

Expression of Interest (EOI)

For the supply of laser related products.

EOI No. 8080/13/09/2023

Date of Issue	Tuesday, 29 August 2023
Enquiries	Strategic Procurement Unit E-mail: tender@csir.co.za
	Please use EOI No and EOI Description as subject reference
Last date for submission of enquiries/clarifications	Wednesday, 06 September 2023 @16h30
Electronical Submission	tender@csir.co.za (If tenders exceed 25MB multiple emails can be sent)
CSIR business hours	08h00 – 16h30
Category	Engineering
Closing Date and Time	Wednesday, 13 September 2023 @ 16H30

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EOI STRUCTURE

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SECTION A
GENERAL EOI TERMS AND CONDITIONS

1 INTRODUCTION

The Council for Scientific and Industrial Research (CSIR) is one of the leading scientific research and technology development organisations in Africa. In partnership with national and international research and technology institutions, the CSIR undertakes directed and multidisciplinary research and technology innovation that contributes to the improvement of the quality of life of South Africans. The CSIR's main site is in Pretoria while it is represented in other provinces of South Africa through regional offices.

This CSIR Photonics Centre intends to appoint a panel of pre-approved suppliers of high-end laser related products for a period of 3 years. Original Equipment Manufacturers (OEM's) and their authorised local agents are hereby invited to respond to this Expression of Interest and supply the required documentation for vetting procedures in compliance with current National Treasury regulations and the Public Finance Management Act (PFMA). The intention of this EOI is to streamline the procurement process of high-end laser related components of foreign origin over the 3-year period and reduce paperwork for the panel of suppliers whilst maintaining a competitive and fair process in line with local regulations.

Engagement model

Request for quotations will be requested from the panel of suppliers as and when required. An evaluation on price and specific goals (BBBEE status RSA suppliers only) will be done to identify the supplier(s) to deliver on the specific product.

2 SUBMISSION OF PROPOSALS

- 2.1 All proposals are to be submitted electronically to tender@csir.co.za. No late proposals will be accepted.
- 2.2 All proposals will only be considered if received by the CSIR before the closing date and time (**as indicated on the cover page**). The CSIR business hours are between **08h00** and **16h30**.

- 2.3 All emailed proposal submissions are to be clearly subject referenced with the **EOI number and EOI Description**.
- 2.4 Proposals submitted by companies must be signed by a person or persons duly authorised.
- 2.5 Proposals submitted at incorrect location, will not be accepted for considerations and where practicable, be returned unopened to the Respondent(s).
- 2.6 Proposals received after the closing date and time, at the address indicated in the proposal documents, will not be accepted for consideration and where practicable, be returned unopened to the Respondent(s).
- 2.7 All dates and times in this proposal are South African standard time.
- 2.8 Any time or date in this proposal is subject to change at the CSIR's discretion. The establishment of a time or date in this proposal does not create an obligation on the part of the CSIR to take any action or create any right in any way for any respondent to demand that any action be taken on the date established. The respondent accepts that, if the CSIR extends the deadline for proposal submission (the Closing Date) for any reason, the requirements of this proposal otherwise apply equally to the extended deadline.
- 2.9 Documents submitted via cloud solutions such as: WeTransfer, Google Drive, Dropbox, etc. will not be considered.
- 2.10 The naming / labelling syntax of files or documents must be short and simple.
- 2.11 The CSIR will award the contract to qualified tenderer(s)' whose proposal is determined to be the most advantageous to the CSIR, taking into consideration the technical (functional) solution, price and specific goals.

3 COUNTER CONDITIONS

Respondents' attention is drawn to the fact that amendments to any of the EOI Conditions or setting of counter conditions by Respondents or qualifying any EOI Conditions will result in the invalidation of such proposals.

4 FRONTING

- 4.1 Government supports the spirit of broad based black economic empowerment and recognizes that real empowerment can only be achieved through individuals and businesses conducting themselves in accordance with the Constitution and in an honest, fair, equitable, transparent, and legally compliant manner. Against this background the Government condemn any form of fronting.
- 4.2 The Government, in ensuring that Respondents conduct themselves in an honest manner will, as part of the EOI evaluation processes, conduct or initiate the necessary enquiries/investigations to determine the accuracy of the representation made in proposal documents. Should any of the fronting indicators as contained in the Guidelines on Complex Structures and Transactions and Fronting, issued by the Department of Trade and Industry, be established during such enquiry / investigation, the onus will be on the Respondent / contractor to prove that fronting does not exist. Failure to do so within a period of 14 days from date of notification may invalidate the proposal / contract and may also result in the restriction of the Respondent /contractor to conduct business with the public sector for a period not exceeding ten years, in addition to any other remedies the CSIR may have against the Respondent / contractor concerned.

5 PRICING PROPOSAL

- 5.1 **Pricing is not applicable at this stage for selection of the panel of suppliers.**
- 5.2 Prices that are subject to escalation and exchange rate fluctuations are to be clearly indicated, with the currency and ROE used in the quotation must be clearly indicated.
- 5.3 Price should include additional cost elements such as travel cost, freight, insurance until acceptance, duty where applicable, etc.
- 5.4 Payment will be according to the CSIR Payment Terms and Conditions ([Link](#)).

6 APPOINTMENT OF SERVICE PROVIDER

- 6.1 The contract will be awarded to the tenderer who scores the highest total number of points during the evaluation process, except where the law permits otherwise.

6.2 Appointment as a successful service provider shall be subject to the parties agreeing to mutually acceptable contractual terms and conditions. In the event of the parties failing to reach such agreement, CSIR reserves the right to appoint an alternative supplier.

6.3 Awarding of contracts will be published on the same platform where the proposal was published, and no regret letters will be sent to unsuccessful respondents.

7 ENQUIRIES AND CONTACT WITH THE CSIR

Any enquiry regarding this EOI shall be submitted in writing to CSIR to the email and format outlined in the table on cover page of this EOI document.

Any other contact with CSIR personnel involved in this tender is not permitted during the EOI process other than as required through existing service arrangements or as requested by the CSIR as part of the EOI process.

8 MEDIUM OF COMMUNICATION

All documentation submitted in response to this EOI must be in English.

9 CORRECTNESS OF RESPONSES

9.1 The tenderer must confirm satisfaction regarding the correctness and validity of their proposal and that all prices and rates quoted cover all the work/items specified in the EOI. The prices and rates quoted must cover all obligations under any resulting contract.

9.2 The tenderer accepts that any mistakes regarding prices and calculations will be at their own risk.

10 VERIFICATION OF DOCUMENTS

10.1 Tenderers should check the numbers of the pages to satisfy themselves that none is missing or duplicated. No liability will be accepted by the CSIR in regard to anything arising from the fact that pages are missing or duplicated.

10.2 Pricing schedule and specific goals credentials should be submitted with the proposal, but as a separate document and no such information should be available in the technical proposal.

11 RESPONSIBILITY FOR SUB-CONTRACTORS AND RESPONDENT'S PERSONNEL

A respondent is responsible for ensuring that its personnel (including agents, officers, directors, employees, advisors, and other representatives), its sub-contractors (if any) and personnel of its sub-contractors comply with all terms and conditions of this proposal. In the event that the CSIR allows a respondent to make use of sub-contractors, such sub-contractors will at all times remain the responsibility of the respondent and the CSIR will not under any circumstances be liable for any losses or damages incurred by or caused by such sub-contractors.

12 ADDITIONAL TERMS AND CONDITIONS

12.1 A tenderer shall not assume that information and/or documents supplied to CSIR, at any time prior to this request, are still available to CSIR, and shall consequently not make any reference to such information document in its response to this request.

12.2 Copies of any affiliations, memberships and/or accreditations that support your submission must be included in the tender.

12.3 In case of proposal from a joint venture, the following must be submitted together with the proposal:

- Joint venture Agreement including split of work signed by both parties;
- The Tax Compliance Status (TCS) of each joint venture member;
- Proof of ownership/shareholder certificates/copies; and
- Company registration certificate.

12.4 An omission to disclose material information, a factual inaccuracy, and/or a misrepresentation of fact may result in the disqualification of a tender, or cancellation of any subsequent contract.

12.5 Failure to comply with any of the terms and conditions as set out in this document will invalidate the Proposal.

13 SPECIAL CONDITIONS

The CSIR reserves the right to:

- 13.1 Extend the closing date of this EOI.
- 13.2 Correct any mistakes at any stage of the tender that may have been in the Proposal documents or occurred at any stage of the tender process.
- 13.3 Verify any information contained in the respondent's submission.
- 13.4 Request documentary proof regarding the respondent's submission.
- 13.5 Carry out site inspections, product evaluations or explanatory meetings in order to verify the nature and quality of the product/service offered by the respondent(s) or verify any information whether before or after the adjudication of this EOI.
- 13.6 Award this tender to a respondent that did not score the highest total number of points, only in accordance with Section 2(1)(f) of the PPPFA (Act 5 of 2000);
- 13.7 Request audited financial statements or other documents for the purpose of a due diligence exercise to determine if the bidder will be able to execute the contract.
- 13.8 Award this EOI as a whole or in part.
- 13.9 Award this EOI to multiple respondents.
- 13.10 Cancel and/or terminate the tender process at any stage, including after the Closing Date and/or after presentations have been made, and/or after tenders have been evaluated and/or after the preferred respondent(s) have been notified of their status as such.
- 13.11 Post tenders negotiate on any elements on the bid, including but not limited to technical, transformation, price, and contractual terms and conditions.;
- 13.12 Not to award a contract to a bidder who is associated with a security breach that materially adversely affects other entities or if any directors or officers of a bidder are formally accused of fraudulent or illegal conduct which, would harm the CSIR's reputation by its continued association with the bidder.

14 CONFLICT OF INTEREST, CORRUPTION AND FRAUD

- 14.1 The CSIR reserves its right to disqualify any respondent who either itself or any of whose members (save for such members who hold a minority interest in the respondent through shares listed on any recognised stock exchange), indirect members (being any person or entity who indirectly holds at least a 15% interest in the respondent other than in the context of shares listed on a recognised stock exchange), directors or members of senior

management, whether in respect of CSIR or any other government organ or entity and whether from the Republic of South Africa or otherwise ("Government Entity")

- a) engages in any collusive tendering, anti-competitive conduct, or any other similar conduct, including but not limited to any collusion with any other respondent in respect of the subject matter of this proposal.
- b) seeks any assistance, other than assistance officially provided by a Government Entity, from any employee, advisor or other representative of a Government Entity in order to obtain any unlawful advantage in relation to procurement or services provided or to be provided to a Government Entity.
- c) makes or offers any gift, gratuity, anything of any value or other inducement, to any Government Entity's officers, directors, employees, advisors or other representatives in order to obtain any unlawful advantage in relation to procurement or services provided or to be provided to a Government Entity.
- d) accepts anything of value or an inducement that would or may provide financial gain, advantage or benefit in relation to procurement or services provided or to be provided to a Government Entity.
- e) pays or agrees to pay to any person any fee, commission, percentage, brokerage fee, gift or any other consideration, that is contingent upon or results from, the award of any tender, contract, right or entitlement which is in any way related to procurement or the rendering of any services to a Government Entity.
- f) has in the past engaged in any matter referred to above; or
- g) has been found guilty in a court of law on charges of fraud and/or forgery, regardless of whether or not a prison term was imposed and despite such respondent, member or director's name not specifically appearing on the List of Tender Defaulters kept at National Treasury.

15 MISREPRESENTATION DURING THE LIFECYCLE OF THE CONTRACT

- 15.1 The respondent should note that the terms of its Tender will be incorporated in the proposed contract by reference and that the CSIR relies upon the respondent's Tender as a material representation in making an award to a successful respondent and in concluding an agreement with the respondent.

15.2 It follows therefore that misrepresentations in a Tender may give rise to service termination and a claim by the CSIR against the respondent notwithstanding the conclusion of the Service Level Agreement between the CSIR and the respondent for the provision of the Service in question. In the event of a conflict between the respondent's proposal and the Service Level Agreement concluded between the parties, the Service Level Agreement will prevail.

16 PREPARATION COSTS AND LIMITATION OF LIABILITY

The Respondent will bear all its costs in preparing, submitting and presenting any response or Tender to this proposal and all other costs incurred by it throughout the proposal process. Furthermore, no statement in this proposal will be construed as placing the CSIR, its employees or agents under any obligation whatsoever, including in respect of costs, expenses or losses incurred by the respondent(s) in the preparation of their response to this proposal.

A respondent participates in this proposal process entirely at its own risk and cost. The CSIR shall not be liable to compensate a respondent on any grounds whatsoever for any costs incurred or any damages suffered as a result of the Respondent's participation in this Proposal process.

17 INDEMNITY

If a respondent breaches the conditions of this proposal and, as a result of that breach, the CSIR incurs costs or damages (including, without limitation, the cost of any investigations, procedural impairment, repetition of all or part of the proposal process and/or enforcement of intellectual property rights or confidentiality obligations), then the respondent indemnifies and holds the CSIR harmless from any and all such costs which the CSIR may incur and for any damages or losses the CSIR may suffer.

18 PRECEDENCE

This document will prevail over any information provided during any briefing session whether oral or written, unless such written information provided, expressly amends this document by reference.

19 TAX COMPLIANCE

No tender shall be awarded to a respondent who is not tax compliant. The CSIR reserves the right to withdraw an award made, or cancel a contract concluded with a successful respondent in the event that it is established that such respondent was in fact not tax compliant at the time of the award or has submitted a fraudulent Tax Clearance Certificate to The CSIR, or whose verification against the Central Supplier Database (CSD) proves non-compliant. The CSIR further reserves the right to cancel a contract with a successful respondent in the event that such respondent does not remain tax compliant for the full term of the contract.

20 TENDER DEFAULTERS AND RESTRICTED SUPPLIERS

No tender shall be awarded to a respondent whose name (or any of its members, directors, partners or trustees) appear on the Register of Tender Defaulters kept by National Treasury, or who have been placed on National Treasury's List of Restricted Suppliers. The CSIR reserves the right to withdraw an award, or cancel a contract concluded with a Respondent should it be established, at any time, that a respondent has been blacklisted with National Treasury by another government institution.

21 GOVERNING LAW

South African law governs this proposal and the proposal response process. The respondent agrees to submit to the exclusive jurisdiction of the South African courts in any dispute of any kind that may arise out of or in connection with the subject matter of this proposal, the proposal itself and all processes associated with the proposal.

Commented [CJ1]: This will be problematic for any foreigner company

Commented [MN2R1]: Let's hear from the supplier

22 CONFIDENTIALITY

Except as may be required by operation of law, by a court or by a regulatory authority having appropriate jurisdiction, no information contained in or relating to this proposal or a respondent's tender(s) will be disclosed by any respondent or other person not officially involved with the CSIR's examination and evaluation of a Tender.

No part of the proposal may be distributed, reproduced, stored or transmitted, in any form or by any means, electronic, photocopying, recording or otherwise, in whole or in part except for the purpose of preparing a Tender. This proposal and any other documents supplied by the CSIR remain proprietary to the CSIR and must be promptly returned to the CSIR upon request together with all copies, electronic versions, excerpts or summaries thereof or work derived there from.

Throughout this proposal process and thereafter, respondent(s) must secure the CSIR's written approval prior to the release of any information that pertains to (i) the potential work or activities to which this proposal relates; or (ii) the process which follows this proposal. Failure to adhere to this requirement may result in disqualification from the proposal process and civil action.

23 AVAILABILITY OF FUNDS

Should funds no longer be available to pay for the execution of the responsibilities of this proposal, the CSIR may terminate the Agreement at its own discretion or temporarily suspend all or part of the services by notice to the successful respondent who shall immediately make arrangements to stop the performance of the services and minimize further expenditure: Provided that the successful respondent shall thereupon be entitled to payment in full for the services delivered, up to the date of cancellation or suspension.

24 PERSONAL INFORMATION

24.1 Each Party consents to the other Party holding and processing "personal information" (as defined in the POPI Act) relating to it for legal, personnel, administrative and management purposes (including, if applicable, any "special personal information" relating to him/her, as defined in the POPI Act). Notwithstanding the generality of the aforesaid, each Party hereby undertakes to comply with all relevant provisions of the POPI Act and any other applicable data protection laws. The tenderer further agrees to comply with all CSIR's reasonable internal governance requirements pertaining to data protection.

24.2 Each Party consents to the other Party making such information available to those who provide products or services to such parties (such as advisers, regulatory authorities,

governmental or quasi-governmental organisations and potential purchasers of such Party or any part of their business).

24.3 While performing any activity where a Party is handling personal information as a “responsible party” (as defined in the POPI Act), each Party undertakes that it will process the personal information strictly in accordance with the terms of the POPI Act, this Contract, and the other Party’s instructions from time to time, and take appropriate operational measures to safeguard the data against any unauthorised access.

24.4 Each Party acknowledges that in the course of conducting business with each other, each Party intends to maintain and process personal information about the other Party in an internal database. By signing this Contract, each Party consents to the maintenance and processing of such personal information.

Where relevant, the tenderer shall procure that all of its personnel, agents, representatives, contractors, sub-contractors and mandataries shall comply with the provisions of this clause 30 (Personal Information). The CSIR shall be entitled on reasonable notice to conduct an inspection or audit tenderers compliance with the requisite POPI Act safeguards.

25 DISCLAIMER

This EOI is a Expression of Interest only and not an offer document. Answers to this EOI must not be construed as acceptance of an offer or imply the existence of a contract between the parties. By submission of its proposal, tenderers shall be deemed to have satisfied themselves with and to have accepted all Terms & Conditions of this EOI. The CSIR makes no representation, warranty, assurance, guarantee or endorsements to tenderer concerning the EOI, whether with regard to its accuracy, completeness or otherwise and the CSIR shall have no liability towards the tenderer or any other party in connection therewith.

SECTION B
EVALUATION METHODOLOGY

26 EVALUATION CRITERIA

The CSIR has set minimum standards that a respondent needs to meet in order to be evaluated and selected as a successful respondent. The minimum standards consist of the following:

Elimination Criteria (Phase 1)	Technical Evaluation Criteria (Phase 2)	Objective Criteria
Only respondents that comply with ALL the criteria set on paragraph 26.1 on Phase 1 below will proceed to Technical/Functional Evaluation (Phase 2).	Respondent(s) are required to achieve a predetermined minimum threshold on each of the individual criteria, and a predetermined minimum threshold on 100 points overall.	Bidder(s) may be evaluated further on Objective Criteria in accordance with Section (2) (1) (f) of the PPPFA (Act 5 of 2000).

26.1 Elimination Criteria (Phase 1)

Proposals will be eliminated under the following conditions:

- Respondents that submit late proposals will not be considered.
- Respondents that submit to the incorrect location or email address will not be considered (Only electronic submission to tender@csir.co.za would be considered).
- Respondent that are listed on the NT database of restricted suppliers will not be considered.
- Respondents that are registered on the NT Register of Tender Defaulters will not be considered.
- Respondent that did not submit mandatory returnable documents as **Annexure E: Proposal Form and List of Returnable Documents**.

26.2 Technical Evaluation Criteria (Phase 2)

The evaluation of the functional / technical detail of the proposal will be based on the following criteria:

No		WEIGHT
1	Company Experience	30%
2	Track record	20%
3	Delivery Lead Times	20%

Commented [CJ3]: Elimination criteria:

Letter stating that the bidder is the OEM or product owner or, letter from OEM authorising / appointing the bidder as agent or distributor of a specified set of products.

Commented [MN4R3]: The document is part of mandatory documents

Commented [CJ5]: If OEM/agent letter cannot be an elimination criteria, can we add it as a phase 2 category for evaluation? OEM scores highest, followed by appointed sole distributor / agent, followed by authorised distributor / agent, followed by licensed importer/reseller, followed by unlicensed importer/reseller

Commented [MN6R5]: It is part of elimination (Mandatory documents)

4	Seller status: OEM, Service agent, Authorised Distributor, Reseller	30%
TOTAL (%)		100

Proposals with functionality / technical points of less than the pre-determined minimum overall percentage of 70% will be eliminated from further evaluation.

Refer to **Annexure C (Technical Evaluation Matrix/Rubrics)** for the scoring ranges/rubrics that will be used to evaluate functionality.

27 OBJECTIVE CRITERIA

The CSIR reserves the right to award this tender to a respondent that did not score the highest total number of points in accordance with Section (2) (1) (f) of the PPPFA (Act 5 of 2000).

The directors, shareholders or officers of the bidder must not be formally accused of fraudulent or illegal conduct which could harm the CSIR's reputation by associating with the bidder.

28 NATIONAL TREASURY CENTRAL SUPPLIER DATABASE REGISTRATION

Respondents are required to self-register on National Treasury's Central Supplier Database (CSD) which has been established to centrally administer supplier information for all organs of state and facilitate the verification of certain key supplier information. Business may not be awarded to a Respondent who has failed to register on the CSD. Only foreign suppliers with no local registered entity need not register on the CSD. In order to enable the CSIR to verify information on the CSD, Respondents are required to provide the unique registration reference number: _____.

Before any negotiations will start with the winning respondent it will be required from the winning respondent to:

- be registered on National Treasury's Central Supplier Database (CSD). Registrations can be completed online at: www.csd.gov.za;
- provide the CSIR of their CSD registration number.

Annexure A

Standard Bidding Document (SBD) 1

PART A: INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE CSIR					
BID NUMBER:	8080-13-09-2023	CLOSING DATE:	13 September 2023	CLOSING TIME:	16h30
DESCRIPTION	For the supply of laser related products				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
In light of the Covid-19 pandemic, the CSIR requires that all tender submissions be submitted electronically to tender@csir.co.za . Should tender file size exceed 25MB, respondents submit tender in multiple emails. Use the tender number and description of the tender as the subject on your email.					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON		CONTACT PERSON			
TELEPHONE NUMBER		TELEPHONE NUMBER			
FACSIMILE NUMBER		FACSIMILE NUMBER			
E-MAIL ADDRESS	tender@csir.co.za	E-MAIL ADDRESS		tender@csir.co.za	
SUPPLIER INFORMATION					
NAME OF RESPONDENT					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
1 ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	2 ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]		
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS					
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? <input type="checkbox"/> YES <input type="checkbox"/> NO					

DOES THE ENTITY HAVE A BRANCH IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?	<input type="checkbox"/> YES <input type="checkbox"/> NO

IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.

PART B: TERMS AND CONDITIONS FOR BIDDING

1. PROPOSAL SUBMISSION:
1.1. PROPOSALS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE PROPOSALS WILL NOT BE ACCEPTED FOR CONSIDERATION.
1.2. ALL PROPOSALS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED-(NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE PROPOSAL DOCUMENT.
1.3. THIS PROPOSAL IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2022, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
1.4. THE SUCCESSFUL RESPONDENT WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).
2. TAX COMPLIANCE REQUIREMENTS
2.1 RESPONDENTS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2 RESPONDENTS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
2.4 RESPONDENTS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE PROPOSAL.
2.5 IN PROPOSALS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
2.6 WHERE NO TCS PIN IS AVAILABLE BUT THE RESPONDENT IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
2.7 NO PROPOSALS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE."

NB: FAILURE TO PROVIDE / OR COMPLY WITH ANY OF THE ABOVE PARTICULARS MAY RENDER THE PROPOSAL INVALID.

SIGNATURE OF RESPONDENT:

.....

CAPACITY UNDER WHICH THIS PROPOSAL IS SIGNED:

.....

(Proof of authority must be submitted e.g. company resolution)

DATE:

.....

Annexure B

Scope of Services: The supply of laser related products EOI No.8080/13/09/2023

1 INVITATION FOR PROPOSAL

Expression of interests are hereby invited for the supply of laser related products.

The purpose of the Expression of Interest (EOI) is to obtain capability, pricing and general information on the business of potential Contractors for the CSIR to determine the Contractors most capable of providing the products.

This EOI document details and incorporates, as far as possible, the tasks and responsibilities of the potential respondent required by the CSIR.

This EOI does not constitute an offer to do business with the CSIR, but merely serves as an invitation to respondent(s) to facilitate a requirements-based decision process.

Responses to this Expression of Interest (EOI) (hereinafter referred to as a Bid or a Proposal) are requested from suitably qualified entities (hereinafter referred to as a Bidder or Respondent) for the supply of laser related products.

2 PROPOSAL REQUIREMENTS

All proposals are to be submitted in a format specified in this enquiry. However, tenderers are welcome to submit additional / alternative proposals over and above the originally specified format.

2.1 Technical Proposal

The following must be submitted as part of the **technical** proposal:

- a. Company profile (or link to company profile for foreign suppliers only)
- b. Track record in supplying of services/products in the required fields
- c. Delivery Lead Times on past projects/orders
- d. References
- e. Proof of OEM or authorised distributor/reseller status
- f. Brochures of product groupings offered or link to online catalogue.

Commented [CJ7]: Or OEM authorised agent

2.2 Financial Proposal:

The following must be submitted as part of the **financial** proposal:

- Cover Letter
- CSD registration report (RSA suppliers only).

3 PROPOSAL SPECIFICATION

Scope of Work

Expressions of interest are hereby invited from suitably qualified and experienced suppliers to supply laser related products for provision of **any** of the following:

List of products

Lasers and subcomponents

- Thorlabs Laser diodes and associated power supplies
- Thorlabs optomechanical components for optical tables
- Thorlabs optical components
- Thorlabs optical fibres and fibre components
- Thorlabs light detectors including power and energy detectors / meters
- Thorlabs - other standard catalogue items

AND / OR

- Ophir Photonics power detectors and/or power meter readouts
- Ophir Photonics energy detectors and / or meter readouts for energy detectors
- Ophir Photonics – other standard catalogue items

AND / OR

- Coherent energy detectors and / or meter readouts for energy detectors
- Coherent power detectors and/or power meter readouts
- Coherent – other standard catalogue items

AND / OR

- Gentec Electro-Optics Power and Energy meters and/or meter readouts
- Gentec Electro-Optics – other standard catalogue items

AND / OR

- Hamamatsu – standard catalogue items

Commented [CJ8]: Can we add Gentec Power and Energy meters?

AND / OR

- Edmund Optics – standard catalogue items

AND / OR

- Eksma Optics – standard catalogue items

AND / OR

- Newport Laser diodes and associated power supplies
- Newport optomechanical components for optical tables
- Newport optical components
- Newport optical fibres and fibre components
- Newport light detectors including power and energy detectors / meters
- Newport - other standard catalogue items

AND / OR

- Delta Elektronika B.V – standard catalogue laser power suppliers

AND / OR

- BWT – laser diodes and related equipment

AND / OR

- Technotrans / Termotek GmbH chillers and related equipment

AND / OR

- Layertec GmbH optical components

AND / OR

- LaserOptik GmbH optical components

AND / OR

- Casix laser crystals and optical components

AND / OR

- LaserAnd laser crystals and optical components

**Annexure C
Technical matrix**

The supply of laser related products

EOI No.8080/13/09/2023

Requirement	Acceptance Criteria	Weight	Evidence
Company Experience	<p>A company profile substantiating this must be provided</p> <ul style="list-style-type: none"> • 0 to 3 years – 0 • 4 to 6 years – 5 • 6 to 10 years – 7 • More than 10 years – 10 	30%	<p>Company profile clearly indicating the number of years the bidder has in the supplying of required services/products (or link to company profile for foreign suppliers)</p>
Track record in supplying of services/products in the required fields	<p>Proof of track record on supplying such services/products</p> <ul style="list-style-type: none"> • Less than 2 references – 0 • 2 to 3 references – 5 • 4 to 5 references – 7 • More than 5 references – 10 <p>OR</p> <p>For direct supply from OEM listed in Annexure B only:</p> <ul style="list-style-type: none"> • OEM - 10 	20%	<p>Reference letters indicating the capability for rendering the required services.</p> <p align="center">OR</p> <p>A list of references indicating the following:</p> <ul style="list-style-type: none"> - Client - Contact Person - Designation - Email address - Telephone number <p align="center">OR</p> <p>OEM letter and link to OEM online catalogue</p>
Delivery Lead Times on their past projects	<ul style="list-style-type: none"> • Delivery not done on time– 0 • Delivery done on time – 10 <p>OR</p> <p>For direct supply from OEM listed in Annexure B only:</p> <p>OEM - 10</p>	20%	<p>Project schedule for previous deliveries must be provided. The schedule must show the timelines from the point of order (client) to the point of supply (to the client).</p> <p align="center">OR</p>

			OEM letter and link to OEM online catalogue
Seller Status	A company relation to the products being supplied: <ul style="list-style-type: none"> • Authorised Reseller – 3 • Authorised Distributor – 5 • Authorised service agent – 7 • OEM – 10 	30%	Proof of OEM or sole distributor status (e.g., Signed letter of ownership of products by OEM, or appointment letter from OEM)
TOTAL		100%	

Annexure E

Proposal Form and List of Returnable Documents

The supply of laser related products EOI No.8080/13/09/2023

I/We _____

[name of entity, company, close corporation or partnership] of [full address]

carrying on business trading/operating as

represented by _____ in my capacity as

_____ being duly authorised thereto by a Resolution of the Board of Directors or Members or Certificate of Partners, dated _____ to enter into, sign execute and complete any documents relating to this proposal and any subsequent Agreement. The following list of persons are hereby authorised to negotiate on behalf of the abovementioned entity, should CSIR decide to enter into Post Tender Negotiations with shortlisted respondent(s).

FULL NAME(S) CAPACITY SIGNATURE

I/We hereby offer to supply the abovementioned Services at the prices quoted in the schedule of prices in accordance with the terms set forth in the documents listed in the accompanying schedule of EOI documents.

I/We agree to be bound by those conditions in CSIR's:

1. General EOI Terms and Conditions; and
Any other standard or special conditions mentioned and/or embodied in this Expression of Interest.

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

I/We further agree that if, after I/we have been notified of the acceptance of my/our Proposal, I/we fail to enter into a formal contract if called upon to do so, or fail to commence the supply of Services within 4 [four] weeks thereafter, CSIR may, without prejudice to any other legal remedy which it may have, recover from me/us any expense to which it may have been put in calling for Proposals afresh and/or having to accept any less favourable Proposal.

I/We accept that any contract resulting from this offer will be for a period as determined by the CSIR.

Furthermore, I/we agree to a penalty clause/s which will allow CSIR to invoke a penalty against us for non-compliance with material terms of this EOI including the delayed delivery of the Services due to non-performance by ourselves, failure to meet Subcontracting.

I/we agree that non-compliance with any of the material terms of this EOI, including those mentioned above, will constitute a material breach of contract and provide CSIR with cause for cancellation.

ADDRESS FOR NOTICES

The law of the Republic of South Africa shall govern any contract created by the acceptance of this EOI. The domicilium citandi et executandi shall be a place in the Republic of South Africa to be specified by the Respondent hereunder, at which all legal documents may be served on the

Respondent who shall agree to submit to the jurisdiction of the courts of the Republic of South Africa. Foreign Respondents shall, therefore, state hereunder the name of their authorised representative in the Republic of South Africa who has the power of attorney to sign any contract which may have to be entered into in the event of their Proposal being accepted and to act on their behalf in all matters relating to such contract.

Respondent to indicate the details of its domicilium citandi et executandi hereunder:
Name of Entity:

Facsimile: _____

Address: _____

NOTIFICATION OF AWARD OF EOI

As soon as possible after approval to award the contract(s), the successful Respondent [**the Service provider**] will be informed of the acceptance of its Proposal. Unsuccessful Respondents may be advised in writing of the name of the successful Service provider and the reason as to why their Proposals have been unsuccessful, for example, in the category of price, delivery period, quality, B-BBEE or for any other reason.

VALIDITY PERIOD

CSIR requires a validity period of 90 [Ninety calendar Days from closing date] against this EOI.

Respondents are to note that they may be requested to extend the validity period of their proposal, at the same terms and conditions, if the internal evaluation process has not been finalised within the validity period. However, once the adjudication body has approved the process and award of the business to the successful respondent(s), the validity of the successful respondent(s)' proposal will be deemed to remain valid until a final contract has been concluded.

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

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

1. Registration number of company / C.C.

2. Registered name of company / C.C.

3. Full name(s) of director/member(s) Address/Addresses ID Number(s)

RETURNABLE DOCUMENTS

All Sections, as indicated in the footer of each page, **must be signed, stamped and dated** by the Respondent. **Returnable Documents** means all the documents, Sections and Annexures, as listed in the tables below.

a) Mandatory Returnable Documents

Failure to provide all Mandatory Returnable Documents at the closing date and time of this proposal will result in a Respondent's disqualification. Respondents are therefore urged to ensure that all these documents are returned with their Proposals.

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

MANDATORY RETURNABLE DOCUMENTS	SUBMITTED [Yes/No]
Product catalogue	
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	
Proof of subcontracting arrangements if the respondent will subcontract some of the works	

b) Essential Returnable Documents

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

Essential Returnable Documents required for evaluation purposes:

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

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

ESSENTIAL RETURNABLE DOCUMENTS USED FOR SCORING	SUBMITTED
Annexure H: Standard Proposal Document (SBD) 1 Form	
Annexure I: Standard Proposal Document (SBD) 4 Form	

Other Essential Returnable Documents:

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

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

OTHER ESSENTIAL RETURNABLE DOCUMENTS	SUBMITTED [Yes/No]
Annexure D: Proposal Form and List of Returnable documents <i>(This document)</i>	
Annexure E: Certificate of Acquaintance with EOI, Terms & Conditions & Applicable Documents	
Annexure J: EOI Declaration and Breach of Law Form	
Annexure K: Mutual Non-Disclosure Agreement	

CONTINUED VALIDITY OF RETURNABLE DOCUMENTS

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

SIGNED at _____ on this _____ day of _____ 20_____

SIGNATURE OF WITNESSES ADDRESS OF WITNESSES

1 _____

Name _____

2 _____

Name _____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE:

Name: _____

Designation: _____

Annexure F

Certificate of Acquaintance with EOI, Terms & Conditions & Applicable Documents

**The supply of laser related products
EOI No. 8080/13/09/2023**

By signing this certificate the Respondent is deemed to acknowledge that he/she has made himself/herself thoroughly familiar with, and agrees with all the conditions governing this EOI. This includes those terms and conditions contained in any printed form stated to form part hereof, including but not limited to the documents stated below. As such, CSIR will recognise no claim for relief based on an allegation that the Respondent overlooked any such condition or failed properly to take it into account for the purpose of calculating tendered prices or any other purpose:

Should the Respondent find any terms or conditions stipulated in any of the relevant documents quoted in the EOI unacceptable, it should indicate which conditions are unacceptable and offer alternatives by written submission on its company letterhead, attached to its submitted Proposal. Any such submission shall be subject to review by CSIR's Legal Counsel who shall determine whether the proposed alternative(s) are acceptable or otherwise, as the case may be. A material deviation from any term or condition may result in disqualification.

Respondents accept that an obligation rests on them to clarify any uncertainties regarding any proposal which they intend to respond on, before submitting the proposal. The Respondent agrees that he/she will have no claim based on an allegation that any aspect of this EOI was unclear but in respect of which he/she failed to obtain clarity.

The respondent understands that his/her Proposal will be disqualified if the Certificate of Acquaintance with EOI documents included in the EOI as a returnable document, is found not to be true and complete in every respect.

SIGNED at _____ on this ____ day of _____ 20 ____

SIGNATURE OF WITNESSES ADDRESS OF WITNESSES

1 _____

Name _____

2 _____

Name _____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE:

Name: _____

Designation: _____

Annexure I
Standard Proposal Bidding Document (SBD) 4

The supply of laser related products

EOI No. 8080/13/09/2023

RESPONDENT'S DISCLOSURE

1. PURPOSE OF THE FORM

Any person (natural or juristic) may make an offer or offers in terms of this invitation to proposal. In line with the principles of transparency, accountability, impartiality, and ethics as enshrined in the Constitution of the Republic of South Africa and further expressed in various pieces of legislation, it is required for the respondent to make this declaration in respect of the details required hereunder.

Where a person/s are listed in the Register for Tender Defaulters and / or the List of Restricted Suppliers, that person will automatically be disqualified from the proposal process.

2. Respondent's declaration

2.1 Is the respondent, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest¹ in the enterprise, employed by the state? YES / NO

2.1.1 If so, furnish particulars of the names, individual identity numbers, and, if applicable, state employee numbers of sole proprietor/ directors / trustees / shareholders / members/ partners or any person having a controlling interest in the enterprise, in table below.

Full Name	Identity Number	Name of institution	State

¹ the power, by one person or a group of persons holding the majority of the equity of an enterprise, alternatively, the person/s having the deciding vote or power to influence or to direct the course and decisions of the enterprise.

2.2 Do you, or any person connected with the respondent, have a relationship with any person who is employed by the procuring institution? YES NO

2.2.1 If so, furnish particulars:
.....
.....

2.3 Does the respondent or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise whether or not they are proposal for this contract? YES NO

2.3.1 If so, furnish particulars:
.....
.....

3 DECLARATION

I, the undersigned, (name).....in submitting the accompanying proposal, do hereby make the following statements that I certify to be true and complete in every respect:

- 3.1 I have read and I understand the contents of this disclosure;
- 3.2 I understand that the accompanying proposal will be disqualified if this disclosure is found not to be true and complete in every respect;
- 3.3 The respondent has arrived at the accompanying proposal independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium² will not be construed as collusive proposal.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the proposal, proposal with the intention not to win the proposal and conditions or delivery particulars of the products or services to which this proposal invitation relates.
- 3.4 The terms of the accompanying proposal have not been, and will not be, disclosed by the respondent, directly or indirectly, to any competitor, prior to the date and time of the official proposal opening or of the awarding of the contract.
- 3.5 There have been no consultations, communications, agreements or arrangements made by the respondent with any official of the procuring institution in relation to this procurement process prior to and during the proposal process except to provide clarification on the proposal submitted where so required by the institution; and the respondent was not involved in the drafting of the specifications or terms of reference for this proposal.
- 3.6 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to proposals and contracts, proposals that are suspicious

² Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 1, 2 and 3 ABOVE IS CORRECT.

I ACCEPT THAT THE STATE MAY REJECT THE PROPOSAL OR ACT AGAINST ME IN TERMS OF PARAGRAPH 6 OF PFMA SCM INSTRUCTION 03 OF 2021/22 ON PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM SHOULD THIS DECLARATION PROVE TO BE FALSE.

..... Signature Date
..... Position Name of respondent

Annexure J

DECLARATION BY TENDERER AND BREACH OF LAW FORM

**The supply of laser related products
EOI No. 8080/13/09/2023**

Only tenderers who completed the declaration below will be considered for evaluation.

NAME OF ENTITY:

We _____ do hereby certify that:

1. CSIR has supplied and we have received appropriate responses to any/all questions [as applicable] which were submitted by ourselves for EOI Clarification purposes;
2. we have received all information we deemed necessary for the completion of this Expression of Interest [EOI];
3. we have been provided with sufficient access to the existing CSIR facilities/sites and any and all relevant information relevant to the Services as well as CSIR information and Employees, and has had sufficient time in which to conduct and perform a thorough due diligence of CSIR's operations and business requirements and assets used by CSIR. CSIR will therefore not consider or permit any pre- or post-contract verification or any related adjustment to pricing, service levels or any other provisions/conditions based on any incorrect assumptions made by the Respondent in arriving at his Proposal Price.
4. at no stage have we received additional information relating to the subject matter of this EOI from CSIR sources, other than information formally received from the designated CSIR contact(s) as nominated in the EOI documents;
5. we are satisfied, insofar as our entity is concerned, that the processes and procedures adopted by CSIR in issuing this EOI and the requirements requested from Respondents in responding to this EOI have been conducted in a fair and transparent manner; and
6. we have complied with all Obligations of the Respondent/Supplier as indicated in paragraph 3 of the CSIR Supplier Integrity which includes but is not limited to ensuring that we take all measures necessary to prevent corrupt practices, unfairness and illegal activities in order to secure or in furtherance to secure a contract with CSIR;
7. furthermore, we declare that a family, business and/or social relationship **exists / does not exist** [delete as applicable] between an owner / member / director / partner / shareholder of our entity and an employee or board member of the CSIR Group including any person who may be involved in the evaluation and/or adjudication of this Proposal.
8. In addition, we declare that an owner / member / director / partner / shareholder of our entity **is / is not** [delete as applicable] an employee or board member of the CSIR.
9. If such a relationship as indicated in paragraph 6 and/or 7 exists, the Respondent is to complete the following section:

FULL NAME OF OWNER/MEMBER/DIRECTOR/
PARTNER/SHAREHOLDER: ADDRESS:

Indicate nature of relationship with CSIR:

[Failure to furnish complete and accurate information in this regard will lead to the disqualification of a response and may preclude a Respondent from doing future business with CSIR]

10. We declare, to the extent that we are aware or become aware of any relationship between ourselves and CSIR [other than any existing and appropriate business relationship with CSIR] which could unfairly advantage our entity in the forthcoming adjudication process, we shall notify CSIR immediately in writing of such circumstances.
11. We accept that any dispute pertaining to this Proposal will be resolved through the Ombudsman process and will be subject to the Terms of Reference of the Ombudsman. The Ombudsman process must first be exhausted before judicial review of a decision is sought.
12. We further accept that CSIR reserves the right to reverse an award of business or decision based on the recommendations of the Ombudsman without having to follow a formal court process to have such award or decision set aside.

BREACH OF LAW

13. We further hereby certify that I/we (the proposal entity and/or any of its directors, members or partners) have/have not been [delete as applicable] found guilty during the preceding 5 [five] years of a serious breach of law, including but not limited to a breach of the Competition Act, 89 of 1998, by a court of law, tribunal or other administrative body. The type of breach that the Respondent is required to disclose excludes relatively minor offences or misdemeanours, e.g. traffic offences. This includes the imposition of an administrative fine or penalty.

Where found guilty of such a serious breach, please disclose:

NATURE OF BREACH:

DATE OF BREACH: _____

Furthermore, I/we acknowledge that CSIR reserves the right to exclude any Respondent from the proposal process, should that person or entity have been found guilty of a serious breach of law, tribunal or regulatory obligation.

SIGNED at _____ on this _____ day of _____ 20____

For and on behalf of _____ duly authorised hereto	AS WITNESS:
Name:	Name:
Position:	Position:
Signature:	Signature:
Date	Registration No of Company/CC
Place	Registration Name of Company/CC

Annexure K Mutual Non-Disclosure Agreement

EOI No. 8080/13/09/2023

MUTUAL NON-DISCLOSURE AGREEMENT

Preamble

The Parties as identified herein are engaged in discussions relating to their potential collaboration in the Field as likewise described therein; are by virtue thereof are required to disclose Confidential Information to one another, and have agreed to do so subject to the terms and conditions as set out in this agreement.

Definitions

The following words and/or phrases, when used in this agreement, shall have the following meanings: "Confidential Information" shall mean all scientific, technical, business, financial, past, present or future research, development, business activities, products, services and technical knowledge or marketing information, whether inside or outside the Field, which one party (the "Disclosing Party") discloses to the other party (the "Receiving Party") in connection with the discussions, and either has been identified in writing as confidential or is of such a nature (or has been disclosed in such a way) that it should be obvious to the Receiving Party that it constitutes Confidential Information. (Without limiting the generality of the foregoing, "Confidential Information" shall include any information that falls within the definition of 'Personal Information' "Disclosing Party" shall mean the Party disclosing Confidential Information under this agreement; "Disclosing Purpose" shall mean, as pertains to any particular joint opportunity(ies) in the Field, the discussions held or to be held between the Parties regarding their possible collaboration and future working relationship with regards to any such opportunity(ies); "Effective Date" shall mean the date of the commencement of this agreement herein"; "Notice" shall mean a written document addressed by one Party to the other and either delivered by hand; sent per registered post or telefaxed to the addresses as indicated herein"; "Personal Information" means any information that falls within the definition of 'Personal Information' as defined in the Protection of Personal Information Act, No 4 of 2013 ("POPI"); "Receiving Party" shall mean the Party receiving Confidential Information under this agreement; "Responsible Party" means a public or private body or any other person which, alone or in conjunction with others, determines the purpose of and means for processing personal information, as defined in POPI.

Obligation of Confidentiality

The Receiving Party undertakes and agrees: to use the Disclosing Party's Confidential Information only to give effect to the Disclosing Purpose; to hold in strict confidence and not to publish or disclose to any unauthorised third parties any of the

Confidential Information of the Disclosing Party without the prior written consent of the Disclosing Party;

to use the same degree of care (and in any event not less than reasonable care) to safeguard the confidentiality of the Disclosing Party's Confidential Information that it uses to protect its own information of like kind;

to limit any disclosure of such Confidential Information only to those of its employees and professional advisors who have a specific need –to know to access such Confidential Information and either entered into a written agreement which impose, or are otherwise bound by the same restrictions as those imposed upon it by virtue of this agreement; not to disclose or reveal to any third party, whomsoever, either the fact that discussions or negotiations are taking, or have taken, place between the Parties; the content of any such discussions, or other facts relating to the Disclosing Purpose; on termination of this agreement, to act with the Disclosing Party's Confidential Information in accordance with a Notice delivered to it by the Disclosing Party, and if no such Notice is delivered to the Recipient, to destroy the Disclosing Party's Confidential Information in a similar manner to which it would destroy its own Confidential Information.

Protection of Personal Information

The Party(ies) undertake(s) to:- comply with the provisions of POPI as well as all applicable legislation as amended or substituted from time to time; treat all Personal Information strictly as defined within the parameters of POPI; process Personal Information only in accordance with the consent it was obtained for, for the purpose agreed, any lawful and reasonable written instructions received from the applicable Responsible Party and as permitted by law; process Personal Information in compliance with the requirements of all applicable laws; secure the integrity and confidentiality of any Personal Information in its possession or under its control by taking appropriate, reasonable technical and organisational measures to prevent loss, damage, unauthorised destruction, access, use, disclosure or any other unlawful processing of Personal Information; not transfer any Personal Information to any third party in a foreign country unless such transfer complies with the relevant provisions of POPI regarding transborder information flows; and not retain any Personal Information for longer than is necessary for achieving the purpose in terms of this Agreement or in fulfilment of any other lawful requirement.

The Party(ies) undertake(s) to ensure that all reasonable measures are taken to: identify reasonably foreseeable internal and external risks to the Personal Information in its possession or under its control;

establish and maintain appropriate security safeguards against the identified risks; regularly verify that the security safeguards are effectively implemented; ensure that the security safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards; provide immediate notification to the Responsible Party if a breach in information security or any other applicable security safeguard occurs; provide immediate notification to the Responsible Party where there are reasonable grounds to believe that the Personal Information has been accessed or acquired by any unauthorised person; remedy any breach of a security safeguard in the shortest reasonable time and provide the Responsible Party with the details of the breach and, if applicable, the reasonable measures implemented to address the security safeguard breach; provide immediate notification to the Responsible Party where either party has, or reasonably suspects that, Personal Information has been processed outside of the purpose agreed to or consented to; provide the Responsible Party, upon request, with all information of any nature whatsoever relating to the processing of the Personal Information for the purpose in terms of this Agreement and any applicable law; and notify the CSIR, if lawful, of receipt of any request for access to Personal Information, in its possession and relating to the CSIR.

The CSIR reserves the right to inspect the Personal Information processing operations, as well as the technical and organisational information security measures employed by the contracting Party to ensure compliance with the provisions of clause 4. The provisions of clause 4 shall survive the termination of this Agreement, regardless of cause, in perpetuity.

Exclusions

The Receiving Party recognises that this agreement is not intended to restrict use or disclosure of any portion of the Disclosing Party's Confidential Information which:

is as at the Effective Date, or later, made known to the public or otherwise enters the public domain through no default by the Receiving Party of its obligations under this Agreement; it can show was in its possession prior to the earliest disclosure by the Disclosing Party, as evidenced by written documents in its files; is rightfully received by it from a third party having no obligation of confidentiality to the Disclosing Party; is independently developed by the Receiving Party by a person(s) who did not have access to the Confidential Information of the Disclosing Party; is disclosed by the Receiving Party after receipt of written permission from the Disclosing Party; or it is requested or required by subpoena, court order, or similar process to disclose, provided that, in such an event, it will provide the Disclosing Party with prompt written notice of such request(s) so that the latter may seek an appropriate protective order and/or waive the Receiving Party's compliance with the provisions of this agreement.

Ownership and Provision of Information

The Disclosing Party shall retain ownership of all its Confidential Information as disclosed hereunder. Nothing contained in this agreement or in any disclosures made hereunder shall create or imply, or be construed as to grant to the Receiving Party any license or other rights in or to the Confidential Information and/or any intellectual property rights attached thereto, or act as a waiver of any rights that the Disclosing Party may have to prevent infringement or misappropriation of any patents, patent applications, trademarks, copyright, trade secrets, know-how or other intellectual property rights owned or controlled by the Disclosing Party as at the Effective Date.

The Disclosing Party provides the Confidential Information "as is" and accordingly no disclosure thereof by it hereunder shall constitute any representation, warranty, assurance, guarantee or inducement by such Disclosing Party with respect to infringement of patents or other rights of third parties, nor is any warranty or representation as to the accuracy, completeness, or technical or scientific quality of any of the Disclosing Party's Confidential Information provided hereunder. (For the avoidance of doubt it is stated expressly that the Disclosing Party neither makes, nor have made, any representation or warranty as to the merchantability or fitness for a particular purpose of any Confidential Information disclosed hereunder).

Term of Obligation

The Parties' obligations concerning non-disclosure of Confidential Information contained in the above clauses shall commence on the Effective Date and shall continue for five (5) years from the date of each disclosure, unless otherwise agreed between the parties in writing, where after such obligations shall forthwith terminate.

No Violation

Each party represents that its compliance with the provisions of this agreement will not violate any duty which such party may have towards any third party, including obligations concerning the provision of services to others, confidentiality of information and assignment of inventions, ideas, patents or copyright.

Breach

It is acknowledged that the breach of this agreement by the Receiving Party would cause the Disclosing Party irreparable injury not compensable in monetary damages alone. Accordingly, in the event of a breach, or a threat of a breach, the Disclosing Party, in addition to its other remedies, is entitled to a restraining order, preliminary injunction or similar relief so as to specifically enforce the terms of this agreement or prevent, cure or reduce the adverse effects of the breach.

DOMICILIUM CITANDI ET EXECUTANDI

The Parties hereto respectively choose as their *domicilium citandi et executandi* for all purposes of, and in connection with this agreement, the physical addresses and contact details stated herein.

Notices

Any Notice to be given hereunder shall be given in writing and may be given either personally or may be sent by post or facsimile and addressed to the

relevant party at its *domicilium citandi et executandi* address as chosen herein. Any notice given by post shall be deemed to have been served on the expiry of 7 (seven) working days after same is posted by recorded delivery post or air mail. Any notice delivered personally or sent by facsimile shall be deemed to have been served at the time of delivery or sending.

Governing Law and Jurisdiction

This agreement will be governed and construed by the laws of the Republic of South Africa and the Parties hereby submit to the exclusive jurisdiction of the South African courts to hear any dispute arising therefrom which the Parties are unable to settle amicably.

General

This agreement comprises the entire agreement between the parties concerning the subject matter and supersedes all prior oral and written agreements between them.

No waiver, alteration or cancellation of any of the provisions of the Agreement shall be binding unless made in writing and signed by the party to be bound. The parties hereby warrant that the officials signing this agreement have the power to do so on behalf of the parties.

No public announcement, such as a media release, or disclosure beyond those disclosures authorised for Confidential Information hereunder may be made by either party concerning this agreement without the prior written approval of the other party.

Neither party is, by virtue of this agreement, authorised to use the name, logo(s) or trademarks of the other in connection with any advertising, publicity, marketing or promotional materials or activities, or for any other purpose whatsoever, without the prior written consent of the other party. For purposes of this clause, it is also recognised that, under the provisions of section 15 (1) of the Merchandise Marks Act, Act No 17 of 1941 of the Republic of South Africa, the use of the abbreviation of the name of the Council for Scientific and Industrial Research, "WNNR" and CSIR, is prohibited in connection with any trade, business, profession or occupation or in connection with a trade mark, mark or trade description applied to goods, other than with the consent of the CSIR.

Both Parties shall remain free to use, in the normal course of its business, its general knowledge, skills and experience incurred before, during or after the discussions envisaged hereunder. (To this end, it is also recorded that nothing in this Agreement shall be construed as constituting an exclusive arrangement between the parties and both Parties shall remain free to explore market opportunities in the Field, unless otherwise agreed to in writing in a subsequent agreement.)

ANNEXURE A: MUTUAL NDA

Parties to the NDA

THE CSIR, a statutory council, duly established under Act 46 of 1988 through its Operating Unit of herein represented byin his/her capacity as Executive Director and he/ she being duly authorised thereto; **and**

.....
.....
....., registration number:..... a,
with limited liability duly incorporated under the applicable laws of the Republic of South Africa herein represented by in his/her capacity as and he/she being duly authorised thereto.

Contact Details for Purposes of Clause 10:

1.1 The CSIR

Physical Address:
Meiring Naude Road
Brummeria
Pretoria
0002
FOR ATTENTION:

Postal Address:
PO BOX 395
Pretoria
0001
FOR ATTENTION:

Telefax Communication:
FOR ATTENTION:

.....

Physical Address:

FOR ATTENTION:

Postal Address:

FOR ATTENTION:

Telefax Communication:

FOR ATTENTION:

Effective Date:.....

THE FIELD:

SIGNED ON THIS THE.....DAY OF.....AT..... IN THE PRESENCE OF THE FOLLOWING WITNESSES:

- 1.
- 2.

SIGNED ON THIS THE.....DAY OF.....AT..... IN THE PRESENCE OF THE FOLLOWING WITNESSES:

FOR THE CSIR

- 1.
- 2.

FOR XXXX

