICE PROVIDER and its subcontractors shall be responsible for the well-being in relation to the health and safety of all persons coming upon/into such area in accordance with the Occupational Health and Safety Act, subject to any directives issued by the CLIENT.

22.6.3. The SERVICE PROVIDER and its subcontractors undertakes to report to the CLIENT any hazard to health, safety or the environment that exists or arises during the contract work in the area concerned.

22.6.4. This Agreement is supplementary and additional to any health and safety specifications issued to the SERVICE PROVIDER and its subcontractors.

23. WHOLE AGREEMENT

23.1. It is agreed that this document together with its Annexures 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.

23.2. 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.

24. SEVERABILITY

The Parties agree that each clause of this Agreement shall be severable, the one from the other, and if any clause is found to be defective or unenforceable for any reason by any competent court, then the remaining clauses shall be and continue to be of full force and effect.

25. VARIATION, SUSPENSION, DELETION, AMENDMENT OR MODIFICATION

No variation, suspension, deletion, extension, amendment or modification of this Agreement shall be of any force or effect, unless recorded in writing and signed by the parties, and shall be effective only in the specific instance and for the purpose and to the extent set out.

26. INDULGENCE OR EXTENSION

No latitude, extension of time or other indulgence which may be given or allowed by either party to the other in respect of the performance of any obligation or the enforcement of any right arising from this Agreement, shall be construed to be an implied consent by the former party or to operate as a waiver or a notation of, or otherwise affect, any of that party's rights in terms of or arising from this Agreement or stop such party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision hereof.

27. WAIVER

No waiver on the part of either party of any rights arising from a breach of any provision of this

CLIENT: _____

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Agreement will constitute a waiver of rights in respect of any subsequent breach of any other provision in the same Agreement.

28. SUPERSESION

This Agreement and its Annexures are to be taken as complementary to each other. In the event of any conflict between the contents of this Agreement and any or all of the Annexures, the Agreement shall prevail to the extent of such inconsistency.

29. GOOD FAITH

The Parties undertake to observe good faith in dealing with each other and in implementing the provisions of this Agreement.

30. SUBCONTRACTING AND CESSION

Neither party shall, without the prior written consent of the other, cede or assign any of its rights or obligations in terms of this Agreement to any third party. The party wishing to cede or assign its rights or obligations to any third party shall, if so required by the other party, be obliged to bind itself as surety and co-principal debtor with the third party for all its obligations in terms of this Agreement.

31. INDIRECT AND CONSEQUENTIAL DAMAGES

31.1. Unless expressly otherwise provided for, neither party ("the defaulting party") shall be liable to the other ("the aggrieved party") for any indirect or consequential damages or loss of profits suffered by the aggrieved party except if such damages or loss:

31.2. arises out of the gross negligence, fraud or any other illegal act or illegal omission on the part of the defaulting party (or any person for whom it is vicariously liable); or

31.3. arises from a claim made against the aggrieved party by a third party as a consequence of any act or omission committed by the defaulting party against such third party for which the aggrieved party is entitled to claim a full indemnification in terms of this Agreement

32. PROTECTION OF RIGHTS

If the SERVICE PROVIDER fails to comply with any obligation imposed upon it by this Agreement, CLIENT shall, without prejudice to any other rights it may have, be entitled but not obliged to effect such compliance at the risk and expense of the SERVICE PROVIDER and to recover the fair and reasonable costs and expenses of doing so from the SERVICE PROVIDER.

33. GOVERNING LAW

The provisions of this Agreement shall be governed by South African law and the parties shall at all times be subject to the jurisdiction of the South African Courts irrespective of the place of signature of this Agreement

CLIENT: _____

WITNESS 1: _____

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SERVICE PROVIDER: _____ WITNESS 1: _____

WITNESS 2: _____

34. DOMICILIUM CITANDI ET EXECUTANDI

- 34.1. The parties choose as their service address (*domicilium 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 hereunder.
- 34.2. Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing.
- 34.3. A party may, by notice to any other party change the physical address and/or telefax number chosen as its *domicilium citandi et executandi* provided that the physical address is one in the Republic of South Africa. The change shall become effective on the 10th business day from the deemed receipt of the notice.
- 34.4. Unless the contrary is proved, any notice to a party;
- 34.4.1. delivered by hand to a responsible person during ordinary business hours, shall be deemed
- 34.4.2. to have been received on the day of delivery; or
- sent by telefax, shall be deemed to have been received on the date of dispatch.
- 34.5. The domicile of the CLIENT is: EAST LONDON INDUSTRIAL DEVELOPMENT ZONE, EAST LONDON IDZ HEAD OFFICE, LOWER CHESTER ROAD, SUNNYRIDGE, EAST LONDON, FAX: 043 702 8251
- 34.6. The domicile of the SERVICE PROVIDER is: _____ FAX:
_____.

CLIENT: _____

WITNESS 1: _____

WITNESS 2: _____

SERVICE PROVIDER: _____ WITNESS 1: _____

WITNESS 2: _____

35. SIGNATURES

The signatories to this Agreement hereby warrant that they have the proper and full authority to sign this Agreement on behalf of the parties hereto, and shall produce the necessary resolution to such effect, if called upon to do so.

THUS DONE AND SIGNED BY **EAST LONDON INDUSTRIAL DEVELOPMENT ZONE SOC LTD** on the ____ day of _____ 20__ here in the presence of the undersigned witnesses:

For and on behalf of **EAST LONDON INDUSTRIAL DEVELOPMENT ZONE SOC LTD**

NAME OF DELEGATED AUTHORITY TO SIGN: _____

POSITION: _____, who warrants that he is duly authorized hereto

AS WITNESSES:

1. _____

2. _____

THUS DONE AND SIGNED BY **FULL NAME OF SERVICE PROVIDER** on the ____ day _____ 20__ in the presence of the undersigned witnesses:

For and on behalf of **FULL NAME OF SERVICE PROVIDER**

NAME OF DELEGATED AUTHORITY TO SIGN: _____

POSITION: _____, who warrants that he is duly authorized hereto

AS WITNESSES:

1. _____

2. _____



ANNEXURE 1

PROCUREMENT HANDBOOK



ANNEXURE 2

REFERENCE LETTER



ANNEXURE 3

BROCHURES