

EXPRESSION OF INTEREST [EOI]

ICT SERVICES RESELLER PROGRAM 2022

EOI REFERENCE:	EOI-ICT-075
ISSUE DATE:	01 July 2022
CLOSING DATE:	21 July 2022
CLOSING TIME:	12:00

SCHEDULE OF CONTENTS

Section No	Page
SECTION 1: NOTICE TO RESPONDENTS	3
1 INFORMATION REQUEST \ EXPRESSION OF INTEREST [EOI]	3
2 EOI CONDITIONS.....	3
3 RESPONSE SUBMISSION \ DELIVERY INSTRUCTIONS	4
4 BROAD-BASED BLACK ECONOMIC EMPOWERMENT AND SOCIO-ECONOMIC OBLIGATIONS	4
5 SUBCONTRACTING.....	5
6 COMMUNICATION	6
7 CONFIDENTIALITY	6
8 INSTRUCTIONS FOR COMPLETION OF EOI	6
9 STATUS OF THIS EOI AND SUBSEQUENT PROCESS	7
10 DISCLAIMERS	7
11 TAX COMPLIANCE	8
12 PROTECTION OF PERSONAL DATA	8
SECTION 2: EOI SCOPE OF REQUIREMENTS	9
1 INTRODUCTION.....	9
2 BACKGROUND	10
3 KEY OBJECTIVES OF THIS EOI PROCESS	10
4 RESELLER PROGRAM DETAILED REQUIREMENTS	10
5 GENERAL RESPONDENT OBLIGATIONS.....	12
6 CONFIDENTIALITY AND COMPLIANCE	12
7 UNDERTAKINGS BY RESPONDENT.....	12
8 COSTS TO RESPOND TO THE EOI	12
9 AUTHORITY OF SIGNATORY	13
10 UNDERTAKING BY ELIDZ.....	13
SECTION 3: ELIDZ'S EOI INFORMATION	14
1 REQUIREMENTS FOR EOI	14
2 VALUATION METHODOLOGY AND CRITERIA	14
SECTION 4: EXPRESSION OF INTEREST (EOI).....	17
SECTION 5: DRAFT SERVICE LEVEL AGREEMENT	21

EOI for the Participation in the East London IDZ SOC LTD ICT Services Reseller Program

Section 1: NOTICE TO RESPONDENTS

1 INFORMATION REQUEST \ EXPRESSION OF INTEREST [EOI]

Information is requested from interested persons, companies, close corporations or enterprises, hereinafter referred to as the **Respondent(s)** to supply the aforementioned information to the East London IDZ. Respondents are to note that only those that have responded to this EOI and whom have been shortlisted following the bid evaluation process detailed in this EOI, will be considered for the ICT reseller program.

2 EOI CONDITIONS

- Questions relating to the EOI will be accepted until 16h00 on the 01 July 2022. All questions must be submitted to Zandile Mtebele via e-mail to zandile@elidz.co.za;
- A compulsory briefing session will be held on the 08 July 2022 starting at 10h00 via Microsoft Teams, a link will be provided on the East London IDZ's website;
- The closing date for this tender is at 12h00 on the 21 July 2022;
- E-mailed, faxed, late, or incomplete proposals will not be considered;
- ELIDZ is not obligated to accept the lowest or any proposal;
- It will be the responsibility of the respondent to ensure that the tender/bid reaches the East London IDZ. All tender/bid documents are to be submitted online at <https://tenderportal.elidz.co.za> before the closing date and time. Only PDF documents must be uploaded with a maximum size limit of 2GB per file;
- Any expenses incurred by the tenderer in preparing and submitting the proposal will be for the tenderer's account, as the East London IDZ 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

Any additional information or clarification will be faxed or emailed to all Respondents, if necessary.

Respondent's Signature

Date and Company Stamp

3 RESPONSE SUBMISSION \ DELIVERY INSTRUCTIONS

It will be the responsibility of the tenderer to ensure that the tender reaches the East London IDZ. The tender should be uploaded to our Online Tender Portal website before the closing date and time of 12h00, 08 June 2022.

A guide to the East London IDZ's Online Tender Portal website has been provided with the tender documents.

Tender must be marked:

For the attention of: Zandile Mtebele: SCM Officer

4 BROAD-BASED BLACK ECONOMIC EMPOWERMENT AND SOCIO-ECONOMIC OBLIGATIONS

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 East London IDZ 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 East London IDZ reserves the right to negotiate if preferred bidder's proposal exceeds the East London IDZ's project estimate.

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 East London IDZ 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 East London IDZ 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.

The East London IDZ 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

Respondent's Signature

Date and Company Stamp

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).

5 SUBCONTRACTING

The East London IDZ fully endorses Government's transformation and empowerment objectives and when contemplating subcontracting during the subsequent EOI process, Respondents are requested to give preference to companies which are Black Owned, Black Women Owned, Black Youth Owned, owned by Black People with Disabilities, EMEs and QSEs including any companies designated as B-BBEE Facilitators.

Respondents are required to submit proof of the subcontracting arrangement between themselves and the subcontractor. Proof of the subcontracting arrangement may include a subcontracting agreement.

Respondents are to note that it is their responsibility to select competent subcontractors that meet all requirements of the bid so that their bid is not jeopardised by the subcontractor when evaluated. Respondents are responsible for all due diligence on their subcontractors.

If contemplating subcontracting, a Respondent will not be awarded points for B-BBEE if it is indicated in its Proposal that such Respondent intends subcontracting more than 25% [twenty-five percent] of the value of the contract to an entity or entities that do not qualify for at least the same points that the Respondent qualifies for, unless the intended subcontractor is an EME with the capability to execute the contract.

Respondent/s are discouraged from subcontracting with their subsidiary companies as this may be interpreted as subcontracting with themselves and / or using their subsidiaries for fronting. Where a Respondent intends to subcontract with their subsidiary this must be declared in their bid response.

The successful Respondent awarded the contract may only enter into a subcontracting arrangement with the East London IDZ's prior approval.

The contract will be concluded between the successful Respondent and ELIDZ, therefore, the successful Respondent and not the sub-contractor will be held liable for performance in terms of its contractual obligations.

A Respondent awarded a contract in relation to a designated sector, may not subcontract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.

A person awarded a contract may not subcontract more than 25% [twenty-five percent] of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.

Respondent's Signature

Date and Company Stamp

6 COMMUNICATION

For specific queries relating to this EOI a Clarification Request Form should be submitted Zandile Mtebele before 12h00 on the 15 July 2022, substantially in the form set out in Section 7. In the interest of fairness and transparency the East London IDZ's response to such a query will then be made available to the other Respondents who have participated in the briefing session. For this purpose the East London IDZ will communicate with Respondents using the contact details provided during the briefing session. Kindly ensure that you provide the Secretariat with the correct contact details, as the East London IDZ will not accept responsibility for being unable to contact a bidder who provided incorrect contact details.

After the closing date of the EOI a Respondent may only communicate with the Supply Chain Officer via email zandile@elidz.co.za.

Respondents are to note that changes to its submission will not be considered after the closing date.

Respondents are warned that a Proposal may be liable to disqualification should any attempt be made by a Respondent either directly or indirectly to canvass any officer or employee of the East London IDZ in respect of this EOI between the closing date and the date of the award of the business. Furthermore, Respondents found to be in collusion with one another will be automatically disqualified and restricted from doing business with the East London IDZ in the future.

7 CONFIDENTIALITY

All information related to this EOI is to be treated with strict confidence. In this regard Respondents are required to certify that they have acquainted themselves with the Reseller Agreement. All information related to a subsequent contract, both during and after completion thereof, will be treated with strict confidence. Should the need however arise to divulge any information gleaned from provision of the Goods, which is either directly or indirectly related to the East London IDZ's business, written approval to divulge such information must be obtained from the East London IDZ.

8 INSTRUCTIONS FOR COMPLETION OF EOI

- 8.1** EOI proposals must be submitted in an electronic PDF format and clearly labelled.
- 8.2** All returnable documents listed in the expression of interest (Section 4) in this EOI must be returned with your submission.
- 8.3** The person or persons signing the submission must be legally authorised by the respondent to do so.

Respondent's Signature

Date and Company Stamp

9 STATUS OF THIS EOI AND SUBSEQUENT PROCESS

- 9.1** It is envisaged that Respondents to this EOI will be subjected to pre-qualification criteria and will be shortlisted during the evaluation stage of the EOI.
- 9.2** This EOI is not an offer to purchase and the East London IDZ is under no obligation to accept any proposals in this process and/or the subsequent processes which may be issued hereafter.
- 9.3** This is an Expression of Interest, after which successful Respondents will be appointed to the ICT Services Reseller Program.
- 9.4** Opportunities or services relating to the East London IDZ's ICT service offerings will be awarded based on contracts awarded by a Third Party to the Reseller.

10 DISCLAIMERS

- 10.1** Respondents are hereby advised that ELIDZ is not committed to any course of action as a result of its issuance of this EOI and/or its receipt of submissions in response to it. In particular, please note that the East London IDZ reserves the right and at its sole and full discretion to:
- a) utilise any information provided to it in response to this EOI in future EOI's;
 - b) take no further action whatsoever, if it so decides;
 - c) withdraw from this process and the provisions of this project at any time;
 - d) select the EOI participants based on ELIDZ's criteria;
 - e) change the dates of adjudication and submission;
 - f) not bind itself to accept any or all of the EOI's;
 - g) increase or decrease the quantities/scope as indicated in the EOI;
 - h) validate any information submitted by Respondents in response to this bid. This would include, but is not limited to, requesting the Respondents to provide supporting evidence. By submitting a bid, Respondents hereby irrevocably grant the necessary consent to ELIDZ to do so;
 - i) request audited financial statements or other documentation for the purposes of a due diligence exercise; and/or
 - j) not accept any changes or purported changes by the Respondent to the bid rates after the closing date and/or after the award of the business, unless the contract specifically provides for it.
 - k) enter into price negotiations with the preferred bidder/s.
- 10.2** ELIDZ's decisions will be final and no correspondence will be entered into after the selection process. You will be formally notified of your result.

Respondent's Signature

Date and Company Stamp

10.3 An EOI will only be deemed accepted once written notice is given by the East London IDZ to the successful Respondent(s) and after any amendments have been documented and agreed to within a Service Level Agreement.

10.4 Kindly note that the East London IDZ will not reimburse any Respondent for any preparatory costs or other work performed in connection with this submission.

11 TAX COMPLIANCE

Tax Requirements

- Bidders must ensure compliance with their Tax obligations;
- Bidders are required to submit their unique personal ID number (PIN) issued by SARS to enable the East London IDZ to view the tax payer's profile and tax status;
- Application for tax compliance status (TCS) or PIN may also be made via e-filing;
- Bidders may also submit a printed TCS together with the bid;
- In Bids where consortia/joint venture/ sub-contractors are involved, each pay must submit a separate proof of TCS/PIN/CSD number;
- Where no TCS is available but the bidder is registered on the CSD database, a CSD number must be provided.

12 PROTECTION OF PERSONAL DATA

In responding to this bid, the East London IDZ acknowledges that it may obtain and have access to personal data of the Respondents. The East London IDZ agrees that it shall only process the information disclosed by Respondents in their response to this bid for the purpose of evaluating and subsequent award of business and in accordance with any applicable law. Furthermore, the East London IDZ will not otherwise modify, amend or alter any personal data submitted by Respondents or disclose or permit the disclosure of any personal data to any Third Party without the prior written consent from the Respondents. Similarly, the East London IDZ requires Respondents to process any personal information disclosed by the East London IDZ in the bidding process in the same manner. The detailed mutual duties of the East London IDZ and the Respondents to protect personal information is contained in paragraph 37 of the General Bid Conditions.

Respondent's Signature

Date and Company Stamp

EOI for the Participation in the East London IDZ SOC LTD ICT Services Reseller Program

Section 2: EOI SCOPE OF REQUIREMENTS

1 INTRODUCTION

The ELIDZ is a Greenfield 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. Over 400 hectares of prime land has been transformed into a world-class industrial location.

The ELIDZ is the operator of the zone, an entity that exists to help manufacturers to become globally competitive through the development and efficient management of a modern, purpose built industrial location, which offers investing industries a streamlined business environment enhanced by a range of supporting services.

The ELIDZ is a prime industrial park in South Africa. It is perfectly positioned for light industry manufacturers that are investing from R10 million (+/- \$1.2 million) upwards. The zone is specially developed for growth-oriented manufacturers in search of ultimate global competitiveness. The zone focuses on streamlining business operations and engineering operational efficiencies for located industries.

The zone is already operational and currently houses a number of manufacturers that supply products for the local and international markets. The zone is situated on the Buffalo City's West Bank, adjacent to the existing East London port. The ELIDZ includes a Customs Control Area to allow for a duty-free importation of manufacturing inputs utilized in the production of export products as well as providing access to a variety of general sector-specific industrial investment incentives.

The zone has six individually fenced sub-zones, each designed to serve specific manufacturing needs. It is characterized by excellent internal roads and a newly built dual carriageway designed to carry both light and heavy vehicles including 22m-long interlines.

Boasting 150 fully serviced sites with access to all utilities including the highest calibre ICT infrastructure and systems and all are within close proximity to key transport networks. The ELIDZ is on a mission and has already succeeded in establishing local and global export-oriented industries within the zone.

Respondent's Signature

Date and Company Stamp

2 BACKGROUND

The ELIDZ intends to appoint a maximum of twenty (20) SMME ICT resellers with preference given to SMMEs within the province for a period of three (3) years with an additional ten (10) resellers other than the SMMEs within the country.

The resellers will market and sell the ELIDZ's ICT Services and receive discounts according to sales volume or contract amount. The resellers will be expected to provide additional supporting services required by the clients, which would not typically be provided by the ELIDZ.

The appointed resellers will not be paid commissions but rather receive discounts ranging from 5% - 10%.

The preferred service providers must meet the requirements as stipulated.

3 KEY OBJECTIVES OF THIS EOI PROCESS

The objective of this bid is to appoint suitable, independent service providers that can resell the East London IDZ's ICT services as part of their service offerings.

4 RESELLER PROGRAM DETAILED REQUIREMENTS

4.1 East London IDZ ICT Services

East London IDZ currently provides and sells the following services to clients inside and outside the Zone:

- Internet as a Service
- Telephony as a Service
- Data Centre Rack Hosting
- Disaster Recovery as a Service (Veeam)
- Backup as a Service (Veeam)
- Cloud Services (IaaS)

Future services include the following:

- Document Digitisation & Storage Facilities
- SOC and NOC Services
- ICT Project Management

Respondent's Signature

Date and Company Stamp

4.2 Expected Reseller Services

Appointed resellers are expected to market the East London IDZ services and include them in their service offerings during Third Party tendering processes. The East London IDZ expects the reseller to provide high quality and professional services to his/her client.

This will be measured by means of annual surveys to all reseller clients. Failure to achieve an average of eighty five percent (85%) may negatively affect the discount given to the reseller by the East London IDZ.

The East London IDZ will provide services to the reseller and will invoice the reseller and not the end client.

It is anticipated that the end client may request additional services not offered by the East London IDZ, in this case the reseller will be responsible for providing such services.

4.3 The Reseller Commission Tiers Versus KPIs.

TIER and Commission Percentage	<u>KPI 1</u> – Number of Active Clients	<u>KPI 2</u> – Revenue Generated per annum	<u>KPI 3</u> – Client reseller engagement and support satisfaction percentage
Bronze (5%)	1 – 20 active clients <div>OR</div>	R 100 000 – R 250 000 per annum	85 % and above
Silver (7.5%)	21 – 50 active clients <div>OR</div>	R 251 000 – R 750 000 per annum	85 % and above
Gold (10%)	51 and above active clients	R 750 000 and above per annum	85 % and above

4.4 Reporting

A quarterly management report needs to be supplied and presented to East London IDZ detailing monthly expenditure, service performance, trends and possible cost savings. Further detail to this report will need to be discussed once the project is awarded.

4.5 Reseller Capacitation

The East London IDZ will conduct a minimum of one product awareness session per annum to all resellers at the East London IDZ's conference centre.

Respondent's Signature

Date and Company Stamp

5 GENERAL RESPONDENT OBLIGATIONS

5.1 The Respondent(s) shall be fully responsible to the East London IDZ for the acts and omissions of persons directly or indirectly employed by them.

5.2 The Respondent (s) must comply with the requirements stated in this EOI.

6 CONFIDENTIALITY AND COMPLIANCE

This EOI and information contained herein or provided for purposes thereof, remain the property of the East London IDZ and may not be reproduced, sold or otherwise disposed of. All recipients of this document (whether a EOI is submitted or not) shall treat the details of this document as strictly private and confidential.

Information disclosed in this EOI is given in good faith and only for the purposes of providing sufficient information to the Respondent to enable submission of a well-informed and realistic EOI.

7 UNDERTAKINGS BY RESPONDENT

It will be accepted that the Respondent, on submitting the EOI response, has read, understood and accepted all the terms and conditions of the document. The submission of an EOI by any Respondent shall presume complete acceptance of the terms and conditions of the document. All qualifications and or exceptions should be noted in the EOI Response document.

8 COSTS TO RESPOND TO THE EOI

All Respondents wishing to submit a EOI response must be in possession of this document, the EOI. The East London IDZ will not be responsible for or pay any expense or losses which may be incurred by any Respondent in the preparation and submission of the EOI and the costs of the EOI at all stages of the EOI process. Costs, if any, will be for each Respondent's own account.

The East London IDZ reserves the right to invite certain Respondents to present an introduction of their company or otherwise demonstrate their capability as per their EOI, at the Respondent's own cost.

Respondent's Signature

Date and Company Stamp

9 AUTHORITY OF SIGNATORY

- 9.1** If the EOI Respondent is a company, a certified copy of the resolution of the Board of Directors (i.e. personally signed by the Chairman or Secretary of the Board) authorising the person who signs this EOI to do so and any other documents and correspondence in connection with this EOI and/or agreement on behalf of the company, must be submitted with their EOI.
- 9.2** If the EOI Respondent is a partnership, a certified copy of the resolution of the partners (personally signed by all the partners) authorising the person who signs this EOI to do so and any other documents and correspondence in connection with this EOI and/or agreement on behalf of the partnership, must be submitted with this EOI.
- 9.3** If the EOI Respondent constitutes a "one-man business", certified proof must be submitted that the person signing this EOI and any other documents and correspondence in connection with this EOI and/or agreement is the sole owner of the one-man business.
- 9.4** Failure to comply with this clause may result in rejection of the EOI response.

10 UNDERTAKING BY ELIDZ

In responding to this EOI, the East London IDZ encourages all EOI Respondents to put their best effort into the construction and development of the proposal \ submission.

The EOI process will include due governance and the results of the adjudication process will be available to Respondents who are not successful under certain conditions. This will be allowed at the sole discretion of the East London IDZ.

Respondent's Signature

Date and Company Stamp

EOI for the Participation in the East London IDZ SOC LTD ICT Services Reseller Program

Section 3: ELIDZ'S EOI INFORMATION

1 REQUIREMENTS FOR EOI

Respondents expressing an interest to participate in this EOI stage must qualify in terms of the minimum predetermined requirements and have the capability to supply / provide the full range of Products / Services, as set out below:

Minimum Eligibility Criteria are as follows:

- (i) Functionality Evaluation 70%;

2 VALUATION METHODOLOGY AND CRITERIA

During this EOI process, the East London IDZ intends utilising the following methodology and criteria in selecting preferred service providers.

NB: Evaluation of the various stages will normally take place in a sequential manner. However, in order to expedite the process, the East London IDZ reserves the right to conduct the different stages of the evaluation process in parallel. In such instances the evaluation of bidders at any given stage must therefore not be interpreted to mean that bidders have necessarily passed any previous stage(s).

2.1 SUMMARY OF PROPOSED EOI EVALUATION THRESHOLD AND WEIGHTINGS

EVALUATION CRITERIA	WEIGHTED SCORE
Technical / Functionality	80

EVALUATION CRITERIA	WEIGHTED SCORE
B-BBEE	20
TOTAL SCORE:	100

Respondent's Signature

Date and Company Stamp

2.2 FUNCTIONALITY EVALUATION MATRIX

Evaluation Areas	Evaluation Criteria	Total Max Points	Item Max Points	Evaluation Description
Local Operational Office	Local Operational Office	20	20	Proof of a local office in BCMM Area provided
			15	Proof of a local office in Eastern Cape Province provided
			5	Proof of a local office in RSA provided
			0	No local office in RSA that is operation
Technical Resources	Technical Human Resources Skills Competency	30	30	Three or more resources with CISCO, HP, VEEAM expertise and qualifications. CVs for all resources attached.
			20	Two resources with CISCO, HP, VEEAM expertise and qualifications. CVs for all resources attached.
			10	One resource with CISCO, HP, VEEAM expertise and qualifications. CV of the resource attached.
			0	No resource information provided
Service Providers Expertise and Resources	Sales, Project Management and Marketing Human Resources Skills Competency with Company Experience	50	50	Company is providing or has provided similar ICT Services to five or more clients (public/private) in the past five (5) years. Five reference letters provided. Project, sales and marketing team composition and details provided
			40	Company is providing or has provided similar ICT

Respondent's Signature

Date and Company Stamp

Evaluation Areas	Evaluation Criteria	Total Max Points	Item Max Points	Evaluation Description
				Service to four clients (public/private) in the past five (5) years. Four reference letters provided. Project, sales and marketing composition and details provided
			30	Company is providing or has provided similar ICT Service to three clients (public/private) in the past five (5) years. Three reference letters provided. Project, sales and marketing composition and details provided
			20	Company is providing or has provided similar ICT Service to two clients (public/private) in the past three (3) years. Two reference letters provided. Project, sales and marketing composition and details provided
			10	Project, sales and marketing composition and details provided only
			0	No project team details provided

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

2.3 FINANCIAL REQUIREMENTS FOR FUTURE AWARD OF BUSINESS

Opportunities or services relating to the East London IDZ's ICT service offerings will be awarded based on contracts awarded by a Third Party to the Reseller.

Respondent's Signature

Date and Company Stamp

EOI for the Participation in the East London IDZ SOC LTD ICT Services Reseller Program

Section 4: EXPRESSION OF INTEREST (EOI)

I/We _____

—

[name of company, close corporation or partnership]

of [full address] _____

—

carrying on business under style or title of [trading as]

—

represented

by _____

in my capacity as

being duly authorised, hereby lodge an **Expression of Interest** in the participation in the East London IDZ's ICT Services Reseller Program over a period of **Three [3] years**, as follows:

ADDRESS FOR NOTICES

Respondent to indicate its *domicilium citandi et executandi* hereunder:

Name of entity: _____

Facsimile: _____

Address: _____

NAME(s) AND ADDRESS / ADDRESSES OF DIRECTOR(s) OR MEMBER(s)

The Respondent must disclose hereunder the full name(s) and address(s) of the director(s) or members of the company or close corporation [C.C.] on whose behalf the EOI is submitted.

(i) Registration number of company / C.C.

.....

(ii) Registered name of company / C.C.

.....

Respondent's Signature

Date and Company Stamp

(iii)

Full name(s) of director/member(s):

Address/Addresses:

ID Number/s:

CONFIDENTIALITY

All information related to a subsequent contract, both during and after completion, is to be treated with strict confidence. Should the need however arise to divulge any information gleaned from provision of the Services, which is either directly or indirectly related to the East London IDZ’s business, written approval to divulge such information must be obtained from the East London IDZ.

RETURNABLE DOCUMENTS

a) Respondents must submit with their responses to this EOI, **as a minimum requirement**, all the returnable documents indicated below with a [√]. All Sections must be signed and dated by the Respondent.

Minimum Requirements - Returnable Documents	Submitted [√]
SECTION 4: Expression of Interest	
Completed and Signed ELIDZ Procurement Handbook with all relevant supporting documentation (Tax clearance etc.)	
JV Participation Documentation (If applicable)	
CSD Registration Certificate	

b) Essential Returnable Documents

In addition to the requirements of section (a) above, Respondents are further required to submit with their Proposals the following **essential Returnable Documents** as detailed below.

Essential Returnable Documents required for evaluation purposes:

Failure to provide all essential Returnable Documents used for purposes of scoring a bid, by the closing date and time of this bid will not result in a Respondent's disqualification. However, Bidders will receive an automatic score of zero for the applicable evaluation criterion. Bidders are therefore urged to ensure that all these documents are returned with their Proposals.

Please confirm submission of these essential Returnable Documents by indicating Yes or No in the table below:

ESSENTIAL RETURNABLE DOCUMENTS USED FOR SCORING	SUBMITTED [Yes or No]
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	
Skills Summary and Curriculum Vitae's	
Three (3) Completed Reference Letters	

Other Essential Returnable Documents:

Failure to provide other essential Returnable Documents may result in a Respondent's disqualification. Bidders are therefore urged to ensure that all these documents are returned with their Proposals.

Please confirm submission of these essential Returnable Documents by indicating Yes or No in the table below:

OTHER ESSENTIAL RETURNABLE DOCUMENTS & SCHEDULES	SUBMITTED [Yes or No]
Completed and Signed ELIDZ Procurement Handbook with all relevant supporting documentation (Tax clearance or SARS PIN etc.)	
CSD Registration Certificate not older than 10 days from tender closing	
Tax Clearance Certificate or electronic access PIN obtained from SARS's new Tax Compliance Status (TCS) system [Consortia / Joint Ventures must submit a separate Tax Clearance Certificate for each party]	

Respondent's Signature

Date and Company Stamp

CONTINUED VALIDITY OF RETURNABLE DOCUMENTS

The successful Respondent will be required to ensure the validity of all returnable documents, including but not limited to its Tax Clearance Certificate and valid B-BBEE Verification Certificate, for the duration of any contract emanating from this EOI. Should the Respondent be awarded the contract **[the Agreement]** and fail to present the East London IDZ with such renewals as and when they become due, the East London IDZ shall be entitled, in addition to any other rights and remedies that it may have in terms of the eventual Agreement, to terminate such Agreement forthwith without any liability and without prejudice to any claims which the East London IDZ may have for damages against the Respondent.

SIGNED at _____ on this ____ day of _____
20____

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 _____

Name _____

2 _____

Name _____

SIGNATURE OF RESPONDENT’S AUTHORISED REPRESENTATIVE: _____
NAME: _____
DESIGNATION: _____

**EOI for the Participation in the East London IDZ SOC LTD ICT Services
Reseller Program**

Section 5: Draft Service Level Agreement



RESELLER AGREEMENT

BETWEEN

**EAST LONDON INDUSTRIAL DEVELOPMENT ZONE SOC
LTD**

(REGISTRATION NUMBER:)

(HEREINAFTER REFERRED TO AS “**ELIDZ**”)

AND

.....

(REGISTRATION NUMBER:)

(HEREINAFTER REFERRED TO AS “**RESELLER**”)

(COLLECTIVELY REFERRED TO AS “THE PARTIES”)

1. PREAMBLE

Whereas:

- 1.1. The **ELIDZ** contracts with the **RESELLER** to provide Services in terms of this Agreement for the use of the **END USER**;

NOW THEREFORE the parties agree to record their agreement in writing upon the following terms and conditions:

2. DEFINITIONS

- 2.1. The head notes to the clauses of this Agreement are inserted for reference purpose only and shall not affect the interpretation of any of the provisions to which they relate.
- 2.2. Expressions defined in this Agreement shall bear the same meanings in any Annexure to this Agreement which does not contain its own definitions.
- 2.3. Unless inconsistent with the context, words signify any one gender shall include the other, words signify the singular shall include the plural and vice versa and words signify natural persons shall include artificial persons and vice versa.
- 2.4. Any reference to an enactment or piece of legislation is to that enactment or legislation as at the date of signature hereof and as amended or re-enacted from time to time.
- 2.5. Unless the contrary intention appears from the context, the following terms shall have the following meanings in terms of this Agreement:
 - 2.5.1. "**Accounting month**" shall mean the monthly accounting period starting 01 of each month and ending the last day of the same month;
 - 2.5.2. "**Act**" shall mean the Special Economic Zones Act 16 of 2014, as amended;
 - 2.5.3. "**Agreement**" shall mean this Reseller Agreement and all Annexures thereto;
 - 2.5.4. "**BCMM**" shall mean Buffalo City Metropolitan Municipality;

Respondent's Signature

Date and Company Stamp

- 2.5.5. "**Days**" shall mean business days and excludes a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 2.5.6. "**ELIDZ**" shall mean East London Industrial Development Zone SOC Ltd bearing registration number 2003/012647/30 whose chosen domicilium citandi et executandi for this Agreement is ELIDZ Head Office, Lower Chester Road, Sunnyridge, East London;
- 2.5.7. "**END USER**" shall refer to the publisher of the tender/customer/client and end of the line beneficiary of the Services provided.
- 2.5.8. "**prime overdraft rate**" shall mean the publicly quoted basic rate of interest as determined by the South African Reserve Bank from time to time, compounded monthly in arrear and calculated on a three hundred and sixty-five (365) day year as being its prime overdraft rate, as certified by any manager of the **ELIDZ'S** bank, whose appointment and designation need not be proved;
- 2.5.9. "**RESELLER**" shall mean....., an authorised reseller of the ELIDZ's IT Services duly appointed via tender process and whose chosen domicilium citandi et executandi (service address for legal notices) for this Agreement is;
- 2.6. The **ELIDZ** hereby appoints the **RESELLER**, on and subject to the terms of this Agreement, as its nonexclusive reseller to market and resell Services to Customers in the local Border area, broader province of the Eastern Cape, country and or globally.
- 2.7. This Agreement falls part of the **MASTER SERVICES AGREEMENT** which will dictate the terms of the services to be provided and the costs thereto.
- 2.8. The PARTIES shall collectively produce a Bid document to engage commercial opportunities where there is a need.
- 2.9. This contract shall remain in place from date of signature until such time as the award of the tender and the work related thereto is completed, due to effluxion of time of the award or through termination of this agreement.
- 2.10. This Agreement shall be binding on and enforceable by the permitted assigns or liquidators or successors in title of the Parties, as fully and effectually as if

they had signed this Agreement in the first instance and reference to any Party shall be deemed to include such Party's permitted assigns or liquidators or successors in title, as the case may be.

3. CONTRACT AND APPLICATION

3.1. This Reseller Agreement governs the provision of all Services offered by the **ELIDZ** to the **RESELLER**.

3.2. The specific Services to be rendered shall be incorporated in the **MASTER SERVICES AGREEMENT** and any Annexures thereto

3.3. These Services include but not limited to the following:

- Data Centre Rack Hosting (Limited or future data centres)
- Backup as a Service (Veeam)
- Cloud Services
- Business Continuity as a Service
- Internet as a service.

3.4. Notwithstanding any provision to the contrary contained in this Agreement, due to the nature of this Agreement, all Annexures shall only require the signature of the **RESELLER's** representative and any such acceptance shall be sufficient for the purposes of binding it to the terms and conditions contained therein.

3.5. Where this Agreement or its Annexure's are silent or inconclusive on its interpretation or aspect relating to the supply and delivery of services to the **RESELLER**, the policies and procedures of the **ELIDZ** shall apply as to provide guidance and understanding thereto.

4. COMMENCEMENT AND DURATION

4.1. This Agreement shall commence on and shall be terminable on one month's written notice by either party.

Respondent's Signature

Date and Company Stamp

5. RESPONSIBILITIES OF ELIDZ

5.1. ELIDZ undertakes to:

- 5.1.1. provide the Services forming part of **MASTER SERVICES AGREEMENT** to the **RESELLER** for which Service Costs shall be levied against the **RESELLER'S** account;
- 5.1.2. provide the Services to the **RESELLER** on the terms contained in this Agreement and in terms of the relevant Annexures.
- 5.1.3. The ELIDZ shall at all times during the term of this Agreement and in the performance of its obligations hereunder conform and adhere to first class industry and professional standards and use all reasonable skill and care of a professional provider of Storage of DATA and Internet services. In particular, but without prejudice to the generality of the above;
- 5.1.4. the **ELIDZ** shall ensure that it possesses all necessary skills, experience and qualifications to perform its duties in a professional manner.
- 5.1.5. The **ELIDZ** shall use reasonable endeavours to ensure that each Service will conform to any service descriptions and/or service levels as set out, or referred to, in the applicable Scope of Work and/or Bid documentation submitted and awarded.
- 5.1.6. The **ELIDZ** shall designate and maintain an account manager/representative who will liaise with the **RESELLER** and act as primary interface.

5.2. The **ELIDZ** shall:

- 5.2.1 supply the **RESELLER** with such Service Literature as the **RESELLER** may from time to time reasonably require for the purpose of complying with its obligations to the **END USER**;

5.2.2. inform the **RESELLER** about new developments and modifications to the Services.

5.3. The **ELIDZ** shall not be responsible for any efficiency related problems with regard to the Services provided for in terms of this Agreement, the performance of which is dependent on the municipal services and other services provided by third parties.

6. RESPONSIBILITIES OF THE RESELLER

6.1. The **RESELLER** undertakes to:

6.1.1. pay the Service Costs for the Services provided by the **ELIDZ** in terms of the **MASTER SERVICES AGREEMENT**.

6.1.2. Ensure and certify that the Services will be marketed and resold directly to **END USER** in accordance with this Agreement

6.1.3. use its best endeavours to market and resell the Services as widely as possible;

6.2 In performance of such obligations the **RESELLER**:

6.2.1. may identify to its prospective **END USERS** that the Services are to be provided by the **ELIDZ** as a supplier of the **RESELLER**;

6.2.2. may use the **ELIDZ** branding only with prior written consent;

6.2.3. shall cultivate and maintain good relations with **END USERS** and prospective Customers in accordance with all reasonable skill and care of a competent reseller of Data storage and Internet services;

6.2.4. shall provide on-going support to, and maintain regular contact with, **END USERS** for the purpose of encouraging their continual and increased use of the Services;

6.3 The **RESELLER** shall at all times during the term of this Agreement and in the performance of its obligations hereunder conform and adhere to first class

industry and professional standards and use all reasonable skill and care of a professional provider of Data Storage and Internet services. In particular, but without prejudice to the generality of the above, **RESELLER** shall:

6.3.1. when selling Services, provide its prospective **END USERS** with complete and detailed information about the Services and refrain from making or giving any promises, warranties, guarantees or representations, whether express or implied, concerning the Services except such as are consistent with any documentation supplied by the **ELIDZ** to the **RESELLER** under this Agreement;

6.3.2. ensure that it possesses all necessary skills, experience and qualifications to perform its duties in a professional manner.

6.4. the **RESELLER** shall inform the **ELIDZ** promptly of any changes in its organisation or methods of doing business that might affect the performance of **RESELLER's** obligations hereunder.

7. JOINT RESPONSIBILITIES OF THE PARTIES

7.1. Each Party shall in the Bid, in all relevant discussions with respect thereto and in any negotiations with the **END USER**, identify the other Party as its team member.

7.2. Each Party will assure availability of management and technical personnel to assist the other Party in the preparation of the Bid and in any discussions and negotiations with the **END USER** or its representatives or consultants directed toward obtaining the award of the tender.

7.3. The **RESELLER** shall ensure the submission of any Bid which incorporates the services and/or products of **ELIDZ**:

7.1.1 the extent of the Parties' liability and **END USERS** exclusive remedy for damages from any cause whatsoever relating to or arising out of the awarded tender, regardless of the form of action, whether in contract, delict or otherwise, shall be limited to an amount not exceeding the value the award;

7.1.2 the Parties shall not be liable to **END USER** for:

7.1.2.1 indirect, special or consequential loss or damages, or for any loss of use, revenues, profits or savings, or for exemplary or punitive damages;

7.1.2.2 the loss of or damage to the **END USER's** data if such damage is not the fault of either PARTY respectively.

8. SERVICE COSTS AND ACCOUNTS

8.1. The **RESELLER** binds itself and undertakes to pay the **ELIDZ** for all Services Costs rendered in accordance with the terms conditions of the **MASTER SERVICES AGREEMENT** and any annexure hereto.

9. PAYMENT

9.1. All **ELIDZ** invoices shall be in line with the **ELIDZ MASTER SERVICES AGREEMENT** and to be paid by the **RESELLER** as per the terms associated with that Agreement.

10. RESELLER TIERS AND DISCOUNT

10.1. Services will be provided to **RESELLER** by the **ELIDZ** based on an evaluated tier. The **RESELLER** Tiers applicable are:

RESELLER TIER	PARAMETERS			
	Number of Clients:	Revenue Generated per Annum:	END USER Engagement and Support Satisfaction %	Discount
BRONZE	1 – 20 active clients	R100 000 – R250 000	85% and above	5%
SILVER	21 – 50 active clients	R251 000 – R 750 000	85% and above	7.5%
GOLD	51 and above	R751 000 and	85% and above	10%

Respondent's Signature

Date and Company Stamp

	active clients	above		
--	----------------	-------	--	--

10.2 The applicability of the tier in which the **RESELLER** is qualified for is dependent on the annual evaluation of the parameters as set out in clause 10.1.

10.3 The **ELIDZ** shall notify the **RESELLER** every year on the(date) of the particular tier the RESELLER qualifies for and the respective discount associated thereto.

10.4 The **ELIDZ** shall notify the **RESELLER** in writing.

10.5 The discount is only applicable once the assessment is complete and communication is provided to the **RESELLER** by the **ELIDZ** in writing.

11. RISK

11.1. All risk of and liability for any claims arising from the rendering of the Services shall be borne by the **RESELLER**, save as provided for herein.

11.2. The **ELIDZ** shall not be liable for any act, omission, negligence or breach of this Agreement by any sub-contractor, agent or employee that is or was under the control of the **RESELLER**.

11.3. The **RESELLER** shall be liable for all maintenance, unless specified otherwise, of and for any loss and damage to any equipment belonging to the **RESELLER** or its agents, save where such damage to equipment is caused by an unlawful act or omission on the part of the **ELIDZ**.

11.4. The **ELIDZ** shall not be liable for any claim arising from any rendering of Services to the **RESELLER** and/or any third party relating to or arising from the equipment or Services rendered to the **RESELLER** howsoever caused, unless where it is established, that such claim is the result of a gross negligence, unlawful act or omission on the part of **ELIDZ**.

11.5. Neither party shall be liable to the other for:

11.5.1. consequential loss or damage of any nature, that is, direct or indirect or economic loss of the other party whatsoever, including but not limited to loss of production or profit, howsoever arising; or

11.5.2. any loss or damage due to an occurrence of a force majeure nature as defined in this Agreement; or

11.5.3. potential revenue costs.

12. TRADE NAMES AND TRADEMARKS

12.1. The **ELIDZ** grants to **RESELLER** a personal, non-exclusive licence to use such the **ELIDZ** trade names, trademarks or service marks as may be specified by the **ELIDZ** in writing from time to time (the "Trade Marks"), such non-exclusive licence to terminate automatically on the termination of this Agreement.

12.2. **RESELLER** shall only use such Trade Marks:

12.2.1. for the purpose of performing its obligations under this Agreement;

12.2.2. in the forms stipulated by HUGE; and

12.2.3. strictly in accordance with HUGE' directions for the use of such Trade Marks.

12.3. **RESELLER** acknowledges that its use of the Trademarks does not create for itself any rights in such names or Trademarks.

12.4. The **RESELLER** shall submit details of all proposed use of the Trademarks to **ELIDZ** for prior written approval.

12.5. If the **RESELLER** wishes to use its own or other trade names or trademarks for the purpose of promoting and marketing the its, it shall ensure that any

such name or mark is kept entirely separate from the Trade Marks and that no composite mark is created.

- 12.6. The **ELIDZ** shall be entitled to take whatever steps it considers necessary in the case of an infringement or alleged infringement. In event of infringement of Clause 12, the **ELIDZ** will be entitled to revoke to cancel the **RESELLER** Agreement and or request the **RESELLER** to remedy such infringement within seven (7) days after receipt of a written notice giving particulars of the infringement.

13. REPRESENTATIVE

- 13.1. Each party shall appoint a representative, which representatives shall be available on a forty-eight (48) hour basis to liaise with one another with a view to ensuring the efficient implementation of this Agreement.
- 13.2. Either party will be entitled from time to time by written notice to the other to replace its representative or to appoint additional representatives.
- 13.3. Each party's representative shall be deemed to have delegated authority to represent it in all matters relating to day-to-day operational issues.

14. LIAISON

- 14.1. Either party's representative will be entitled to convene meetings on reasonable notice.
- 14.2. The purpose of these meetings shall be to discuss, negotiate and agree on all issues including the identification of any problems experienced during the preceding month, giving reasons for the problems and proposing the necessary

action to be taken to either rectify the problem or to avoid the reoccurrence of such problems.

14.3. The **ELIDZ** and the **RESELLER** undertake to hold regular meetings at times and venues agreeable to both parties.

15. DISPUTE RESOLUTION

15.1. In the event of any dispute in respect of the Agreement or its interpretation, the **ELIDZ** and the **RESELLER** agree that they shall in the first instance attempt to resolve the dispute through the authorised representatives of each Party, failing such resolution the dispute shall be escalated as follows:

15.1.1. Within 14 calendar days of any disagreement arising the **ELIDZ** and the **RESELLER** being unable to reach agreement, the matter shall be referred to the Chief Executive Officer(s) or Managing Director(s) of the **ELIDZ** and the **RESELLER** (or a nominee or a person so authorized) who shall endeavour to settle the dispute through bona fide negotiations.

15.1.2. In the event of the **ELIDZ** and the **RESELLER** still being unable to reach agreement through the process referred to and within the period referred to, the parties shall be entitled to refer the dispute to the relevant South African court having jurisdiction.

16. FORCE MAJEURE

16.1. For Neither Party hereto shall be liable for any delay or failure to perform its obligations hereunder or other breach of this Agreement to the extent that such delay, failure or breach results from an event of Force Majeure.

16.2. Each Party agrees to give notice to the other Party immediately upon becoming aware of any event of Force Majeure, such notice to contain details of the circumstances giving rise to the event of Force Majeure.

16.3. If any delay or failure in performance of any part of this Agreement by a Party is attributable to an event of Force Majeure that continues for more than ten

(10) days, then the other Party shall be entitled to terminate this Agreement by notice to the other Party, such notice to take effect immediately.

17. INDIRECT AND CONSEQUENTIAL DAMAGES

17.1. 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 or third party claiming consequential damages arising from the Services and Scope of this Agreement except if such damages or loss:

17.1.1. 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

17.1.2. arises from a claim made against the aggrieved party by a third party as a consequence of any delict committed by the defaulting party against such third party for which the aggrieved party is entitled to claim a full indemnification.

18. BREACH AND TERMINATION

18.1. Should either party ("the defaulting party") breach any of the provisions of this Agreement and the breach is irremediable or the defaulting party fails to remedy that breach within 10 (ten) days or such longer period as may be deemed reasonable in the circumstances and/or agreed to between the parties after receipt of a written notice from the non-defaulting party, requiring it to remedy that breach, the non-defaulting party will be entitled, without prejudice to any remedies which it may otherwise have in terms of this Agreement or at law, to terminate this Agreement or to suspend all or a portion of the Services offered in terms of this Agreement on further notice to the defaulting party

18.2. If the breach is not capable of being remedied within that period, the defaulting party may be afforded such extended period at the discretion of the

non-defaulting party as the non-defaulting party may consider reasonable in the circumstances.

18.3. The termination of this Agreement, for whatever reason, will not affect the rights of a Party which may have accrued as at the date of termination and will further not affect any rights which specifically or by its nature survive the termination of this Agreement.

18.4. Termination of this Agreement may also in addition to the above be in accordance with the termination of the lease agreement.

19. 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.

20. VARIATION, SUSPENSION, DELETION, AMENDMENT OR MODIFICATION

Save as provided for elsewhere in this Agreement, 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.

21. 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 novation 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.

22. 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.

23. 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.

24. GOOD FAITH

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

25. 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.

26. CONFIDENTIALITY

26.1. The **PARTIES** undertake that all information which each has or obtains at any time relating to the other, including but not limited to technical and commercial information, which is not available on request to the general public, and which shall include the terms and conditions relating to the provision of the Services and the Service Costs:

Respondent's Signature

Date and Company Stamp

26.1.1. shall be kept confidential and shall not be disclosed by such party and its sub-contractors, or by their officers, employees and agents, to any third party;

26.1.2. shall not directly or indirectly be used by such party and its sub-contractors, or by their officers, employees and agents for their own benefit or the benefit of any third party.

26.2. A party shall on demand use its best endeavours to obtain secrecy undertakings in the form reasonably specified by the other from any relevant sub-contractor or agent of the other.

26.3. The **ELIDZ** hereby warrants, represents and/or undertakes in favour of **RESELLER** that it shall at all times, strictly comply with the provisions of the Protection of Personal Information Act 2013 (POPI Act), including the following:

26.3.1. The **ELIDZ** hereby warrants, represents and/or undertakes that it shall not, at any time Process or use Data for any purpose, other than with the express prior written consent of **RESELLER** and to the extent necessary, to provide and/or to perform its obligations under this Agreement.

26.3.2. The **ELIDZ** shall take appropriate and/or reasonable technical measures or steps according to the service offering to prevent the loss of, damage to or unauthorised destruction of storage facility provided to the **END USER** for Data and the unlawful access to or Processing of Data. The measures and or steps taken, must at all times be of a minimum standard required by the POPI Act and be of a standard no less than the standards which are in compliance with the Best Industry Practice for the protection, control and/or use of Data.

26.3.3. The **ELIDZ** shall take all measures to identify all reasonably foreseeable internal and/or external risks, posed to storage facility under the Operator's possession, care and/or control and to establish and/or maintain appropriate safeguards against any risks identified. The **ELIDZ** shall regularly verify that the safeguards are effectively implemented and keep a record of such verification. The safeguards shall be updated

continually in response to new risks and/or deficiencies identified in previously implemented safeguards. Records kept, must be made available for inspection to the **RESELLER/END USER** by the **ELIDZ** and/or its Personnel, on 7 (seven) days written notice been given by **RESELLER/END USER**.

26.4. The **ELIDZ** shall immediately notify **RESELLER/END USER**:

- (i) of any risks posed with regard to the services provided that it has identified;
- (ii) of the safeguards established by the service provider to mitigate the impact of the risks; and
- (iii) that the safeguards have been effectively implemented.

26.5. The **ELIDZ** undertakes to promptly notify **RESELLER/END USER** of:

26.5.1. any legally binding request for disclosure of the **RESELLER/END USER** Data by a law enforcement authority unless otherwise legally prohibited from notifying (such as a prohibition under criminal law so as to preserve the confidentiality of a law enforcement investigation);

26.5.2. any security compromises or suspected security compromises of which it becomes aware or suspects, immediately on becoming so aware or forming such a suspicion;

26.5.3. any request received directly from a Data Subject without responding to that request, unless it has been otherwise authorised to do so;

26.6. Subject to legislative, regulatory, contractual and other legitimate conditions, the **RESELLER/END USER** has certain rights in terms of how their information is processed. The **RESELLER/END USER** 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.

- 26.7. 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 **RESELLER/END USER**.
- 26.8. The **ELIDZ** undertakes to deal promptly and properly with all enquiries from **RESELLER/END USER** relating to the processing of the Service Offering provided to the **RESELLER/END USER**.
- 26.9. The **ELIDZ** acknowledges and agrees that any breach of its obligations under this clause shall be deemed a material breach of this Agreement.
- 26.10. The provisions of this Confidentiality clause shall survive the cancellation or termination of this Agreement for any reason and shall remain binding on the parties for a period of five (5) years after termination of this Agreement for any reason.

27. MISCELLANEOUS LEGAL PROVISIONS

- 27.1. This Agreement contains all of the express provisions agreed to by the parties with regard to the subject matter hereof and the parties waive the right to rely on any alleged express provision not contained herein.
- 27.2. This Agreement may be executed by the parties in one or more counterparts, each of which shall be deemed to be an original, but all of which shall together constitute one and the same Agreement.
- 27.3. The rule of interpretation, that an Agreement shall be interpreted against the party responsible for the drafting and or preparation of the Agreement the contra proferentum rule, shall not apply herein.
- 27.4. Neither party shall be bound by any representation, express or implied terms, warranty, promises or the like not recorded herein or reduced to writing and signed by the parties or their representatives.
- 27.5. **ELIDZ** shall have the right to enforce a lien or right of retention it may have over the equipment, machinery and or all products on the **ELIDZ** premises.

28. 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 Eastern Cape South African Courts irrespective of the place of signature of this Agreement.

29. NOTICES AND DOMICILIA

29.1. All notices to be given in terms of this Agreement shall be in writing and shall be delivered by hand or sent by prepaid registered post to the addresses set out in this Agreement (under the section definitions) hereto, the physical addresses which the parties select as their domicilium citandi et executandi ("domicilium").

29.2. Each party shall be entitled at any time to change its domicilium to any other physical address within the Republic of South Africa; provided that such change shall take effect only upon delivery or deemed delivery of a notice of change of address to the other party.

29.3. Any notice shall:

29.3.1. if delivered by hand during normal business hours to the person apparently in charge of the premises selected by the addressee for the delivery of notices, be deemed to have been received on the date of delivery;

29.3.2. if sent by prepaid registered post be deemed to have been received 6 days after posting; and

29.4. Notwithstanding the above any written notice actually received by the party to whom it is addressed shall be adequate notice to it.

Respondent's Signature

Date and Company Stamp

30. SIGNATURE

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_ in the presence of the undersigned witnesses

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

NAME OF SIGNATORY:

DESIGNATION:, who warrants that he is duly authorized hereto.

AS WITNESSES:

1. _____ 2. _____

THUS DONE AND SIGNED BY on the _____ day of _____ 20_ in the presence of the undersigned witnesses:

For and on behalf of

NAME OF SIGNATORY: _____

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

AS WITNESSES:

1. _____ 2. _____

Respondent's Signature

Date and Company Stamp