# ENVELOPE B – FINANCIAL PROPOSAL

## TENDER NO: RFP- ES/26/RWL/ENPC/02

# REQUEST FOR PROPOSAL (RFP) PACK

FOR THE SUPPLY, DELIVERY, INSTALLATION, COMMISSIONING, OPERATION AND MAINTENANCE OF IOT READY LED LUMINAIRES, CONTROLLERS AND CENTRAL MANAGEMENT SYSTEMS (CMS) AT THE ELIDZ UNDER AN ENERGY PERFORMANCE CONTRACT (EnPC), INCLUDING FULL FINANCING AND SHARED ENERGY SAVINGS OVER THE AGREED CONTRACT PERIOD - ES/26/RWL/EnPC/01

START DATE: 13 November 2026

CLOSING DATE: 07 December 2026

NAME OF TENDERER: _____

TENDERER'S ADDRESS: _____

_____

_____

_____

# TENDER PROPOSAL PRICE SCHEDULE

## EAST LONDON INDUSTRIAL DEVELOPMENT ZONE

FOR THE SUPPLY, DELIVERY, INSTALLATION, COMMISSIONING, OPERATION AND MAINTENANCE OF IOT READY LED LUMINAIRES, CONTROLLERS AND CENTRAL MANAGEMENT SYSTEMS (CMS) AT THE ELIDZ UNDER AN ENERGY PERFORMANCE CONTRACT (ENPC), INCLUDING FULL FINANCING AND SHARED ENERGY SAVINGS OVER THE AGREED CONTRACT PERIOD

**TENDER NO: RFP- ES/26/RWL/ENPC/02**

| | |
|---|---|
| **EAST LONDON IDZ**<br>**HEAD OFFICE BUILDING**<br>**LOWER CHESTER ROAD**<br>**SUNNYRIDGE**<br>**EAST LONDON**<br>**5201**<br><br>Contact Name: …….<br><br>Telephone: 043 702 8200 | |

**Name of Tenderer:**

**……..……**

**Total Projected Value of ELIDZ's Share of Savings over the full Contract Duration inclusive**

**of Value Added Tax: R……..**

**Amount in**

**Words..……..……**

**……..……**
**…**

**Signature ……**

**All tender documents are to be submitted online at https://tenderportal.elidz.co.za before the closing date and time of 12h00, 07 Dec. 2026**

***NO LATE SUBMISSIONS WILL BE CONSIDERED***

**EVALUATION, RANKING, AND SHORTLISTING**
**Tenderers will be evaluated and ranked in accordance with the evaluation criteria and scoring formulas as detailed in Envelope A.**
**Following the initial ranking, the three (3) highest-ranked tenderers will be invited to attend a mandatory clarification presentation, and due diligence session. This session will serve to verify the feasibility of the technical solution and the accuracy of the financial proposal.**
**ELIDZ reserves the right to adjust final scores based on the outcomes of these sessions.**

***Should the price in figures not agree with the price in words the EL IDZ will only consider the price in words as valid. Should this Price Schedule be submitted Non signed and Non written price and unsigned, it will result in the disqualification of the tender.***

# SUPPORTING PRICE SCHEDULE

## EAST LONDON INDUSTRIAL DEVELOPMENT ZONE

Price Schedule

| Description | |
|---|---|
| A. Projected Annual Energy Savings | kWh / Year |
| B. Proposed Contract Duration | Years |
| C. Monetary Value of overall Savings (calculated from the Baseline) over the Contract Duration | R |
| D. Monetary Value of Savings allocated to ELIDZ over the Contract Duration | R |
| E. Total Capital Investment (Financed by ESCO) | R |
| F. Estimated Annual Maintenance Cost 3 years Post-Contract | R |
| | |
| **Total (Excluding VAT) for year 1** | |
| **VAT @ 15%** | |
| **Total (Including VAT) for year 1** | |




# 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**

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## 1. INTRODUCTION AND PURPOSE

1.1. The CLIENT requires certain services and the SERVICE PROVIDER is willing to provide such services to the CLIENT.

1.2. The purpose of this Agreement is to regulate the relationship between the CLIENT and the SERVICE PROVIDER and to ensure that high quality and performance standards are achieved and maintained by the PARTIES.

## 2. DEFINITIONS AND INTERPRETATION

2.1. The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof.

2.2. In this Agreement, unless a contrary intention clearly appears any expression which denotes

2.2.1. one gender includes the other gender

2.2.2. the singular includes the plural and vice versa, and

2.2.3. natural persons includes juristic persons and vice versa.

2.3. In this Agreement, unless the context indicates otherwise the following words and expressions will have the meaning assigned to them in this clause:

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

| | | | |
|---|---|---|---|
| Section | A | – | Response to Tender including, invitation (not attached) |
| Section | B | – | Letter of Award (not attached), |
| Section | C | - | Acceptance of award (not attached), |
| Annexure | 1 | – | Scope of work, |
| Annexure | 2 | – | Payment Schedule, |
| Annexure | 3 | – | Baseline Costs, |
| Annexure | 4 | – | Energy Performance Contract Guideline, |

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. "**Energy Performance Contract**" refers to the contract between ELIDZ and the service provider. Guidelines are provided in **ANNEXURE 4.**

2.3.5. "**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;

2.3.6. "**prime rate**" refers to the variable interest rate as charged and calculated by the Client's Bankers from time to time to it;

2.3.7. "**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;

2.3.8. "**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;

2.3.9. "**Baseline Consumption**": Define this as the energy consumption provided by ELIDZ for the specific sub-zones/buildings before implementation. Provided in **ANNEXURE 3**.

2.3.10. "**Baseline Costs**": Yearly operation cost breakdown incurred by ELIDZ for the system. Provided in **ANNEXURE 3**

2.3.11. "**Measurement & Verification (M&V**)": Reference the SANS 50010 / IPMVP standard as the method for calculating savings.

2.3.12. "**Savings Share**": Define the percentage split of the monetary value of verified energy savings.

2.3.13. "**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;

2.3.14. "**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**;

2.3.15. "**SERVICE PROVIDER**" refers to **……**, Registration Number: **……**, a company duly registered and/or incorporated according to the laws of the Republic of South Africa and having its principal place of business in **……**;

2.3.16. "**SHE**" refers to safety, health and environment,

2.3.17. "**signature date**" refers to the date of signature of this Agreement and, if signed on different dates, the later of the two dates.

2.4. Any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time.

2.5. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement.

2.6. When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.

2.7. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.

2.8. Expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own definitions.

## 3. APPOINTMENT

3.1. The CLIENT appoints the SERVICE PROVIDER to provide the services and the SERVICE PROVIDER accepts such appointment for the duration and on the terms and conditions of the Agreement.

3.2. The basis of the appointment in clause 3.1 is in terms of a tender process, a copy of which forms part of this Agreement but not attached hereto, as set out in:

3.2.1. **SECTION A**

3.2.2. **SECTION B**

3.2.3. **SECTION C**

## 4. PROVISION OF SERVICES

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

## 5. UNDERTAKINGS BY THE SERVICE PROVIDER

5.1. The SERVICE PROVIDER undertakes whilst it is providing the services that:

5.1.1. the services will be performed by sufficient number of professional service providers who have the skill and experience required to perform the services;

5.1.2. the services will be performed in accordance with the quality and performance standards expected of service providers of same stature, or as referenced in clause 2.3.8;

5.1.3. the services will be provided in accordance with the needs of the CLIENT;

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

5.1.5. it will fully comply with all tender / brief specifications and requirements as per entire Agreement herein;

5.1.6. it will take out and adhere to its professional indemnity insurance that and as is required by the consultancy industry; and

5.1.7. it will consult with the CLIENT with regard to any client competitor tendering of work before such tender is undertaken.

## 6. DELIVERY

6.1. The supply of services shall be in accordance with the general terms of this Agreement and more specifically in terms of **ANNEXURE 1**.

6.2. Should the SERVICE PROVIDER fail to complete the services or any part thereof before the date which is stipulated herein, an amount equal to **five percent (5%)** of the contract value may be deducted per day by the CLIENT for each day falling after stipulated completion date or milestone as articulated in Annexure 1 & 2.

## 7. TIMING

7.1. <u>Commencement dates</u>

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

The contract shall endure for a period of [Tenderer Proposed Years], commencing from the date of the Notice of Completion of Works."

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

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

8.2. Disclosure

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

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

## 9. REPORT BACK MEETINGS

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

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

## 10. BY-LAWS AND REGULATIONS

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

undertakes:

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

10.1.2. to indemnify the CLIENT against any loss, damages or punitive fines that it may suffer or have imposed on it by reason of its failure to comply with the provisions of clause 10.1.1, and

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……(**……**) 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) and a related statement, 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. As contemplated in clause 11.2 above

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. and clause 11.2

11.7. All invoices are to be submitted to Mr Jerry Yantolo, as well as 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 _____@elidz.co.za as well as _____@elidz.co.za and accounts@elidz.co.za.

11.8. The CLIENT shall not be in breach of clause 11.6 in the event of it failing to pay any invoice submitted that does not comply with any provisions contained under this clause 11.

11.9. In the event that the SERVICE PROVIDER has submitted an invoice in contravention of this clause, the CLIENT shall notify the SERVICE PROVIDER within 5 (five) working days of the non-compliant invoice, together with the reasons, and the SERVICE PROVIDER shall thereafter withdraw the non-compliant invoice and submit a further original VAT compliant invoice.

**11.10. Where the SERVICE PROVIDER has incurred any liability to the CLIENT, whether arising from or under this Agreement or otherwise howsoever arising, the CLIENT may, without notice to the SERVICE PROVIDER set-off the amount of such liability against any liability of the CLIENT to the SERVICE PROVIDER arising from or under this Agreement, whether either such liability is liquidated or unliquidated, present or future, accrued or contingent, unless otherwise agreed to in writing by the CLIENT.**

## 12. KEY PERSONS

12.1. The SERVICE PROVIDER shall, by Agreement with the CLIENT, identify key person/s whose contribution is, in the discretion of the CLIENT, critical to the objects contemplated by this Agreement. The Key Person/s shall be persons who are required to execute the roles as stated in 12.2 below and in particular those persons included as part of the SERVICE PROVIDER's response to the CLIENT's Tender / Requisition request.

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 or any role as indicated in the SERVICE PROVIDER's response to the CLIENT's tender / requisition request, 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, unless only if a similar replacement is agreed to by the CLIENT. It shall be the SERVICE PROVIDER's responsibility to obtain written approval in this regard.

12.4. Key person/s for the CLIENT is/are: **……**

12.5. Key person/s for the SERVICE PROVIDER is/are: **……**

## 13. INTELLECTUAL PROPERTY, COPYRIGHT AND OWNERSHIP OF DOCUMENTS

13.1. It is agreed that the Contract Documentation shall be and shall remain the property of the CLIENT and shall, upon written request addressed to the SERVICE PROVIDER, be delivered over to the CLIENT.

13.2. The SERVICE PROVIDER waives his rights to any claimed hypothec or any other right of retention over the Contract Documentation for any cause whatsoever.

13.3. In the event of the SERVICE PROVIDER claiming that it has any further claim, irrespective the nature of such claim, the SERVICE PROVIDER shall upon written request, deliver over the Contract Documentation to the CLIENT and such claim shall then be dealt with in accordance with the dispute procedure provided for in this Agreement.

13.4. It is agreed that, upon payment by the CLIENT to the SERVICE PROVIDER of such remuneration as it is entitled to in terms of this Agreement, the copyright and the ownership of the Contract Documentation shall vest in the CLIENT.

13.5. Ownership of the Energy Efficiency Equipment shall remain with the Service Provider for the duration of the Contract Term and shall transfer to the Client (ELIDZ) at R0.00 upon expiry of the contract, provided all performance obligations are met.

## 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 aforegoing 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:

15.1.1. leave the services of the CLIENT with a view to their being employed or in any other way associated with the SERVICE PROVIDER; or

15.1.2. 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.

15.2. Nothing in the aforegoing subparagraph will prevent the transfer of employees from the CLIENT to the SERVICE PROVIDER by written agreement between the parties.

15.3. 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 PARTIES 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 any circumstances whatsoever which is beyond the respective PARTIES control including, but not limited to labour disputes, strike, war, riot, civil commotion, or any order or regulations of any Government or other lawful authority and or and act which constitutes as an act of God.

## 17. DISPUTES

17.1. Any dispute arising out of or in connection with this Agreement, or related thereto, whether directly or indirectly, or any alleged breach and / or repudiation thereof, its interpretation, application and /or termination, shall be resolved in accordance with the provisions of this clause.

17.2. In the event of any dispute in respect of the Agreement or its interpretation, the CLIENT and SERVICE PROVIDER agree that they shall in the first instance attempt to resolve the dispute through the authorized representatives of each Party, failing such resolution the dispute shall be escalated as follows:

17.3. Within 14 calendar days of any disagreement arising the CLIENT and the SERVICE PROVIDER being unable to reach agreement, the matter shall be referred to the Chief Executive Officer(s) or Executive Manager(s) or Managing Director(s) of the CLIENT and the SERVICE PROVIDER respectively (or a

nominee or a person so authorized by such individuals herein mentioned) who shall endeavour to settle the dispute through bona fide negotiations.

17.4. In the event of the CLIENT and the SERVICE PROVIDER still being unable to reach agreement through the process referred to in clause 17.2 to 17.3 and within the period referred to which ever period or process is exhausted first, the PARTIES shall be entitled to refer the dispute to the relevant South African Court having jurisdiction.

## 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:

19.1.1. ceases to carry on business;

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

19.1.3. 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:

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

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

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

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

## 21. WARRANTIES

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

22.1.4. 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.

22.2. 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.

22.3. 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.

22.4. The SERVICE PROVIDER shall not be liable to the CLIENT for any loss or damage of whatsoever nature suffered by the CLIENT as a result of the performance of the services in accordance with this Agreement, save where such loss or damage is as a direct result of the negligence of the SERVICE PROVIDER, its employees or agents, performing the services.

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

22.5.1. 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

22.5.2. 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.

22.5.3. 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.

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

## 23. WHOLE AGREEMENT

23.1. It is agreed that this document together with its Annexures constitutes the whole Agreement as between the parties unless supplemented by further Agreements, which are reduced to writing and signed by the parties, constitutes the sole record of the Agreement between the parties.

23.2. The parties agree that any amendment to this Agreement shall be reduced to writing and signed by the parties, failing which it shall be of no force or effect.

## 24. SEVERABILITY

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

## 25. VARIATION, SUSPENSION, DELETION, AMENDMENT OR MODIFICATION

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

## 26. INDULGENCE OR EXTENSION

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

## 27. WAIVER

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

## 28. SUPERSESSION

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. POPIA

30.1. By signing this Agreement, the SERVICE PROVIDER hereby consents to providing the CLIENT with personal information as provided in the Protection of Personal Information Act 2013 (POPIA).

30.2. The CLIENT undertakes to:

30.2.1. It will take all reasonable steps and precautions to preserve the integrity of the SERVICE PROVIDER Personal Information and to prevent any corruption or loss of such data.

30.2.2. 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 SERVICE PROVIDER Personal Information as described in the Act for any purpose other than with the express prior written consent of the SERVICE PROVIDER.

30.2.3. Utilize the personal information provided for the purposes of assessment of the SERVICE PROVIDER through due diligence processes and contracting with the SERVICE PROVIDER as the case may be.

30.2.4. It will immediately inform the SERVICE PROVIDER in writing if any Personal Information relating to it has been compromised. The CLIENT undertakes to immediately inform the SERVICE PROVIDER in writing as to how it will manage such compromise and what steps will be taken to rectify the situation.

30.2.5. Due and reasonable care of the SERVICE PROVIDER personal information and not to share the said personal information with any third party unless the SERVICE PROVIDER have authorised such disclosure or the release of such information is required by law.

30.2.6. At all times strictly comply with its obligations under Data Protection Legislation.

30.2.7. Subject to legislative, regulatory, contractual and other legitimate conditions, the SERVICE PROVIDER has certain rights in terms of how their information is processed. The SERVICE PROVIDER can request access to information or guidance on how to lodge a complaint from or direct a request to exercise afforded rights to the CLIENT Information Officer, or his/her deputy/ies, or the Information Regulator.

30.2.8. 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.

30.2.9. It shall implement and maintain, at its cost and expense, appropriate, reasonable

30.2.10. 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.

30.3. The CLIENT 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 SERVICE PROVIDER.

**31. 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.

**32. INDIRECT AND CONSEQUENTIAL DAMAGES**

32.1. 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:

32.1.1. 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

32.1.2. 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

**33. 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.

**34. 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

**35. DOMICILIUM CITANDI ET EXECUTANDI**

35.1. 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.

35.2. Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing.

35.3. 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.

35.4. Unless the contrary is proved, any notice to a party;

35.4.1. delivered by hand to a responsible person during ordinary business hours, shall be deemed

35.4.2. 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.

35.5. 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

35.6. The domicile of the SERVICE PROVIDER is: ……;

**36. 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 _____ 2024 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: SIMPHIWE NICHOLAS KONDLO**
**POSITION**:**CHIEF EXECUTIVE OFFICER**, who warrants that he is duly authorized hereto
AS WITNESSES:

1. _____ 2. _____

THUS DONE AND SIGNED BY **……** on the _____ day _____ 2024 in the presence of the undersigned witnesses:

_____

For and on behalf of **……**
**NAME OF DELEGATED AUTHORITY TO SIGN**: ……..
**POSITION**: **DIRECTOR**, who warrants that he is duly authorized hereto
AS WITNESSES:

1. _____ 2. _____

DRAFT