



## ENVELOPE A – TECHNICAL PROPOSAL

TENDER NO: RFP-AQM/001/21

## REQUEST FOR PROPOSAL (RFP) PACK

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PROVISION OF AIR QUALITY MONITORING SERVICES AT THE ELIDZ

**START DATE: 19 NOVEMBER 2021**  
**CLOSING DATE: 10 DECEMBER 2021**

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

TENDERER'S ADDRESS:

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## CHECKLIST FOR SUBMISSIONS

ITEM	TICK
<b>Supporting Documentation To Be Submitted</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 (Municipal Clearance Certificate for confirming office address/Lease agreement/Municipal bill)	
Three (3) Completed Reference Letters (Annexure 2)	
Comprehensive Project Approach	
CV of Project Leader with proof of Qualification in Environmental Sciences; specializing in Air Quality Management.	
<b>Compulsory Documentation To Be Submitted</b>	
Completed and Signed ELIDZ Procurement Handbook with all relevant supporting documentation (Tax clearance etc.)	
CSD Registration Certificate	
Valid Tax Clearance Certificate or SARS PIN	
JV Participation Documentation (If applicable)	
Valid proof of good standing for workman's compensation from the Department of Labour Compensation Commissioner, or any other registered workman's compensation insurer.	

**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
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## **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:

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

Where:

$P_s$  = Points scored for price of tender under consideration

$R$  = Percentage of the price

$P_t$  = Rand value of tender under consideration

$P_{min}$  = Rand value of lowest acceptable tender

$R$  must be up to a maximum of 80

Score Breakdown:

Price ( $R$ ) = 80 points

BBBEE = 20 points

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 for generic companies, affidavit for EMEs and QSEs. Failure to submit a valid B-BBEE certificate and/or affidavits 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.**

- No briefing session will be held.
- Questions relating to the RFP will be accepted until 16h00 on the 03 December 2021. All questions must be submitted to Zandile Mtebele via e-mail to [zandile@elidz.co.za](mailto:zandile@elidz.co.za)
- The closing date for this tender is at 12h00 on the 10 December 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 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 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.

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.

Where there is no designated sector, ELIDZ may decide to include a specific bidding condition that only locally produced goods or services with a stipulated minimum threshold for local production and content, will be considered, on condition that such prescript and threshold(s) are in accordance with the specific standards determined by the dti in consultation with the National Treasury.

#### **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 (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.

## **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 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.

### **14 SHERQ COMPLIANCE**

Before starting work, service providers must produce the following for approval:

1. Project specific Safety, Health & Environmental (SHE) Risk assessments,
  - a. SHE Risk assessments to include activity specific risks, service providers risk to the ELIDZ and the ELIDZ risk to them;
2. SHE plans and safe work procedures must be developed to respond to project specific activities as well as to identified risks: for example (waste management plans, fall protection plans etc.);
3. List of applicable PPE required;
4. Letters of Good standing with workman's compensation where applicable;
5. Applicable legal appointments - as required;
6. List of chemicals and related Material Safety Data Sheets;

All of the above must be included in a SHE file together with:

1. Copy of scope of work;
2. Copy of appointment;
3. PPE issue register;
4. Requisite training / competency certificates where applicable;
5. Medicals as applicable to the nature of the work (for example, there must be medicals for employees who will be working at heights to confirm that they are fit to work at heights);

## 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 - EMEs and QSEs Sworn Affidavit for confirming annual turnover and B-BEE management split of company	
Company Profile	
Valid Proof of Office Location	
Valid Proof of Office Location (Municipal Clearance Certificate for confirming office address/Lease agreement/Municipal bill)	
Three (3) Completed Reference Letters (Annexure 2)	
Comprehensive Project Approach	
CV of Project Leader with proof of Qualification in Environmental Sciences; specializing in Air Quality Management.	

## 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
<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)	
Valid proof of good standing for workman’s compensation from the Department of Labour Compensation Commissioner, or any other registered workman’s compensation insurer.	

## 18 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 bidder's 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.

## 19 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 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 envelope marked "RFP-AQM/001/21" and deposited by hand in the tender box before the closing date and time of 12h00, 10 December 2021. ELIDZ WILL NOT BE RESPONSIBLE FOR DOCUMENTS PLACED IN AN INCORRECT TENDER BOX.

The tender box will be marked tender name "RFP-AQM/001/21" which can be found in the following location:

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

Tender must be marked:

For the attention of Zandile Mtebele: SCM Officer

The tender should be placed in a sealed envelope marked "RFP-AQM/001/21" and deposited by hand in the tender box before the closing date and time of 12h00, 10 December 2021. ELIDZ WILL NOT BE RESPONSIBLE FOR DOCUMENTS PLACED IN AN INCORRECT TENDER BOX.

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

Tender must be marked:

For the attention of: Zandile Mtebele: 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**

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## 1. Introduction

### 1 Detailed Scope:

The East London Industrial and Development Zone (ELIDZ) is looking for a competent service provider to:

1. Supply air quality monitoring equipment as described in Phase 1 below.
2. Maintain and operate existing ELIDZ air quality monitoring equipment.
3. Operate and maintain the ELIDZ air dispersion modelling system (AIRMOD);
4. Maintain reporting requirements on air quality monitoring as well as on the reports required on the air dispersion modelling, from the AIRMOD air dispersion modelling system;
5. Upload ELIDZ Air Quality Data on the South African Air Quality Information System.

The scope of work is split into two phases, namely:

- **Phase 1:**
  - Procurement and set up of monitoring equipment and Telemetry System to enable real time air quality data monitoring and automated transmission of PM 10 and PM2.5 results into the South African Air Quality Information System (SAAQIS).
  - Procurement and set up of Radiello Passive Badges to monitor gases such as SO<sub>2</sub>, NO<sub>2</sub>, VOCs and O<sub>3</sub> at 10 monitoring points for 36 months.
  -
- **Phase 2** –monitoring and reporting for a 3-year period to include:
  - Passive gas sampling must be undertaken monthly over a period of 15 days.
  - Monthly sites visit to undertake PM and gas monitoring. The gas samples must be sent to an accredited SANAS laboratory for analysis.
  - Run and maintain the existing ELIDZ owned air dispersion (AIRMOD) model annually with updated Meteorological data for all identified sources and their respective emissions. Details provided below.
  - Calibration of monitoring equipment
  - Compilation and submission of quarterly report to the EL IDZ.
  - Provide recommendations and management measures in quarterly and annual reports for any anomalies identified.
  - Reporting to include potential root cause/s and source of non-compliances;
  - Reporting to include recommended corrective action for non-compliances;



- Reporting to include interpretation and trend analysis of measured parameters against regulated air quality standards;
- Maintain a database of air quality monitoring information that includes historical air quality information provided by the ELIDZ;
- Submit reports to the South African Air Quality Information Systems (SAAQIS) on behalf of the ELIDZ.

Update the Air Dispersion (AIRMOD) annually or model as and when required as follows.

1. Review the process description and environmental documentation of all new activities within the ELIDZ complex and compile a detailed emissions inventory for the new facilities.
2. Prepare and update modelled meteorological data for the dispersion modelling study.
3. Prepare and update the emissions inventory for the ELIDZ Complex based on information received for all new emission generating activities in the EL IDZ.
4. Update and run the dispersion model for all identified sources and their respective emissions.
5. Preparation of a report detailing findings of the dispersion modelling studying and providing potential root causes as well as management and mitigations, as required, based on these findings.

## 2. Considerations

### 2.1. Requirements Considerations

The score achieved for 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

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

Evaluation Areas	Evaluation Criteria	Total Max Points	Item Max Points	Evaluation Description
<b>Local Operational Office</b>	Local Operational Office (provide Municipal Clearance Certificate for confirm office address)/Lease agreement/Municipality bill	20	20	Proof of a local office in BCMM Area provided
			10	Proof of a local office in Eastern Cape Province provided
			5	Office outside of the Eastern Cape Province
<b>Project Approach</b>	Service Provider should propose all activities for the implementation of the Air Quality Monitoring programme describing the methodology, milestones, schedule and resource allocation in relation to the scope of work.	20	20	Comprehensive project Approach submitted according to the criteria
			0	No Project Approach Submitted
<b>Project leader Experience</b>	The project leader is expected to have relevant technical experience in managing similar projects in the area of Air Quality Management. Provide CV of project leader with proof of Qualification in Environmental Sciences; specializing in Air Quality Management.	30	30	Relevant Experience and above 5 years' experience
			20	Relevant Experience and 4-5 years' experience
			10	Relevant Experience and 2-3 years' experience
<b>References</b>	Provide 3 relevant references on the ELIDZ template.	30	30	Scores will be allocated based on the scores from the referees.

## **2.2. Financial Considerations**

Payment milestones will be attached to the service level agreement.

## **2.3. Time Constraints**

The East London Industrial Development Zone would like this project to commence on the 04 January 2022 after the signing of the service level agreement.

## **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**

This section will aim to unpack all elements required for this project, as follows:

- Supply Air Quality Monitoring passive badges and Telemetry System;
- Set up Air Quality Monitoring Equipment;
- Maintenance & Calibration of monitoring equipment
- Air Quality Data Retrieval and Monitoring;
- Reporting on Ambient air quality monitoring results;
- Running of the Air Dispersion mode and reporting
- Uploading ELIDZ Air Quality Data on the South African Air Quality Information System

# **4. Response Format**

## **4.1 Location evidence**

Provide information on your operation office locations. Do you have local offices in the BCM Metropolitan Area \ Eastern Cape Province Any of the below as proof?

- Provide a Municipal Clearance Certificate
- Lease agreement
- Municipality bill

## **4.2 Project Leader Experience**

- Project Leader Competency, Provide Qualification in Environmental Sciences, specializing in Air Quality Management.

## **4.3 Project Approach**

- Service Provider should propose all activities for the implementation of the Air Quality Monitoring programme describing the methodology, milestones, schedule and resource allocation in relation to the scope of work.

## **4.4 References**

- Provide 3 relevant references on the ELIDZ template.

Please forward any queries to: Zandile Mtebele at the following contact details:

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

Tel: (043) 702 8200

Fax: (043) 702 8251



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

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**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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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, 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

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](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

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

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

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

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

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

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

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

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: \_\_\_\_\_

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

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

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

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

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



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

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

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

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

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

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

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



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: \_\_\_\_\_

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

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

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

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

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

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: \_\_\_\_\_

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

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

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PROCUREMENT HANDBOOK



## ANNEXURE 2

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REFERENCE LETTER

