



## ENVELOPE A – TECHNICAL PROPOSAL

TENDER NO: RFP- **EB/ERP/06/21/Z1A**

## REQUEST FOR PROPOSAL (RFP) PACK

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**PROVISION OF PROFESSIONAL CONSULTING SERVICES FOR PREPARATION OF  
PRECINCT AND BUILDING ENVIRONMENTAL RESPONSE PLAN FOR THE EAST  
LONDON INDUSTRIAL DEVELOPMENT ZONE**

**START DATE: 17 SEPTEMBER 2021**

**CLOSING DATE: 11 OCTOBER 2021**

NAME OF TENDERER: \_\_\_\_\_

TENDERER'S ADDRESS:

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## CHECKLIST FOR SUBMISSIONS

ITEM	TICK
<b>Supporting Documentation To Be Submitted for evaluation</b>	
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	
Valid Proof of Office Location	
Four (4) Completed Reference Letters (Annexure 2)	
Proposed Solution and Project Approach	
Project Team Skills Matrix and Curriculum Vitae's	
Valid Tax Clearance Certificate or SARS PIN	
<b>Compulsory Documentation To Be Submitted</b>	
Completed and Signed ELIDZ Procurement Handbook with all relevant supporting documentation (Tax clearance etc.)	
CSD Registration Certificate	
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

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## 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.

Unincorporated Joint Ventures are required to compile a consolidated verified BBBEE certificate in order to achieve Preferential Points

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 70% of the total functional requirements will not be considered for the next stage of tender evaluation.

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.**

- A compulsory virtual briefing session will be held on the **28 September 2021** starting at 12h00.
- Questions relating to the RFP will be accepted until 16h00 on the **01 October 2021**. All questions must be submitted to Anathi Mzantsi via e-mail to [anathi@elidz.co.za](mailto:anathi@elidz.co.za)
- The closing date for this tender is at 12h00 on the **11 October 2021**;
- 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 submitted 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.

## **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 must 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.

In the event that the successful Bidder has been awarded the contract with value above R 5 000 000.00 for the same goods/services on a consecutive basis, the successful Bidder will be required to submit a Supplier development plan for SMMEs to be agreed with the ELIDZ.

#### **6 COMPANY PROFILE**

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

#### **7 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.

## **8 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.

## **9 PRICE BASIS**

ELIDZ requires the tender price to remain firm for the validity period of ninety (120) 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.

## **10 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.

## **11 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.

## **12 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.

## **13 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 stipulated period from the date of the briefing session and must be addressed to the SCM Officer 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 SCM Officer only. 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.

## **14 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".

## 15 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	
Valid Proof of Office Location	
Four (4) Completed Reference Letters (Annexure 2)	
Proposed Solution and Project Approach	
Project Team Skills Matrix and Curriculum Vitae's	
Valid Tax Clearance Certificate or SARS PIN	

## 16 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
<b>Compulsory Documentation To Be Submitted</b>	
Completed and Signed ELIDZ Procurement Handbook with all relevant supporting documentation (Tax clearance etc.)	
CSD registration certificate	
JV Participation Documentation (If applicable)	

## 17 POPIA

By submitting this tender, the bidder hereby consents to providing the ELIDZ with personal information as provided in the Protection of Personal Information Act 2013 (POPIA).

The ELIDZ undertakes to:

1. It will take all reasonable steps and precautions to preserve the integrity of bidders Personal Information and to prevent any corruption or loss of such data.
2. It will not do any of the following: copy, compile, collect, collate, process, store, transfer, alter, delete, interfere with or in any other manner use the bidders Personal Information as described in the Act for any purpose other than with the express prior written consent of the bidder.

3. Utilize the personal information provided for the purposes of assessment of the tender submitted by the bidder and contracting with the successful bidder as the case may be.
4. It will immediately inform the bidder in writing if any Personal Information relating to it has been compromised. The ELIDZ undertakes to immediately inform the bidder in writing as to how it will manage such compromise and what steps will be taken to rectify the situation.
5. Due and reasonable care of the bidders personal information and not to share the said personal information with any third party unless you have authorised such disclosure or the release of such information is required by law.
6. At all times strictly comply with its obligations under Data Protection Legislation.
7. Subject to legislative, regulatory, contractual and other legitimate conditions, the respective bidder has certain rights in terms of how their information is processed. The bidder can request access to information or guidance on how to lodge a complaint from or direct a request to exercise afforded rights to the ELIDZ Information Officer, or his/her deputy/ies, or the Information Regulator.
8. It will maintain guidelines, policies or procedures for the retention or destruction of data and will retain it only as long as necessary for the identified purposes or to meet legal requirements or policies.
9. It shall implement and maintain, at its cost and expense, appropriate, reasonable technical and organisational measures to prevent loss of, damage to or unauthorised destruction of Personal Information and unlawful access to or Processing of Personal Information.

The ELIDZ shall not incur any liability for costs, loss or damage arising from the use of inaccurate or incomplete data provided by or on behalf of the bidder.

## 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.** 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 Envelope A – Technical Proposal:

- Must include numbered or alphabetized section dividers and a contents page that indicates the numbered or alphabetized section names.
- Above-mentioned sections to align to documents listed in the above tables articulating the Supporting and Compulsory documentation to be submitted.

The tender should be placed in a sealed envelopes marked

**“RFP- EB/ERP/06/21/Z1A”**

**PROVISION OF PROFESSIONAL CONSULTING SERVICES FOR PREPARATION OF PRECINCT AND BUILDING  
ENVIRONMENTAL RESPONSE PLAN FOR THE EAST LONDON INDUSTRIAL DEVELOPMENT ZONE**

**ENVELOPE A / ENVELOPE B**

**(Bidding Company Name)**

and deposited by hand in the tender box before the closing date and time of 12h00, 11 October 2021.

The tender box will be marked tender name “RFP- EB/ERP/06/21/Z1A.” which can be found in the following location:  
The ELIDZ, Head Office Reception, Lower Chester Road, Sunnyridge, East London, 5201

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

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

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## 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. Considerations

### 2.1. 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

Major Criteria	Sub-Criteria	Max points available
Technical Capability (Experience)	Provide a list of proposed team members, with brief CV's including the total number of years that each member has worked on similar projects in the <b>past 10 years</b> and the role they played, with proof of relevant tertiary qualifications. Team members will need to demonstrate expertise in the fields relevant to the project (eg Urban Planning, Project Management, Green Technology, Quantity Surveying, Architecture etc) (4 points per field to a max of 20 points)	20
	Provide <b>a list of relevant projects with references</b> (5 points per project) completed by the company, consortium of companies or joint venture in the past 10 years. Provide brief description of projects and contact/references relevant to IDZ/Eco-industrial estates or similar. Demonstrating successfully completed projects.	20
Quality of Proposal and Demonstration of Sector Knowledge	<ul style="list-style-type: none"> <li>• Demonstrate understanding of the project with respect to Approach and Methodology in <b>driving themes including green-technologies</b> in the context of manufacturing hubs/zones and in relation to surrounds.</li> <li>• Approach and Methodology in ability to <b>breakdown the proposal into various components</b> and articulate clearly what work will be done at each stage and how it will be rolled including possible challenges arising in providing the service and mitigation thereto. This to include detailing main tasks, key steps, timeframes and responsibilities.</li> </ul>	<b>Good (very detailed) 40</b> <b>Satisfactory (detailed) 30</b> <b>Poor (lacking detail) 10</b>
Resources / processes	Ability to demonstrate quality resources through resource allocation of team members with proposed hours (project manager, team members etc), Gantt charts, and deliverable milestones as outlined.	<b>Good (very detailed) 20</b> <b>Satisfactory (detailed) 10</b>

		<b>Poor (lacking detail)</b> <b>0</b>
<b>Total Points Available</b>		<b>100</b>
<b>Minimum number of Points to be met based on Functionality</b>		<b>70</b>

**NB:** Minimum points required to proceed to the next evaluation phase is 70 out of 100.

## 2.2. Financial Considerations

Payment milestones/schedules will be attached to the service level agreement.

## 2.3. Time Constraints

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

<b>Deliverable</b>	<b>Proposed due date after contract has been signed</b>	<b>Reports and presents to</b>
A Green Building Design Guidelines specific to the ELIDZ zones.	3 months	sustainability strategy plan and guidelines (and supporting technical studies)
B Green Building Design Guidelines for individual sites	6 months	an overall strategic plan and a set of guidelines for applying the elements of the plan to each existing building.
C Sustainability measures/net zero carbon opportunities for the estate	6 months	guidelines for applying the elements of the plan to future developments.
<b>Total Projected Duration</b>	6 months	

## 2.4. Area of Service and Facilities

The delivery of services will be required at the East London IDZ offices, Lower Chester Road, Sunnyridge, East London or anywhere the service is required.

### 3. Detailed Requirements

#### 3.1. Detailed solutions

ELIDZ and its strategic partners seek to appoint a professional service provider (firm or consortium) to develop a strategic sustainability plan and guidelines (with associated technical studies) for the ELIDZ & surrounds to provide a defined desired sustainability outcome of the entire zone to guide growth and development, resource allocation and mobilization. The plans will need to be broken down into projects and components which are described, scoped, costed (estimated) and phased to a sufficient level of detail for incorporation into budgets and funding applications. The plans need to consider retrofitting as well as future new developments.

The primary objectives for the provision of professional services for sustainability consulting (and supporting technical studies) for ELIDZ & surrounds are to:

- Produce a sustainability framework for the ELIDZ that specifically considers a green tech focus. It should be practical and simple for existing businesses to adapt and implement and set a baseline for new development. A key part of the plan will be to consider the economic benefits of implementing the plan and with a calculable outcome (monetary and carbon footprint return on investment).
- Linked to the overall plan, guidelines should be produced to guide contractors, maintenance staff and investors on designing and building sustainability conscious facilities (site/building based) in ways that are resource efficient (both in construction and in operation), that minimise or net-zero carbon emissions (in construction and operation) and in other ways advance green tech and green outcomes.

Green rating criteria or standards for manufacturing industrial buildings, should be considered and the pros and cons of applying these identified.

#### 3.2. Project Requirements

##### 3.2.1 General objectives

The service provider will be required to do the following:

- Undertake stakeholder engagement to get an understanding of the current sustainability design components specifically (initial problem scoping and then plan commenting).
- Build on development reports and studies which were carried out or commissioned by ELIDZ in the history of the project. A list of these documents is provided in the Annexures. The documents on the list will be provided to the potential bidders who attend the compulsory briefing session. the long term infrastructure plan (Masterplan) and Site Plan must be drawn on. Both these plans contain some detail around the principles towards sustainable practises.
- Study and incorporate good practice on green tech building and green industrial zones to enhance content and quality of final products.

- Ensure the sustainability proposals/plans comply with spatial planning, zoning and all other relevant policy directives and requirements.
- Outputs to be provided must include, but not limited to, reports, maps, diagrams, Gantt charts, soft copies (including shape/GIS files) as well as all electronic data. Final products must be supplied as a complete PDF, along with all supporting data, images, graphics, maps and plans in their raw/original formats (including Power Point and Word). A PowerPoint presentation covering the landscape plan and guidelines must be indicated as part of the final deliverable.
- All aspects of landscaping, urban design, architecture and engineering maintenance and facilities management , green technology and green manufacturing materials for the highest possible green technology / resource efficiency level for industrial buildings and sites.
- Detailed programme of all work to be performed under the appointment.
- Periodic progress reports on all aspects of the scope of all sub-projects of the appointment.
- Provide monthly progress reports on all aspects of the scope of appointment.
- Monthly co-ordination meeting, and other meetings when required.
- Prepare agenda and keep minutes of all meetings.
- In accordance with the relevant standards and procedures for professional practice, and contracted scope of work, the professional service provider will submit and make oral presentation, if requested, on all outputs and deliverables. In terms of the approach towards completing the assignment, this is a multi-disciplinary process. It is intended that it integrates inputs from several quarters into a holistic planning approach. This necessitates that the tenderer incorporates into the workflow an element of facilitation:
- Engagements for inputs and workshopping of concepts with several key stakeholders and not just a desk top study.
- Some iteration at each stage.

Key stakeholders include, inter alia:

- East London Industrial Development Zone
- Existing and targeted investors, businesses and associations.

For the proposals, each aspect listed below (2.1.2) must be addressed. This must outline the approach and method, timing and phasing (with milestones) and costing (with a breakdown per stage and deliverable with hours and rates indicated).

### 3.2.2 Key objectives for the sustainability study

The approach adopted to develop the sustainability strategy must include (but not necessarily limited to):

- Understand the context, current patterns of growth and development and identify the opportunities and constraints to realising appropriate sustainability/"greening" measures/green performance for the ELIDZ and how it can be done by individual sites and holistically for the estate.
- Develop a long term physical vision (sustainability improvement implementation plan) for the entire ELIDZ and connections to its surrounds that identifies specific focus areas and opportunities for long term green growth and management. This will play a key role in building the zone identity and focus in future.
- Identify all opportunities for installations of or conversion to more sustainable practises physically and managerially.
- Assess how the "greening" measure can be made visible and thus inform and change the culture in the estate.
- Contribute to resilience building for plausible climatic shocks.
- Within the current industrial zoning, consider how centralized sustainability installations and measures can work/be implemented.
- Acknowledging that existing infrastructure is in place and based on current business plans/rentals etc and proposed interventions to mostly be funding over a period of time.
- The green/sustainability interventions should be workshopped with the client and added to the amended site guidelines.

The following need to be considered in terms of legal implications:

- Develop site-based building/green design guidelines to enable the proposed vision with specific attention to Green Technology (reducing carbon emission and resource consumption in construction and operation).
- Consider green rating criteria and tools and their pros and cons (for example, the EDGE Tool and typology specific GBCSA tools and international tools based on the current and future companies/industries and which tools their HQ's accept).

The site guidelines should:

- Be locally appropriate with regards to green technology and/or green outcomes.
- Conserve the natural environment.
- Use resources efficiently and effectively.
- Apply a full life-cycle/cost of ownership approach.
- Minimise waste.
- Use renewable resources.
- Utilise locally sourced materials.
- Leave a positive legacy – futures thinking.
- Avoid an aesthetic deterioration of the estate.

Non-negotiable and critical elements to support and guide appropriate sustainability responses in the development should be identified. In a context of uncertainty and sparse resources, a facilitative approach needs to be applied in the development of land management tools and guidelines for the ELIDZ.

The sustainability design proposals to relate to specific places/sites.

### 3.2.3 Key objectives for sustainability rating tool

The approach adopted to develop the landscaping plan and guidelines must consider (but not necessarily be limited to):

- Comparison of different rating tools with a view to proposing the most appropriate tool for the context and status required by the ELIDZ and their national and international clients/tenants.
- Rough cost estimates for various rating tools/processes.
- Advice on the purpose/advantages of incorporating a rating process in a sustainability strategy vs. “in-house” list of items to be considered to be incorporated.

### 3.3. Deliverables and key tasks

The service provider will be responsible, on behalf of the ELIDZ Steering Committee, for successful delivery of the sustainability strategy plan and guidelines (and supporting technical studies) for the ELIDZ & Surrounds, within the provided timeframes.

The scope of the project should include the various components and their outlined requirements provided below:

#### 3.3.1 Deliverables for the sustainability strategy/plan

- The plan will comprise two keys deliverables – an overall strategic plan and a set of guidelines for applying the elements of the plan to each site.

Strategic Plan:

- The sustainability strategy for the ELIDZ will address the desired green-tech / green outcomes focus of the zone. The plan should contain research competitive analysis precedent study analysis, pros and cons arguments feasibility analysis, business case and general substantiated advice on the desirability in the context to and greening value and value for money. The end product is seen to have gone through various presentations and iterations with the ELIDZ committee to arrive at the final plan. The plan will contain the buildings to the result and diagrams and design documentation illustrating elements & base layer informants that clearly demonstrate the “greening scope and structuring logic, as well demonstrating the measurable achievement of the vision. The desired allocation of physical interventions space across the sites, with associated illustrative indication of sizes. This strategic plan should be supported through development controls and green design guidelines/checklist plan and methodology to measure the outcomes success. Successful sustainability measures (which can be summarised as: 1. Green contribution / value, 2. Practicality in the context, 3. Affordability and return (monetary and otherwise).

- Implementation plan that identifies phased projects (costed and specified) for realising the overall plan, along with maintenance plan/implications. The principles identified under the objectives should be encapsulated in the plan and maintenance programme. Project components must be costed for inclusion in line department budgets and/or funding applications.

Guidelines:

- Guidelines for contractors, maintenance staff and investors on designing and installing/implementing the strategy (site/building based) in ways that are resource efficient (both in construction and in operation), that minimise or net-zero carbon emissions (in construction and operation) and in other ways advance green-tech and green outcomes (green building guidelines). Construction approaches and techniques that utilise local resources in construction and maintenance. Identify green rating criteria or standards for manufacturing buildings, and evaluate pros and cons of applying these.

### **3.4. Professional Team Requirements**

A professional architect or engineer registered with the South African Council for the Architectural Profession (SACAP) and/or ECSA and **who is an accredited/registered Green Building professional in terms of the GBCSA**, with at least 10 (ten) years verifiable appropriate post graduate experience and who has provided green design input into at least 3 major projects of a complex technical nature or of a similar size estate.

### **3.5. Available Information/Resources**

As Built drawings of Infrastructure and Superstructure are available to the appointed service provider

### 3.5.1 Study Area

TOWNSHIP	Status	Investor	Land Area	% of Land Area
ZONE1A	Available		875612	20.05%
	Infrastructure		240724	5.51%
	Operations occupied		31160	0.71%
	Public Open Space		346476	7.94%
	Reserved		87651	2.01%
	Sold		29802	0.68%
	Tenant occupied		698804	16.01%
	Under Construction		33260	0.76%
<b>ZONE1A Total</b>			<b>2343489</b>	<b>53.68%</b>
ZONE1B	Available		303877	6.96%
	Infrastructure		50795	1.16%
	Operations occupied		13840	0.32%
	Public Open Space		246485	5.65%
	Reserved		59133	1.35%
	Tenant occupied		156907	3.59%
<b>ZONE1B Total</b>			<b>831037</b>	<b>19.03%</b>
ZONE1C	Available		3003	0.07%
	Infrastructure		8050	0.18%
	Operations occupied		126375	2.89%
	Public Open Space		92217	2.11%
<b>ZONE1C Total</b>			<b>229645</b>	<b>5.26%</b>
ZONE1D	Available		72738	1.67%
	Infrastructure		27605	0.63%
	Operations occupied		170	0.00%
	Sold		8398	0.19%
	Tenant occupied		45207	1.04%
<b>ZONE1D Total</b>			<b>154119</b>	<b>3.53%</b>
ZONE1E	Available		479454	10.98%
	Operations occupied		6100	0.14%
	Reserved		250651	5.74%
	Tenant occupied		10870	0.25%
<b>ZONE1E Total</b>			<b>747075</b>	<b>17.11%</b>
ZONE1F	Available		10334	0.24%
	Tenant occupied		50365	1.15%
<b>ZONE1F Total</b>			<b>60699</b>	<b>1.39%</b>
<b>Grand Total</b>			<b>4366064</b>	<b>100.00%</b>







## 4. Response Format

### 4.1 Company profile

- Provide an overview of your company profile.
- Provide an organogram for team allocated to this project in terms of roles and responsibilities

### 4.2 Service provider skills competency

- Provide a detailed list of personnel who 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.
- Team members will need to demonstrate expertise in the field with proof of relevant tertiary qualifications.

### 4.3 List of relevant completed projects with references

- Provide a list of relevant projects with references (5 points per project) completed by the company, consortium of companies or joint venture in the past 10 years. Provide brief description of projects and contact/references relevant to IDZ/Eco-industrial estates or similar. Demonstrating successfully completed projects

### 4.4 Resources and program

- Demonstrate resource allocation of team members with proposed hours (project manager, team members etc), Gantt charts, and deliverable milestones as outlined.

### 4.5 Proposal and Demonstration of Sector Knowledge

- Demonstrate understanding of the project: Approach and Methodology in **driving themes including green-technologies** in the context of manufacturing hubs/zones and relation to surrounds.
- Approach and Methodology in ability to **breakdown the proposal into various components** and articulate clearly what work will be done at each stage and how it will be rolled out with relevant interventions in the interim of challenges arising in providing the service. This to include detailing main tasks, key steps, timeframes and responsibilities.

### 4.6 JV Participation Documentation (If applicable)

- Procurement Handbooks for both entities
- Consolidated BBBEE certificate for joint venture
- JV agreement indicating participation split

- Letter of authorization for JV agreement

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

E-mail: [anathi@elidz.co.za](mailto:anathi@elidz.co.za)

Tel: (043) 702 8200

Fax: (043) 702 8251



## **SECTION C: Service Level Agreement**

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**CONTRACT ELIDZ: EB/ERP/06/21/Z1A**

**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

**PROVISION OF PROFESSIONAL CONSULTING SERVICES FOR PREPARATION OF  
PRECINCT AND BUILDING ENVIRONMENTAL RESPONSE PLAN FOR THE EAST LONDON  
INDUSTRIAL DEVELOPMENT ZONE**

CLIENT: \_\_\_\_\_

WITNESS 1: \_\_\_\_\_

WITNESS 2: \_\_\_\_\_

SERVICE PROVIDER: \_\_\_\_\_ WITNESS 1: \_\_\_\_\_

WITNESS 2: \_\_\_\_\_

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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:

Section	A	–	Response to Tender including, invitation
Section	B	–	Letter of Award
Section	C	-	Acceptance of award
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;
  - 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;

CLIENT: \_\_\_\_\_

WITNESS 1: \_\_\_\_\_

WITNESS 2: \_\_\_\_\_

SERVICE PROVIDER: \_\_\_\_\_ WITNESS 1: \_\_\_\_\_

WITNESS 2: \_\_\_\_\_

- 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**
- 3.2.2. **SECTION B**
- 3.2.3. **SECTION C**

CLIENT: \_\_\_\_\_

WITNESS 1: \_\_\_\_\_

WITNESS 2: \_\_\_\_\_

SERVICE PROVIDER: \_\_\_\_\_ WITNESS 1: \_\_\_\_\_

WITNESS 2: \_\_\_\_\_

#### 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 point zero seven percent (0,07%) 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

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.

CLIENT: \_\_\_\_\_

WITNESS 1: \_\_\_\_\_

WITNESS 2: \_\_\_\_\_

SERVICE PROVIDER: \_\_\_\_\_ WITNESS 1: \_\_\_\_\_

WITNESS 2: \_\_\_\_\_



## 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, of ISO 45001 in the implementation of Occupational Health and Safety standards and of ISO 9001 for Quality Management 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 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

CLIENT: \_\_\_\_\_

WITNESS 1: \_\_\_\_\_

WITNESS 2: \_\_\_\_\_

SERVICE PROVIDER: \_\_\_\_\_ WITNESS 1: \_\_\_\_\_

WITNESS 2: \_\_\_\_\_

- 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](mailto: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 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

CLIENT: \_\_\_\_\_

WITNESS 1: \_\_\_\_\_

WITNESS 2: \_\_\_\_\_

SERVICE PROVIDER: \_\_\_\_\_ WITNESS 1: \_\_\_\_\_

WITNESS 2: \_\_\_\_\_

- 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 deem 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

- 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

CLIENT: \_\_\_\_\_

WITNESS 1: \_\_\_\_\_

WITNESS 2: \_\_\_\_\_

SERVICE PROVIDER: \_\_\_\_\_

WITNESS 1: \_\_\_\_\_

WITNESS 2: \_\_\_\_\_

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 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

CLIENT: \_\_\_\_\_

WITNESS 1: \_\_\_\_\_

WITNESS 2: \_\_\_\_\_

SERVICE PROVIDER: \_\_\_\_\_ WITNESS 1: \_\_\_\_\_

WITNESS 2: \_\_\_\_\_

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 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

CLIENT: \_\_\_\_\_

WITNESS 1: \_\_\_\_\_

WITNESS 2: \_\_\_\_\_

SERVICE PROVIDER: \_\_\_\_\_ WITNESS 1: \_\_\_\_\_

WITNESS 2: \_\_\_\_\_

- 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 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

CLIENT: \_\_\_\_\_

WITNESS 1: \_\_\_\_\_

WITNESS 2: \_\_\_\_\_

SERVICE PROVIDER: \_\_\_\_\_ WITNESS 1: \_\_\_\_\_

WITNESS 2: \_\_\_\_\_

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

## 28. SUPERSESION

CLIENT: \_\_\_\_\_

WITNESS 1: \_\_\_\_\_

WITNESS 2: \_\_\_\_\_

SERVICE PROVIDER: \_\_\_\_\_ WITNESS 1: \_\_\_\_\_

WITNESS 2: \_\_\_\_\_



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

## 34. DOMICILIUM CITANDI ET EXECUTANDI

34.1. The parties choose as their service address (*domicilium citandi et executandi*) for all purposes under

CLIENT: \_\_\_\_\_

WITNESS 1: \_\_\_\_\_

WITNESS 2: \_\_\_\_\_

SERVICE PROVIDER: \_\_\_\_\_ WITNESS 1: \_\_\_\_\_

WITNESS 2: \_\_\_\_\_



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

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### PROCUREMENT HANDBOOK



## ANNEXURE 2

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REFERENCE LETTER



## ANNEXURE 3

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BROCHURES