



REQUEST FOR QUOTATION [RFQ] OPS-RE-001

SEMICONDUCTOR MARKET RESEARCH

ISSUE DATE: 02 September 2022
SITE MEETING: NOT APPLICABLE
CLOSING DATE: 23 SEPTEMBER 2022
CLOSING TIME: 12H00 PM

COMPANY NAME: _____

COMPANY ADDRESS:

Section 1
NOTICE TO BIDDERS

Quotations, which must be completed as indicated in Section 2 of this RFQ, are to be submitted as follows:

METHOD: Hand Delivery or E-mail submission
CLOSING VENUE: The ELIDZ, Head Office Reception,
 Lower Chester Road,
 Sunnyridge,
 East London
 Or
anathi@elidz.co.za

1 RESPONSES TO RFQ

Responses to this RFQ [**Quotations**] must not include documents or reference relating to any other quotation or proposal. Any additional conditions must be embodied in an accompanying letter.

2 Broad-Based Black Economic Empowerment [B-BBEE]

The East London Industrial Development Zone SOC Ltd (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 (B-BBEE).

The “tender” will be evaluated in accordance with the ELIDZ Procurement Policy using the 80/20 preference point system i.e. 80 of evaluation points will be based on price competitiveness and 20 will be based on B-BBEE status.

The following formula is used:

Calculation of the points for Price:

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

$$- \frac{\quad}{P_{\min}}$$

Where:

Ps = Points scored for price of tender under consideration

R = Percentage of the price

Pt = Rand value of tender under consideration

Pmin = Rand value of lowest acceptable tender

R must be up to a maximum of 80

Score Breakdown:

Price (R) = 80 points

B-BBEE = 20 points

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

Preference points shall be awarded on the basis of a B-BBEE verification certificate issued by an accredited Verification Agency.

Tenderers are required to submit a Valid Original or Certified B-BBEE Certificate. Failure to submit a valid original or certified B-BBEE certificate will result in zero points being awarded for preference.

A trust, consortium or joint venture will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.

2.1 B-BBEE Scorecard and Rating

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

Table 1: B-BBEE Points Conversion: 20 points

Level Contribution	B-BBEE Score	Points Conversion 20
Level 1	>100%	20
Level 2	85~100%	18
Level 3	75~85%	16
Level 4	65~75%	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%.

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).

3 COMMUNICATION

Respondents are warned that a response will be liable for disqualification should any attempt be made by a Respondent either directly or indirectly to canvass any officer(s) or employee of ELIDZ in respect of this RFQ between the closing date and the date of the award of the business.

A Respondent may, however, before the closing date and time, direct any written enquiries relating to the RFQ to the following ELIDZ employee:

Name: Anathi Mzantsi **Email: anathi@elidz.co.za**

Respondents may also, at any time after the closing date of the RFQ, communicate with the Procurement officer of the ELIDZ Acquisition Council on any matter relating to its RFQ response:

Telephone 043 702 8200 **Email: anathi@elidz.co.za**

4 TAX CLEARANCE

The Respondent's original and valid Tax Clearance Certificate or SARS PIN must accompany the Quotation. Note that no business shall be awarded to any Respondent whose tax matters have not been declared by SARS to be in order.

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 ELIDZ 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 party 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.

5 VAT Registration

The valid VAT registration number must be stated here: _____
[if applicable].

6 Legal Compliance

The successful Respondent shall be in full and complete compliance with any and all applicable national and local laws and regulations.

7 SHERQ Compliance

Before starting work, service providers must undergo ELIDZ SHE induction and produce the following for approval:

1. Project specific Safety, Health & Environmental (SHE) Risk assessments,
 - a. SHE Risk assessments to include activity specific risks (example risk of injury, risk of operating machinery, risk of pollution, etc.), 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. Emergency preparedness plans – including relevant emergency contact information (example, emergency services and contacts for those with information on dealing with snake bites);
4. List of applicable PPE required;
5. PPE issue register;
6. List of chemicals and related Material Safety Data Sheets;
7. Letters of Good standing with workman's compensation where applicable;
8. Applicable legal appointments - as required;
9. Requisite training / competency certificates where applicable;

10. 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);
11. Applicable certifications and / or registrations with / from the relevant authorities as required;

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

1. Copy of scope of work;
2. Copy of appointment;

8 INDEMNITY

- a. The SERVICE PROVIDER hereby undertakes to indemnify the CLIENT and hold it harmless against:
 - i. any loss or damage to the CLIENT'S own property, whether movable or immovable;
 - ii. liability in respect of any loss of or damage to the property whether movable or immovable of third parties;
 - iii. liability in respect of death and or injury to any third party; or
- b. 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.

- c. 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.
- d. 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.

- e. 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.
- f. The SERVICE PROVIDER AND ITS SUBCONTRACTORS further indemnifies the CLIENT against Section 37(2) of the Occupational Health and Safety Act, if applicable:
 - i. The SERVICE PROVIDER and its subcontractors shall bear full responsibility for ensuring that the provisions of the Occupational Health and Safety Act and its regulations are properly implemented in the areas designated for contractual work in respect of all aspects of the work to be undertaken and that all other laws that pertain to that work will also be complied with and hereby indemnifies the CLIENT from any responsibility legally for injury or claim
 - ii. 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.
 - iii. 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.
 - iv. This Agreement is supplementary and additional to any health and safety specifications issued to the SERVICE PROVIDER and its subcontractors.

SERVICE PROVIDER SIGNATURE: _____

WITNESS 1: _____

WITNESS 2: _____

9 Changes to Quotations

Changes by the Respondent to its submission will not be considered after the closing date and time.

10 Pricing

All prices must be quoted in South African Rand on a fixed price basis, including VAT.

11 Prices Subject to Confirmation

Prices quoted which are subject to confirmation will not be considered.

12 Negotiations

ELIDZ reserves the right to undertake post-tender negotiations with selected Respondents or any number of shortlisted Respondents.

13 Binding Offer

Any Quotation furnished pursuant to this Request shall be deemed to be an offer. Any exceptions to this statement must be clearly and specifically indicated.

14 Disclaimers

ELIDZ is not committed to any course of action as a result of its issuance of this RFQ and/or its receipt of a Quotation in response to it. Please note that ELIDZ reserves the right to:

- modify the RFQ's service(s) and request Respondents to re-bid on any changes;
- reject any Quotation which does not conform to instructions and specifications which are detailed herein;
- disqualify Quotations submitted after the stated submission deadline;
- not necessarily accept the lowest priced Quotation;
- reject all Quotations, if it so decides;
- place an order in connection with this Quotation at any time after the RFQ's closing date;
- award only a portion of the proposed service which are reflected in the scope of this RFQ;
- split the award of the order/s between more than one Service Provider; or
- make no award at all.
- ELIDZ reserves the right to award business to the highest scoring bidder/s unless objective criteria justify the award to another bidder.

- 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.

15 Validity Period

ELIDZ desires a validity period of 30 [thirty] days from the closing date of this RFQ.

This RFQ is valid until _____.

ELIDZ shall be entitled to extend the validity period on notice to all before the period expires.

16 Banking Details

BANK: _____

BRANCH NAME / CODE: _____

ACCOUNT HOLDER: _____

ACCOUNT NUMBER: _____

17 Returnable Documents

Returnable Documents means all the documents, Sections and Annexures, as listed in the tables below.

- a) Respondents are required to submit with their Quotations the **Compulsory Returnable Documents**, as detailed below.

Failure to provide all these Returnable Documents at the Closing Date and time of this RFQ will result in a Respondent's disqualification. Respondents are therefore urged to ensure that all these Documents are returned with their Quotations.

All Sections, as indicated in the footer of each page, must be signed, and dated by the Respondent. Please confirm submission of these compulsory Returnable Documents by so indicating [Yes or No] in the table below:

Compulsory Returnable Documents	Submitted [Yes or No]
Pricing Proposal	
CSD registration	

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

Supporting Returnable Documents	Submitted [Yes or No]
Notice to Bidders	
<ul style="list-style-type: none"> - Valid and original B-BBEE Verification Certificate or certified copy thereof [Large Enterprises and QSEs] - Note: failure to provide a valid B-BBEE Verification Certificate at the closing date and time of the RFQ will result in an automatic score of zero for preference 	
<ul style="list-style-type: none"> - In the case of Joint Ventures, a copy of the Joint Venture Agreement or written confirmation of the intention to enter into a Joint Venture Agreement - A consortium or joint venture (including unincorporated consortia and joint ventures) must submit a consolidated B-BBEE Status Level Verification Certificate for every separate tender. 	
<ul style="list-style-type: none"> - Functionality evaluation documentation, i.e.: - Three references of similar work experience to be submitted - The proposed research methodology to be submitted with relevant detail on the required experience to be listed. - Project management experience to be demonstrated. - Skills competency with expertise and resource availability to be listed and detailed for evaluation. 	
<ul style="list-style-type: none"> - In Bids where consortia/joint venture/ sub-contractors are involved, each party must submit a separate proof of TCS/PIN/CSD number 	

Supporting Returnable Documents	Submitted [Yes or No]
- Bidders are required to submit their unique personal ID number (PIN) issued by SARS to enable the ELIDZ to view the tax payer's profile and tax status	
- Original and valid Tax Clearance Certificate or SARS PIN	

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

18 Evaluation Criteria

The following table will be used to guide the evaluation and scoring of each submission:

Evaluation Areas	Evaluation Criteria	Total Max Points	Item Max Points	Evaluation Description
References	Relevant References	15	15	Three references from similar research in the ICT sector is provided
			8	Two references from similar ICT sector research is provided
			5	One reference from similar ICT research is provided
			0	No references are provided
Project Approach	Proposed Research Methodology (Experience demonstrated in the ICT manufacturing sector 10 points, Market research experience demonstrated 10 points, Experience in investment promotion 10 points, Value chain and cluster research demonstrated 10	50	50	All 5 areas demonstrated
			40	4 areas demonstrated
			30	3 areas demonstrated
			20	2 areas demonstrated
			10	1 area demonstrated

Evaluation Areas	Evaluation Criteria	Total Max Points	Item Max Points	Evaluation Description
	points and experience shown in business development within the ICT sector (10 points)		0	No previous experience demonstrated
	Project Management	5	5	Project management experience and principles presented and proposed for this project, including a Gantt chart
			0	No project management principles in place
Service Providers Expertise and Resources	Skills Competency	30	30	Research, ICT Sector and manufacturing, marketing skills and business development experience all present
			20	Only two of the above skill sets available
			10	Only one of the above skill sets available
			0	No required skill sets available

Only proposals with a minimum score of 70 will have their prices considered

19 POPIA

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

The ELIDZ undertakes to:

1. It will take all reasonable steps and precautions to preserve the integrity of bidders Personal Information and to prevent any corruption or loss of such data.
2. It will not do any of the following: copy, compile, collect, collate, process, store, transfer, alter, delete, interfere with or in any other manner use the bidders Personal Information as described in the Act for any purpose other than with the express prior written consent of the bidder.
3. Utilize the personal information provided for the purposes of assessment of the tender submitted by the bidder and contracting with the successful bidder as the case may be.
4. It will immediately inform the bidder in writing if any Personal Information relating to it has been compromised. The ELIDZ undertakes to immediately inform the bidder in writing as to how it will manage such compromise and what steps will be taken to rectify the situation.
5. Due and reasonable care of the bidders personal information and not to share the said personal information with any third party unless you have authorised such disclosure or the release of such information is required by law.
6. At all times strictly comply with its obligations under Data Protection Legislation.
7. Subject to legislative, regulatory, contractual and other legitimate conditions, the respective bidder has certain rights in terms of how their information is processed.

The bidder can request access to information or guidance on how to lodge a complaint from or direct a request to exercise afforded rights to the ELIDZ Information Officer, or his/her deputy/ies, or the Information Regulator.

8. It will maintain guidelines, policies or procedures for the retention or destruction of data and will retain it only as long as necessary for the identified purposes or to meet legal requirements or policies.
9. It shall implement and maintain, at its cost and expense, appropriate, reasonable technical and organisational measures to prevent loss of, damage to or unauthorised destruction of Personal Information and unlawful access to or Processing of Personal Information.

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

SCOPE OF WORK:

The ELIDZ has identified a need to look into conducting market research into the semiconductor manufacturing sector, with particular focus on the manufacturing of these goods for the sectors such as automotive. The global semiconductor shortage has impacted many sectors, with the automotive sector of particular interest to the ELIDZ.

At the same time, the ELIDZ has had its ICT & Electronics facility, previously occupied by Yekani, was returned to the zone after the liquidation process of the previous tenant was concluded. There is therefore a very suitable facility which the ELIDZ owns which could easily be occupied by a semiconductor manufacturer.

The ELIDZ would like to conduct an in-depth research effort into the global market of semiconductor manufacturers. The IDZ would need to know where opportunities present themselves to attract investment into the zone and which sector and customer market segment should be targeted. Furthermore, companies wanting to invest in such a sector, together with their names could be delivered by such research as well as what other competing destinations are offering in terms of incentives to attract inward investment.

The ELIDZ would like to conduct a needs analysis for semiconductor chips which could be produced from the ELIDZ facility or another similar facility within the zone. The automotive sector as well as others, need to be taken into consideration during the study. It is envisaged that the following scope of work would be required:

- Profiling and description of the global, regional and national semiconductor market which includes the most recent market values, export and import volumes, major players in terms of manufacturers, current manufacturing areas with detail on their incentive offerings, etc. South Africa is to be benchmarked against other competing manufacturing destinations.

- Value chain analysis and clustering. Details to include key buyer identification and their requirements, barriers to entry and market attractiveness.
- A list of potential manufacturers who are seeking new manufacturing sites to be listed with a recommended approach and supporting data to encourage inward investment and the development of relevant marketing collateral.
- A proposed phased approach into setting up such an industry in the ELIDZ with consideration given to upskilling of the local community and technology transfer, phased ramp up of activity starting from packaging and basic assembly of semiconductors, to ultimately becoming quite sophisticated.
- Analysis of opportunities and gaps in a PESTEL format, at the ELIDZ in terms of attracting a semiconductor manufacturer with detailed critical success factors to be listed.

Section 3
QUOTATION FORM

I/We _____
hereby offer to supply the services at the prices quoted in the Price Schedule below,
in accordance with the conditions related thereto from the scope of work in section 2
above.

I/We accept that unless ELIDZ should otherwise decide and so inform me/us, this
Quotation [and, if any, its covering letter and any subsequent exchange of
correspondence], together with ELIDZ's acceptance thereof shall constitute a binding
contract between ELIDZ and me/us.

I/We further agree that if, after I/we have been notified of the acceptance of my/our
Quotation, I/we fail to deliver the said goods/service/s within the delivery lead-time
quoted, ELIDZ may, without prejudice to any other legal remedy which it may have,
cancel the order and recover from me/us any expenses incurred by ELIDZ in calling
for Quotations afresh and/or having to accept any less favourable offer.

PRICE SCHEDULE

I/We quote as follows for the goods required, on a “delivered nominated destination” basis, including VAT:

<p>EAST LONDON IDZ HEAD OFFICE BUILDING LOWER CHESTER ROAD SUNNYRIDGE EAST LONDON 5201</p> <p>Contact Name: Anathi Mzantsi</p> <p>Telephone: 043 702 8200</p>	
<p>Company Name.....</p> <p>Total Price inclusive of Value Added Tax</p> <p>Amount in words.....</p> <p>.....</p> <p>.....</p> <p>Signature</p>	
<p>The RFQ (Request for Quote) deadline for submission is 12h00 on the 23rd September 2022 at the ELIDZ offices submission at the:</p> <p>Head Office Reception Lower Chester Road Sunny Ridge, East London or e-mail anathi@elidz.co.za</p> <p>NO LATE SUBMISSIONS WILL BE CONSIDERED!</p>	

NB: Should the price in figures not agree with the price in words the EL IDZ will only consider the price in words as valid.

PRICE SCHEDULE

EAST LONDON INDUSTRIAL DEVELOPMENT ZONE

ITEM NO	DESCRIPTION	UNIT	AMOUNT
	A detailed and comprehensive research product handed in which meets the required scope of work		
	Sub total		
	VAT @15%		
	Total		

Please note the following:

- Invoices will be submitted and processed as per milestone and frequency of the work to be done and as agreed with the ELIDZ;
- A related statement must accompany invoices.
- Order number provided by the ELIDZ upon appointment must be quoted in the invoice.

SECTION 4: Service Level Agreement

CONTRACT ELIDZ: REFERENCE NUMBER

SERVICE LEVEL AGREEMENT

entered into by and between

EAST LONDON INDUSTRIAL DEVELOPMENT ZONE SOC LTD

Registration No. 2003/012647/30

("The Client")

and

FULL NAME OF SERVICE PROVIDER

Registration No. _____

(The "Service Provider")

(Collectively referred to as "the parties")

for

NAME OF PROJECT

CLIENT: _____

WITNESS 1: _____

WITNESS 2: _____

SERVICE PROVIDER: _____ **WITNESS 1:** _____ **WITNESS 2:** _____

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35. SIGNATURES

CLIENT: _____

WITNESS 1: _____

WITNESS 2:

SERVICE PROVIDER: _____ WITNESS 1: _____ WITNESS 2: _____

1. INTRODUCTION AND PURPOSE

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

2. DEFINITIONS AND INTERPRETATION

- 2.1. The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof.
- 2.2. In this Agreement, unless a contrary intention clearly appears any expression which denotes
- 2.2.1. one gender includes the other gender
- 2.2.2. the singular includes the plural and vice versa, and
- 2.2.3. natural persons includes juristic persons and vice versa.
- 2.3. In this Agreement, unless the context indicates otherwise the following words and expressions will have the meaning assigned to them in this clause:
- 2.3.1. **"Agreement"** refers to this Agreement and all annexures hereto and any amendments recorded in writing and signed by the parties. The annexures to this Agreement consist of the following:

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

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

IF THERE IS AN OPEN TENDER PROCESS

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

CLIENT: _____

WITNESS 1: _____

WITNESS 2:

SERVICE PROVIDER: _____ WITNESS 1: _____ WITNESS 2: _____

Annexure 2 – Payment Schedule,

- 2.3.2. **"CLIENT"** refers to the client, being the EAST LONDON INDUSTRIAL DEVELOPMENT ZONE SOC LTD, Registration No. 2003/012647/30;
- 2.3.3. **"Contract documentation"** refers to contracts documentation, agreements, minutes, drawings, specifications, designs and models, electronic matter in the nature of computer software, programmes, computer data and other matter and information relating to this Agreement, provided by the SERVICE PROVIDER to the CLIENT in terms of the services rendered in this Agreement;
- 2.3.4. **"key persons"** refers to employees, agents or representatives of the SERVICE PROVIDER whose contribution is, in terms of this Agreement, agreed to be critical to the compliance of the SERVICE PROVIDER'S obligations in terms of this Agreement;
- 2.3.5. **"prime rate"** refers to the variable interest rate as charged and calculated by the Client's Bankers from time to time to it;
- 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

CLIENT: _____

WITNESS 1: _____

WITNESS 2:

SERVICE PROVIDER: _____ WITNESS 1: _____ WITNESS 2: _____

party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement.

- 2.6. When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 2.7. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 2.8. Expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own definitions.

3. APPOINTMENT

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

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;

CLIENT: _____

WITNESS 1: _____

WITNESS 2:

SERVICE PROVIDER: _____ WITNESS 1: _____ WITNESS 2: _____

- 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

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

CLIENT: _____

WITNESS 1: _____

WITNESS 2:

SERVICE PROVIDER: _____ WITNESS 1: _____ WITNESS 2: _____

14001 requirements in its environmental management, of ISO 45001 in the implementation of Occupational Health and Safety standards and of ISO 9001 for Quality Management standards.

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

8.2. Disclosure

8.2.1. The SERVICE PROVIDER undertakes to make full disclosure of any and all breaches, shortcomings, errors or defects in materials or performance as soon as they come to the notice of the SERVICE PROVIDER who acknowledges that it will in all events hold itself liable for such breaches, shortcomings, errors or defects in materials or performance including any consequential damages that might flow there from including the disclosure of work or potential work to be received for and by or on behalf of the CLIENT’S competitor.

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

9. REPORT BACK MEETINGS

9.1. Where required by the CLIENT and communicated to the SERVICE PROVIDER in the manner provided for in this Agreement, the SERVICE PROVIDER shall, attend all such reasonable meetings as it may be required to and, there, provide such reports and other documentation as may be reasonably required for the purposes contemplated by this Agreement.

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

10. BY-LAWS AND REGULATIONS

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

10.1.1. to comply and ensure compliance with all local, statutory, governmental and other laws and regulations in force and of application to the SERVICE PROVIDER, its employees, contractors and other persons or institutions subject to its control for the purposes of this

CLIENT: _____

WITNESS 1: _____

WITNESS 2:

SERVICE PROVIDER: _____ WITNESS 1: _____ WITNESS 2: _____

Agreement,

- 10.1.2. to indemnify the CLIENT against any loss, damages or punitive fines that it may suffer or have imposed on it by reason of its failure to comply with the provisions of clause 10.1.1, and
- 10.1.3. to take out any professional indemnity for all professional service provider and key persons for the purposes of rendering the services provided for in terms of this Agreement.

11. PAYMENT

- 11.1. The CLIENT undertakes to pay the SERVICE PROVIDER the total sum of R _____ **(IN WORDS) including VAT**, as set out in **ANNEXURE 2** for the diligent services rendered
- 11.2. Payment will only be due and payable once the SERVICE PROVIDER has performed the necessary deliverables set out in **ANNEXURE 1** and has issued the correct invoice.
- 11.3. The SERVICE PROVIDER shall, in respect of the services provided render an original VAT compliant invoice (where applicable), containing sufficient information to enable the CLIENT to determine whether the charges have been debited in accordance with this Agreement and with the agreed price set out in **ANNEXURE 2**, on or before the 25th day of the month.
- 11.4. All amounts reflected on invoices shall strictly be as per the agreed terms contained in **ANNEXURE 2**.
- 11.5. The SERVICE PROVIDER shall not be paid for any additional work unless such work has been agreed to before execution thereof in writing and confirmed by way of an addendum to this Agreement and signed by both parties.
- 11.6. The CLIENT undertakes to make payment of all amounts due within 30 days from receipt of an invoice which complies with the provisions of clause 11.3.
- 11.7. All invoices are to be submitted for the attention of Accounts delivered to the ELIDZ at the EAST LONDON IDZ HEAD OFFICE, LOWER CHESTER ROAD, SUNNYRIDGE, EAST LONDON or PO BOX 5458, GREENFIELDS, EAST LONDON 5208 or by email to accounts@elidz.co.za or facsimile to 043-702-8255.
- 11.8. The CLIENT shall not be in breach of clause 11.6 in the event of it failing to pay any invoice submitted that does not comply with any provisions contained under this clause 11.
- 11.9. In the event that the SERVICE PROVIDER has submitted an invoice in contravention of this clause, the CLIENT shall notify the SERVICE PROVIDER within 5 (five) working days of the non-compliant invoice, together with the reasons, and the SERVICE PROVIDER shall thereafter withdraw the non-compliant invoice and submit a further original VAT compliant invoice.
- 11.10. Where the SERVICE PROVIDER has incurred any liability to the CLIENT, whether arising from or under this Agreement or otherwise howsoever arising, the CLIENT may, without notice to the SERVICE PROVIDER set-off the amount of such liability against any liability of the CLIENT to**

CLIENT: _____

WITNESS 1: _____

WITNESS 2:

SERVICE PROVIDER: _____ WITNESS 1: _____ WITNESS 2: _____

the SERVICE PROVIDER arising from or under this Agreement, whether either such liability is liquidated or unliquidated, present or future, accrued or contingent, unless otherwise agreed to in writing by the CLIENT.

12. KEY PERSONS

- 12.1. The SERVICE PROVIDER shall, by Agreement with the CLIENT, identify one key person whose contribution is, in the discretion of the CLIENT, critical to the objects contemplated by this Agreement.
- 12.2. Such Key Persons:
- 12.2.1. shall, unless it is agreed otherwise, personally attend to all instructions arising out of this Agreement or shall personally oversee the performance of all instructions and shall accord due priority to the obligations of the SERVICE PROVIDER arising from this Agreement,
- 12.2.2. shall personally attend all meetings contemplated in terms of this Agreement unless, by Agreement, an alternative person is agreed to;
- 12.2.3. shall be responsible for the provision of all reports which the CLIENT may reasonably require from time to time; and
- 12.2.4. shall be responsible for the certification of all works executed in terms of this Agreement.
- 12.3. Should the Key Person discontinue to serve in this role for any cause whatsoever, then and in that event the CLIENT may, without prejudice to its other rights, summarily, and on such terms and notice as it may be deem fit, terminate the agreement.
- 12.4. Key person for the CLIENT is: _____
- 12.5. Key person for the SERVICE PROVIDER is: _____

13. INTELLECTUAL PROPERTY, COPYRIGHT AND OWNERSHIP OF DOCUMENTS

- 13.1. It is agreed that the Contract Documentation shall be and shall remain the property of the CLIENT and shall, upon written request addressed to the SERVICE PROVIDER, be delivered over to the CLIENT.
- 13.2. The SERVICE PROVIDER waives his rights to any claimed hypothec or any other right of retention over the Contract Documentation for any cause whatsoever.
- 13.3. In the event of the SERVICE PROVIDER claiming that it has any further claim, irrespective the nature of such claim, the SERVICE PROVIDER shall upon written request, deliver over the Contract Documentation to the CLIENT and such claim shall then be dealt with in accordance with the dispute procedure provided for in this Agreement.
- 13.4. It is agreed that, upon payment by the CLIENT to the SERVICE PROVIDER of such remuneration as it

CLIENT: _____

WITNESS 1: _____

WITNESS 2:

SERVICE PROVIDER: _____ WITNESS 1: _____ WITNESS 2: _____

is entitled to in terms of this Agreement, the copyright and the ownership of the Contract Documentation shall vest in the CLIENT.

14. CONFIDENTIALITY

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

15. SOLICITING EMPLOYEES

- 15.1. The SERVICE PROVIDER undertakes that it will not induce, encourage or procure any employee/s of the CLIENT to:
- 15.2. leave the services of the CLIENT with a view to their being employed or in any other way 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

CLIENT: _____

WITNESS 1: _____

WITNESS 2:

SERVICE PROVIDER: _____ WITNESS 1: _____ WITNESS 2: _____

which constitutes as an act of God.

17. DISPUTES

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

CLIENT: _____

WITNESS 1: _____

WITNESS 2:

SERVICE PROVIDER: _____ WITNESS 1: _____ WITNESS 2: _____

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 sequestered, placed under business rescue proceedings, placed under an order of judicial management or under any other legal disability, either provisionally or finally; or

19.4. materially breaches the terms of this Agreement.

20. SUMMARY TERMINATION

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

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

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

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

20.5. any of the SERVICE PROVIDER'S employees rendering services to the CLIENT in terms of this Agreement are guilty of conduct justifying a summary dismissal according to common law and the SERVICE PROVIDER fails, neglects and/or refuses to take the necessary action against such employees.

CLIENT: _____

WITNESS 1: _____

WITNESS 2:

SERVICE PROVIDER: _____ WITNESS 1: _____ WITNESS 2: _____

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

CLIENT: _____

WITNESS 1: _____

WITNESS 2:

SERVICE PROVIDER: _____ WITNESS 1: _____ WITNESS 2: _____

Agreement, save where such loss or damage is as a direct result of the negligence of the SERVICE PROVIDER, its employees or agents, performing the services.

22.6. The SERVICE PROVIDER AND ITS SUBCONTRACTORS further indemnifies the CLIENT against Section 37(2) of the Occupational Health and Safety Act, if applicable:

22.6.1. The SERVICE PROVIDER and its subcontractors shall bear full responsibility for ensuring that the provisions of the Occupational Health and Safety Act and its regulations are properly implemented in the areas designated for contractual work in respect of all aspects of the work to be undertaken and that all other laws that pertain to that work will also be complied with and hereby indemnifies the CLIENT from any responsibility legally for injury or claim

22.6.2. The SERVICE PROVIDER and its subcontractors shall be responsible for the well-being in 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

CLIENT: _____

WITNESS 1: _____

WITNESS 2:

SERVICE PROVIDER: _____ WITNESS 1: _____ WITNESS 2: _____

of any force or effect, unless recorded in writing and signed by the parties, and shall be effective only in the specific instance and for the purpose and to the extent set out.

26. INDULGENCE OR EXTENSION

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

27. WAIVER

No waiver on the part of either party of any rights arising from a breach of any provision of this Agreement will constitute a waiver of rights in respect of any subsequent breach of any other provision in the same Agreement.

28. SUPERSESSSION

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.

CLIENT: _____

WITNESS 1: _____

WITNESS 2:

SERVICE PROVIDER: _____ WITNESS 1: _____ WITNESS 2: _____

31. INDIRECT AND CONSEQUENTIAL DAMAGES

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

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

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

32. PROTECTION OF RIGHTS

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

33. GOVERNING LAW

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

34. DOMICILIUM CITANDI ET EXECUTANDI

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

CLIENT: _____

WITNESS 1: _____

WITNESS 2:

SERVICE PROVIDER: _____ WITNESS 1: _____ WITNESS 2: _____

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. _____