

Annexure 'C'

CONTRACTUAL TERMS AND CONDITIONS

1. SECTION I- PREAMBLE

- 1.1. The general terms and conditions set out in this Agreement shall be applicable to the entity that is awarded the bid/contract/order by the Post Office.
- 1.2 By signing the RFP Documents prospective Supplier/Service Provider(s) confirm that they have read and warrant that they understand the RFP Documents and in particular the following additional information:
 - 1.1.1 the inclusion of this Agreement does not in any way whatsoever give rise to a presumption of a binding contract or agreement between the Post Office and the bidders.
 - 1.1.2 once all suspensive conditions, if any, and contract negotiations (including but not limited to the following examples, additional legal terms and conditions, price and scope of service) have been successfully complied with, the successful bidder shall receive a Letter of Appointment signed by an authorised Post Office Official together with any additional terms or conditions applicable to their appointment.
 - 1.1.3 notwithstanding anything contained in the RFP /RFI Advertisement and/or the RFP / RFI Documents, the Post Office reserves the right to accept or reject any bid and/or tender and to annul the tendering process and reject any or all bids and/or tenders received at any time, without incurring any liability or obligation to the affected bidder(s) and/or tenderer(s), or any obligation to inform the affected bidder(s) and/or tenderer(s) of the grounds for the Post Office's actions of rejecting annulling any bid and/or tender process.
 - 1.1.4 the Post Office does not bind itself to accept the lowest or any other bid and/or tender.
- 1.3 Any further variation or additional terms and or conditions to the Agreement shall be reduced to writing, signed by the Post Office Official and the entity that is awarded the bid/contract/order.

2 DOMICILIA AND NOTICES

- 2.1 The Parties hereby choose their domicilium citandi et executandi for all purposes arising from or pursuant to this Agreement as follows:

- 2.1.1 Supplier or Service Provider: the address and facsimile set out in the Supplier Questionnaire Form;
 - 2.1.2 Post Office: the address and facsimile set out in the Letter of Appointment;
- 2.2 Either Party may by written notice to the other party change its aforesaid domicilium citandi et executandi to any other address within the Republic of South Africa, which is not a post office box or poste restante.
- 2.3 Any notice given and/or any payment made by either party to the other which:
 - 2.3.1 is delivered by hand during the normal business hours of the addressee at the addressee's domicilium citandi et executandi for the time being shall be rebuttably presumed to have been received by the addressee at the time of delivery;
 - 2.3.2 is posted by registered mail from an address within the Republic of South Africa to the addressee at the addressee's domicilium citandi et executandi for the time being shall be rebuttably presumed to have been received by the addressee on the seventh business day after the date of posting;
 - 2.3.3 is sent by telefax during the normal business hours of the addressee to the addressee's domicilium citandi et executandi for the time being shall be rebuttably presumed to have been received on the first business day following the date of successful transmission thereof.
- 2.4 The word "RFP Number" and the number allocated to this RFP Documents shall be quoted by both Parties on all correspondence, notices or other documents of any description relating to this Agreement.

2. SECTION 2-INTRODUCTION

2.1 DEFINITIONS

In this Agreement, unless otherwise stated, or the context otherwise indicates, the under-mentioned words and expressions shall, when used in this Agreement including in this definitions clause bear the meanings ascribed to them:

Accounting Authority	Body or person mentioned in Section 49 of the PFMA.
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Accounting Officer	Body or person mentioned in Section 36 of the PFMA.
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Agreement	The service level agreement to be concluded between the Parties subsequent to the Award and, subject to clause 1.7 of the Conditions of Bid and Contract, substantially similar to the terms contained in the Conditions of Bid and Contract.
Authorised Representative	Person / legal entity authorised by the Board of Directors or by its delegate, the Accounting Officer of the Post Office to represent the Post Office.
Award	Conclusion of the procurement process and final notification to that effect to the successful Bidder.
B-BBEE	Broad-Based Black Economic Empowerment
B-BBEE status level of contributor	The B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of good practice on Black Economic Empowerment, issues in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act.
Bid	A written offer in a prescribed or stipulated form in response to an invitation by Postbank for the provision of goods and services, through price quotations, advertised competitive tendering processes or proposals.
Bidder	Any entity/ joint venture / consortium responding to this Request for Bid.
Broad-Based Black Economic Empowerment Act	The Broad –Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003).
Business Day	Any day other than a Saturday, Sunday or Public Holiday as defined in the Public Holidays Act 36 of 1994 as amended from time to time.
Completion Date	The date that is stipulated in the Agreement as the completion date alternatively after the satisfactory completion of the Services as contemplated in Annexure

D;

Conditions of Bid and Contract

The conditions set out in Section 3 hereof.

Confidential Information

Any information which the Post Office communicates to the Bidder/Service Provider and which is stated to be or by its nature is intended to be confidential; and

All other information of the same confidential nature concerning the business of the Post Office which comes to the knowledge of the Bidder/ Service Provider whilst participating in this Request for Proposal, negotiating the terms of the Agreement or during the period of the Agreement, including the Post Office's—

financial and operating structures and results;
strategic objectives and planning;

technical data and information;

data and documents necessary or useful for the carrying on by the Post Office of its business;

quality procedures; approximate operational personnel requirements;

know-how and trade secrets;

information relating to clients, business associates, relevant authorities;

Intellectual Property; and

any other intellectual property rights,

in whole or in part used by the Post Office in respect of its business.

Contact Person

For purposes of the Conditions of Bid and Contract

means those persons identified by the Parties as persons responsible for the supervision and management of the Services and whose particulars shall be provided by each of the Parties to the other in writing.

Contracting Entity	The Bidder, or in the event that the Bidder is a joint venture or consortium, the main party of the Bidder (with whom the Post Office will conclude the Agreement, who will also be required to satisfy certain specific requirements described in this Request for Proposal).
Contract Price	The amount payable to the Service Provider as compensation for rendering the Services and as reflected as such in the Letter of Appointment.
Contract Price Adjustment	An increase or decrease of the Contract Price.
DTI	The Department of Trade and Industry of the Government of the Republic of South Africa.
NT	National Treasury
Effective Date	Notwithstanding the Signature Date, the date that is reflected as such on the Letter of Appointment.
Intellectual Property (IP)	Patents, trademarks, service marks, rights, registered or unregistered, in any designs, applications for any of the foregoing, descriptions, trade or business names, copyright including rights in computer software and topography rights, know-how, secret formulae and processes, lists of suppliers and customers and other confidential and proprietary knowledge and information, goodwill, rights protecting goodwill and reputation, database rights and rights under licences and consents in relation to such things and all rights or forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world.

Letter of Appointment	The formal letter signed by a Post Office Official, sent by a Post Office Official to the Service Provider, advising the Service Provider that it is appointed to provide the Services in terms of this Request for Proposal.
Month	A calendar month
Original Bid	An original Bid document or a copy thereof, provided such document is signed in original ink by the person duly authorised to commit the Bidder.
Parties	The Post Office and the Service Provider and “Party” shall mean either of them as the context requires.
PFMA	The Public Finance Management Act, Act No. 1 of 1999 as amended, as well as the Treasury Regulations promulgated thereunder.
Post-office	The South African Post Office Limited including its subsidiaries, a public company with limited liability which is duly incorporated in accordance with the laws of the Republic of South Africa with Registration Number 1991/005477/06.
Post-office official	An official of the Post Office duly authorized in terms of the Post Office’s delegation process.
Request for Proposal	The document contained herein, including any annexures and schedules attached hereto.
Request For Proposal Advertisement	The advertisement issued by the Post Office to the general public; or in relation to “closed tenders” means the advertisement issued by the Post Office to suppliers or service providers already listed on the National Treasury Central Database requesting proposals to provide Services.

SCM	Supply Chain Management
Supplier/Service Provider	The successful Bidder with whom the Post Office concludes the Agreement subsequent to the Award based on this Request for Proposal.
Services	The services, works or goods to be provided by the Service Provider to the Post Office as more fully set out in Annexure D, Part 3 of this Request for Proposal
Service Areas	Those areas, if any, identified in Scope of Supply and Specific Instructions document at which the Supplier or Service Provider is required to render the Services;
Signature Date	The date of signature of the Agreement by the Party signing last in time.
Specification/Scope of Work	The Terms of Reference detailed in Annexure D, Part 3 of this Request for Proposal.
VAT	Value-added tax levied in terms of the VAT Act.
VAT Act	The Value-Added Tax Act, Act No. 89 of 1991, as amended from time to time.

The use of the expression “will be deemed non-responsive” means that the Bidder will be immediately excluded from further evaluation.

The use of the expression “may be deemed non-responsive” means that the Bidder will not summarily be excluded from further evaluation without consideration of the detail and clarification may be requested from the Bidder by the Post Office.

2.2 INTERPRETATION

- 2.2.1 Headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of this Agreement.

- 2.2.2 Unless the context clearly indicates a contrary intention, any word connoting:
- 2.2.2.1 any singular shall be deemed to include a reference to the plural and vice versa;
- 2.2.2.2 any one gender shall be deemed to include a reference to the other two genders; and
- 2.2.2.3 a natural person shall be deemed to include a reference to a legal or juristic person.
- 2.2.3 The expiry or termination of this Agreement shall not affect provisions of this Agreement, which expressly provide that they will operate after any such expiration or termination of this Agreement. Provisions of necessity shall continue to have been effective after such expiry or termination of this Agreement, notwithstanding that the clauses themselves do not expressly provide for this.
- 2.2.4 The rule of interpretation that a written agreement shall be interpreted against the party responsible for the drafting or preparation of that Agreement shall not apply.
- 2.2.5 Where figures are referred to in numerals and in words and there is any conflict between the two, the words shall prevail.
- 2.2.6 Any reference to any legislation is a reference to such legislation as at the Signature Date and as amended or re-enacted, from time to time.
- 2.2.7 If any provision in a definition is a substantive provision conferring any rights or imposing any obligations on any party, then notwithstanding that, it is only in the interpretation clause, effect shall be given to it as if it were a substantive provision in this Agreement.
- 2.2.8 The *eiusdem* generic rule shall not apply and accordingly, whenever a provision is followed by the word “including’ and specific examples, such as examples shall not be construed so as to limit the ambit of the provision concerned.

3 SECTION 3 CONDITIONS OF BID

	CONDITIONS	CONFIRMATION		
		Yes	No	If “No, indicate deviation
1	GENERAL			

1.1	Bidders must indicate a confirmation response against each paragraph in this part of Section 3 by marking the “Yes” box or by marking the “No” box. The Bidder must clearly state if a deviation from these conditions are offered and the reason there for. If an explanatory note is provided, the paragraph reference must be indicated in a supporting appendix to this part of the Bid submission. Answering questions or supplying detail by referring to other sections will not be accepted.			
1.2	In addition to marking the appropriate boxes in the Conditions of Bid and Contract, Bidders must also submit the relevant information as indicated and where required.			
1.3	Should Bidders fail to indicate a confirmation response by ticking the box, the Bidder will be deemed to have assented to the relevant condition.			
1.4	Bids not completed in this manner may be deemed non-responsive.			
1.5	The Post Office will not compensate a Bidder for any costs incurred in the preparation and submission of a Bid, or the negotiation of any contract or the Agreement, including the costs of any testing or auditing necessary to demonstrate that aspects of the Bid satisfy the evaluation criteria.			
1.6	The inclusion and/or acceptance of these conditions does not in any way whatsoever give rise to a presumption of a binding contract or agreement between the Post Office and the Bidder in respect of the Services.			
1.7	The Post Office reserves the right to amend and/or supplement these Conditions of Bid and Contract during the negotiation for inclusion into the Agreement and also reserves the right to include, in the Agreement any other specific terms and conditions that may arise out of the Bid and subsequent negotiation process.			
2	CONDITIONS OF BID AND CONTRACT			
2.1	The Conditions of Bid and Contract and instructions as well as the evaluation process/criteria have been noted and understood by the Bidder.			

2.2	Bidders must indicate that they have acquainted themselves with all the requirements stipulated in this Request for Bid and that they have noted the gate keeping criteria in Addendum 2, Part 1, and that they understand that Bids not meeting the short listing criteria will not be accepted for evaluation and will be deemed non-responsive.			
2.3	The Conditions of Bid as per Section 3, Part 1 of this Request for Proposal must be accepted.			
3	CONTRACT PERIOD			
3.1	<p>The Contract Period of the Agreement shall be as indicated in Annexure D, Part 3 of this RFP document. The Post Office shall be entitled in its sole and absolute discretion to extend the Contract Period (on such terms and conditions as may be agreed between the Parties and recorded in the Agreement) by giving the Service Provider at least three (3) months written notice to that effect, failing which the Agreement will automatically expire at the end of the Initial Term.</p> <p>Nothing contained herein shall be construed or give rise to a legitimate expectation on the part of the Service Provider that the Contract Period will be extended. The Agreement shall commence on the Effective Date or alternatively, as agreed in writing between the Parties during negotiations.</p> <p>Notwithstanding anything contained in the Agreement to the contrary the Post Office shall have the right to terminate the Agreement for its convenience by giving thirty (30) days notice in writing thereof to the Service Provider and the Service Provider shall have no claim against the Post Office as result thereof</p>			
4	BROAD BASED BLACK ECONOMIC EMPOWERMENT			

4.1	The Post Office promotes the principles and objectives of the BBBEE and has developed a procurement policy and strategy which the Service Provider shall be required at all times to comply with and be subject to.			
4.1.1	The Bidder warrants that it has correctly and truthfully reflected its BBBEE qualifications in the Bid. The Post Office will be entitled to conduct a due diligence exercise on the Bidder to determine its compliance with the BBBEE and deem the Bid non-responsive in the event of any non-compliance.			
4.1.2	<p>The Bidder acknowledges that the Post Office shall not allow any sort of fronting or any misrepresentations (as contemplated in the BBBEE) as to the Bidder's BBBEE contributor status and/or accreditation, which fronting/misrepresentation will constitute a breach of a material obligation of these Conditions of Bid and Contract.</p> <p>Any arrangement or conduct which appears to be fronting by the Bidder may be investigated by the Post Office. If the Post Office's investigation reveals that the Bidder is fronting, the Post Office shall be entitled to deem the Bid non-responsive and/or take the necessary legal measures against the Bidder as the Post Office may be advised.</p>			
4.2	In the event that the Bidder is a joint venture, the joint venture must comply with the following requirements:			
4.2.1	An approved contractual relationship must be established between all parties to the Joint Venture and a Joint Venture agreement must be submitted as part of the bid. Such Joint Venture agreement must bear the signature of all duly authorised persons from each entity.			
4.2.2	A Joint Venture will qualify for points for their BBBEE status level as a legal entity, provided that the entity submits their BBBEE status level certificate.			
4.2.3	A Joint Venture will qualify for points for their BBBEE status level an unincorporated entity, provided that the entity submits their consolidated BBBEE scorecard as if they were a group structure.			

4.2.4	Trusts and consortia will follow the same principles as the Joint Venture			
5	APPOINTMENT			
5.1	The Post Office shall appoint the Service Provider to provide the Services to the Post Office by means of an Agreement signed by both parties..			
5.2	Bidder shall be deemed to be the Post Office's appointed Service Provider for purposes of this Request for Proposal, with effect from the Effective Date (or such other date as may be agreed between the Parties during the negotiation process and recorded in the Agreement).			
5.3	The Service Provider accepts the appointment to provide the Services in accordance with the terms and conditions of the Agreement, these Conditions of Bid and Contract, this Request for Proposal and the Bid.			
6	RELATIONSHIP			
6.1	Nothing in the Agreement shall constitute, or be deemed to constitute a partnership or joint venture between the Parties. Furthermore the Service Provider acknowledges and agrees that its status under the Agreement is that of an independent service provider and its status and the status of its employees, agents and/or subcontractors shall in no way be deemed to be that of an agent or employee for the Post Office, for any purpose whatsoever, and the Service Provider shall have no authority or power to bind the Post Office or to contract in the name of the Post Office, or create a liability against the Post Office in any way or for any purpose.			
7	PRICE AND PAYMENT			
7.1	The Contract Price is the amount, agreed to by both parties during contract negotiation process, which the Post Office shall pay to the Service Provider for the Services rendered in terms of the Agreement.			
7.2	The Contract Price for the Services provided by the Service Provider to the Post Office shall be exclusive of VAT.			

7.3	At the end of every month, or agreed period, the Service Provider shall address and deliver an invoice and a schedule setting out the Services rendered to the Post Office's Contact Person.			
7.4	The Post Office shall pay the amount reflected on the invoice once the Post Office has verified that the Services set out in the schedule have been rendered and the invoice amount has been approved by the Post Office.			
7.5	Payment shall, subject to clauses 7.3 and 7.4 above, be made to the Service Provider thirty (30) days after the Post Office Contact Person actually receives the invoice unless an unconditional discount is allowed for early settlement.			
7.6	All payments shall, if applicable, be transferred by the Post Office to the Service Provider, electronically into the Service Provider's bank account, the details of which shall be notified by the Service Provider to the Post Office's Contact Person.			
7.7	The Parties shall in good faith negotiate any proposed Contract Price Adjustment applicable to the Contract Price the terms of which shall be recorded in the Agreement.			
7.8	The Service Provider shall comply with the VAT Act.			
7.9	Notwithstanding any other provision in the Agreement, the Post Office shall be under no obligation to make any payment to the Service Provider in respect of an invoice submitted to the Post Office which, in the reasonable opinion of the Post Office does not comply with the VAT Act. The Post Office shall not be liable for any costs incurred by the Service Provider as a result of such late and/or non-payment.			
8	OTHER EXPENSES OR COSTS			
8.1	Apart from the Contract Price, all other expenses or costs incurred by the Service Provider in the execution and implementation of the Agreement shall be borne by the Service Provider, unless the additional expenses or costs were agreed to in writing by the Post Office.			

8.2	In the event that the Post Office requires the Service Provider to render additional services incidental to the Services, the Parties shall negotiate the terms and the conditions of rendering the additional services. The agreement for the additional services shall not be of any force or effect unless reduced to writing and signed by both Parties.			
9	SERVICE LEVELS			
9.1	The Service Provider recognises that the Post Office has entered into the Agreement relying specifically on the Service Provider's representations regarding Service levels including, inter alia:			
9.1.1	the availability of resources in accordance with the Services to be provided within the agreed time-frames;			
9.1.2	all Services rendered under the Agreement shall comply with the standards and specifications laid down by the Post Office from time to time. The Service Provider acknowledges that it has received a copy of such standards and specifications and the Services shall be executed by the Service Provider to the total satisfaction of the Post Office; and			
9.1.3	the Service Provider shall employ suitably qualified and trained employees to provide the Services to the Post Office in terms of the Agreement and shall allocate, in its discretion, employee resources in accordance with the technical skill and knowledge required, provided that any exercise of such discretion by the Service Provider shall not negatively impact on the provision of the Services by the Service Provider to the Post Office.			
10	PENALTIES			
10.1	Should the Service Provider fail to comply with its obligations in terms of the Agreement the Post Office may:			
10.1.1	impose a penalty on the Service Provider; and/or			
10.1.2	exercise its rights in terms of clause 3.2, or 20 and/or 21;			

10.2	An election of any of the above by the Post Office shall not constitute a waiver by the Post Office of any other rights which the Post Office might have in terms of the Agreement, (as may be permitted by law).			
10.3	Should the Post Office elect to impose a penalty on the Service Provider, the Post Office shall provide the Service Provider with a written notice requiring the Service Provider to remedy the default within five (5) days from the date of delivery of the notice. Should the Service Provider fail to remedy the default within five (5) days after receiving the notice then the Post Office shall be entitled, without prejudice to any alternative or additional right of action or remedy available to the Post Office and without further notice, to levy a penalty for every day or part thereof, which shall elapse between the end of the periods specified for performance, or an extended period reduced to writing and signed by the Parties, and the actual date of completion, at a rate of 10% (ten percent) of the Contract Price, which penalty amount/s the Post Office shall be entitled to set-off against any payments made by it to the Service Provider.			
10.4	Should the Service Provider fail to deliver the Services due to the Post Office's default, the Post Office shall be deemed to have waived its rights to impose the aforesaid penalty in that particular instance.			
10.5	Should there be a dispute as to whether: the failure to deliver was caused by the Post Office or was the Service Provider's fault; or the Post Office is entitled to impose the penalty then such dispute shall be dealt with in accordance with clause 21.			
11	CONTACT PERSONS			
11.1	The Services to be rendered by the Service Provider will be supervised by the Post Office's Contact Person.			
11.2	Either Party may substitute a Contact Person, at its discretion, provided that each Party shall give the other Party reasonable written notice of such substitution and will provide replacement employees of equivalent			

	ability. Without derogating from the foregoing, should either Party replace a Contact Person for any reason whatsoever, it shall ensure, to the greatest extent possible in the circumstances, that a suitable period of hand-over and overlap takes place, at its cost, between the proposed and the incumbent Contact Person.			
11.3	The Contact Persons shall liaise and update each other on the progress of the Services rendered and shall endeavour to resolve and remedy any problems or disputes that may arise in relation to the Services and/or the Agreement.			
12	THE SERVICE PROVIDER'S EMPLOYEES			
12.1	Liability for Criminal Acts of Employees			
12.1.1	The Service Provider shall be liable to the Post Office for any loss that the Post Office or any third party may suffer as a result of any theft, fraud or other criminal act of any employee of the Service Provider.			
12.2	Character of Employees			
12.2.1	Due to the nature of certain aspects of the Services and the position of trust which employees of the Service Provider will fulfill, the Service Provider hereby undertakes to use its best commercial endeavours to ensure that it only employs employees who are fit and proper persons who display the highest standards of personal integrity and honesty and who have not, to their knowledge, been convicted of any crime that carries a jail sentence without the option of paying a fine, or who fall within the category of persons contemplated in section 218(1)(c) and/or section 218(d) of the Companies Act, No 61 of 1973, as amended.			
12.2.2	The Service Provider shall, at its own cost, conduct all reasonable background checks into employees prior to utilizing same to provide the Services to confirm compliance with clause 12.2.1.			
13	STATUTORY AND EMPLOYMENT ISSUES			

13.1	<p>The Service Provider warrants that it complies with and has full knowledge of all relevant statutory, collective agreements and other stipulations applicable to the relationship with its employees and its relationship with the Post Office. This includes, but is not limited to, the Labour Relations Act 66 of 1995, the Basic Conditions of Employment Act 75 of 1997, the Employment Equity Act 55 of 1998 and any other applicable employment legislation currently in force or which may come into force during the currency of the Agreement ("Employment Legislation"). The Service Provider warrants further that it is not and will not in future be in contravention of any of the provisions of any such Employment Legislation and in the event of such contravention, the Service Provider shall immediately take all steps to remedy such contravention. If the Post Office advises the Service Provider of any contravention of such Employment Legislation in writing, the Service Provider shall, within 10 (ten) days after receipt of such notice (or within such extended period as may be reasonable in the circumstances, as notified by the Post Office in writing), take all steps necessary to remedy such contravention and shall keep the Post Office informed regarding the steps taken and the implementation and the result thereof.</p>			
13.2	<p>The Service Provider indemnifies the Post Office and holds it harmless against any loss and/or damage arising from any and all claims which may, in respect of any contravention of such Employment Legislation be made against the Post Office, including, without limitation, the actual costs incurred by the Post Office in defending such claims.</p>			
13.3	No employment			

13.3.1	The Service Provider warrants that none of its employees shall be regarded as employees of the Post Office. The Service Provider shall assist to defend and bear all costs in the event that the Post Office is required to defend a claim, whether civil or employment related, instituted against it by the Service Provider's employees. Should the Post Office defend the matter, the Service Provider hereby indemnifies the Post Office against all and any costs (including attorney and own client costs) which may be incurred by or awarded against the Post Office as a consequence of the defense of the claim.			
13.4	Occupational Health and Safety Act 85 of 1993 ("OHASA")			
13.4.1	The Service Provider shall be responsible for ensuring that it complies with all the provisions of OHASA and it indemnifies the Post Office against any claim, loss and/or damages which may arise as a result of the Service Provider's non-compliance with OHASA.			
14	ACCESS			
14.1	The Post Office shall allow the Service Provider access to its premises, provided that:			
14.1.1	access is related to the Services; and			
14.1.2	the Service Provider, its employees, agents, sub-contractors or any other third party related to the Service Provider adhere to all rules, regulations and instructions applicable at the Post Office's premises.			
14.2	The Service Provider is required to provide the Post Office with a monthly roster of all persons requiring access to the Post Office's premises during any given month, including names and identity numbers of such persons.			
14.3	The Post Office shall grant all persons who are listed in the roster access to Post Office's premises only to the extent that such access is necessary for performance of the Services.			

14.4	The Service Provider shall ensure that all persons listed on the roster shall at all times when entering the Post Office' premises comply with all rules, laws, regulations and policies of the Post Office. The Service Provider indemnifies and holds harmless the Post Office against any loss and/or damages incurred by the Post Office as a result of the failure of the Service Provider to ensure compliance as contemplated above with such rules, laws, regulations and policies of the Post Office (including, without limitation the actual costs incurred by the Post Office in defending such claims).			
15	INSPECTION			
15.1	The Post Office or its Authorised Representatives and/or Contact Person may at any time inspect or audit the Services provided by the Service Provider in terms of the Agreement.			
15.2	If the Post Office is, at any time, dissatisfied with the Service Provider's performance of the Services then the Post Office shall be entitled to notify the Service Provider in writing thereof.			
15.3	The Service Provider shall immediately upon receipt of written demand from the Post Office, remedy the matter, within five (5) days from the date of receipt of the notice, free of charge.			
15.4	The Service Provider's Records			
15.4.1	The Service Provider shall ensure that complete and accurate records of the Services rendered are kept, in a safekeeping area, for a minimum period of five (5) years after the Agreement is terminated, including, without limitation, copies of all reportable incidents which are captured by the system.			
15.4.2	To enable the Post Office to determine whether the Services rendered in terms of the Agreement comply with the provisions thereof, the Service Provider shall:			
15.4.2.1	provide the Post Office with such information as it may reasonably require from time to time;.			

15.4.2.2	allow the Post Office to inspect and take copies of any records of the Service Provider relating to the Services, including but not limited to all hardware, software, data, information, visuals, procedures, event logs, transaction logs, audit trails, books, records, contracts and correspondence; and/or			
15.4.2.3	allow the Post Office or its Authorised Representatives and/or Contact Person to conduct interviews with any of the Service Provider's employees, agents, sub-contractors or any other third party related to the Service Provider and the provision of the Services, subject to reasonable notice being given to such person.			
15.5	The Service Provider to provide reasonable Assistance			
15.5.1	Where any information required for inspection in terms of this clause 15 is kept by means of a computer, the Service Provider shall give the Post Office reasonable assistance required to facilitate inspection and the making of copies of the information in a visible and legible form or to inspect and check the operation of any computer and any associated apparatus or material that is or has been in use in connection with the keeping of the information and/or the performance of the Services.			
15.5.2	Any information required to be provided to the Post Office pursuant to this clause 15 shall be provided by the Service Provider in such form (including a form otherwise than in writing) as the Post Office may reasonably specify.			
15.5.3	The cost of any inspection contemplated in terms of this clause 15 shall be for the account of the Post Office at a rate levied on the Post Office in accordance with the terms and conditions of the Promotion of Access to Information Act 2 of 2000 and the Regulations promulgated thereunder.			

15.6	The inspection contemplated in the Agreement will be conducted during normal business hours save where the circumstances justify it, on reasonable notice to the Service Provider with the minimum interference in the provision of the Services and the Service Provider's other operations.			
16	CONFIDENTIALITY			
16.1	The Bidder/Service Provider acknowledges that during negotiations and meetings with the Post Office and for the purposes of negotiating/concluding and/or carrying out their obligations in terms of the Agreement, the Service Provider may gain access to the Confidential Information.			
16.2	The Bidder/ Service Provider agrees to hold and retain such Confidential Information in the strictest confidence without limiting the foregoing, whether orally, visually or by reason of inspection of documentation or other matter, to prevent any copying thereof by whatever method and not to make use thereof other than for the purpose of the Request for Bid, the Bid, the negotiations, the Agreement and the performance of the Services and to release it only to such properly authorised directors, employees or third parties requiring such information for the purpose thereof.			
16.3	The Bidder/Service Provider further agrees not:			

16.3.1	to disclose such Confidential Information to any person whomsoever other than as may be required by law or to the Bidder/Service Provider's employees (which shall include any directors) agents and/or professional advisors and/or sub-contractors so as to enable them to consider whether or not to enter into further negotiations or a formalised business relationship or for purposes of performing the Services. Before revealing such Confidential Information to any such employees, agents and/or, professional advisors and/or sub-contractors, the Bidder/Service Provider undertakes to ensure that its employees, agents and/or professional advisors and/or sub-contractors sign a similar undertaking in favour of the Post Office and that they are aware of the confidential nature of the information being made available to them. The Bidder/Service Provider undertakes to ensure that its employees, agents, professional advisors or sub-contractors will observe and comply with their obligations in respect thereof, whether or not they remain employees, agents, professional advisors or sub-contractors of the Service Provider; and/or			
16.3.2	to directly or indirectly to use for its benefit or the benefit of any other person such Confidential Information other than for the purposes of the Agreement and the performance of the Services, unless any part of such information is or becomes public knowledge and in the public domain by reason of becoming public property other than through an act or omission on the part of the Bidder/Service Provider or the employees, agents, sub-contractors and/or professional advisors contemplated in this clause, and such Confidential Information as the Service Provider is able to show came lawfully into its possession from a third party lawfully possessing such Confidential Information.			
16.3.3	For the purposes of the foregoing:			

16.3.3.1	disclosures made which are specific, e.g. design practices or techniques shall not be deemed to be within the foregoing exceptions merely because they are encompassed by general disclosures which are generally available to the public; and			
16.3.3.2	any combination of features shall not be deemed to be within such exception merely because individual features thereof are generally available to the public.			
16.4	The Bidder/Service Provider acknowledges that the aforesaid Confidential Information is being made available to it solely for the purpose of the Agreement and for no other purpose whatsoever, and that such information would not have been made available but for the undertaking in this clause 16 .			
16.5	For purposes of this undertaking "Confidential Information" shall in addition to the meaning of same provided in the Glossary, include letters, telexes, telefaxes, agreements, formulae and processes communicated, created, developed or discovered whilst participating in this Request for Bid, negotiating the terms of the Agreement or during the period of the Agreement.			
16.6	This undertaking shall remain valid for a period of five (5) years after the termination of the Agreement for whatever reason.			
17	FORCE MAJEURE			
17.1	For the purposes of the Agreement, " Force Majeure " shall mean civil strife, riots, insurrection, sabotage, national emergency, acts of war of public enemy, rationing of supplies, flood, fire or any other like forces of nature beyond the reasonable control of the party claiming Force Majeure and comprehended in the terms thereof.			
17.2	If Force Majeure causes delays in or failure or partial failure of performance by a Party of all or any of its obligations under the Agreement, the Agreement shall be suspended for the period agreed in writing between the Parties below.			

17.3	In the event of circumstances arising which a Party believes constitutes a Force Majeure ("the Affected Party") then such Affected Party shall send, within five (5) days from the interrupting circumstances, a written notice specifying the nature and date of commencement of the interrupting circumstances to the other Party. The Parties shall agree, in writing, to suspend the implementation of the Agreement for a specific period ("Agreed Period").			
17.4	In the event that both Parties reasonably believe that the Affected Party shall be unable to continue to perform its obligations after the Agreed Period, then either Party shall be entitled to terminate the Agreement without further notice to the other Party.			
18	CESSION			
18.1	The Post Office shall be entitled to cede, assign and/or delegate any of its rights and obligations in terms of the Agreement to any third party.			
18.2	The Service Provider shall not be entitled to cede any of its rights or delegate any of its obligations in terms of the Agreement without the prior written consent of the Post Office.			
19	CHANGE OF CONTROL / CIRCUMSTANCE			
19.1	The Service Provider shall notify the Post Office, in writing, of any change in the Service Provider's shareholding or membership or any change in the Service Providers' subsidiary companies or holding company or its affiliates (such change shall be considered a material change in the constitution and identity of the Service Provider). The Post Office may, in its sole and absolute discretion, terminate the Agreement upon becoming aware of such material change.			

19.2	The Parties agree that should there be a change as envisaged in clause 19.1 above, the Service Provider will no longer exist and a new third party/entity shall have been constituted. In this regard, such third party shall not be entitled to inherit any of the Service Provider's rights and obligations in terms of the Agreement unless agreed to in writing by the Post Office.			
19.3	The Service Provider shall further notify the Post Office of any changes of any circumstance, which might have led the Post Office to appoint the Service Provider to provide the Services. In the event that any change of any circumstances occurs and the Service Provider fails to inform the Post Office of such a change, the Service Provider shall be deemed to have breached a material term of the Agreement and the Post Office shall notwithstanding any other provision in the Agreement, be entitled to cancel the Agreement without any prior notice to the Service Provider.			
20	DEFAULT			
20.1	Save as otherwise provided in the Agreement, should either Party commit a breach of any term of the Agreement ("the Defaulting Party") then the affected party ("Aggrieved Party") shall be entitled to inform the Defaulting Party in writing to remedy such failure or default within fourteen (14) days and should the Defaulting Party fail to remedy the breach within fourteen (14) days after receipt of the notice the so Aggrieved Party shall be entitled, without prejudice to any of its rights under the Agreement or other remedy for breach of contract to:			
20.1.1	immediately terminate the Agreement without giving written notice to the Defaulting Party and to claim damages (which shall include legal costs on an attorney/client scale); OR			
20.1.2	request specific performance and claim damages (which shall include legal costs on an attorney/client scale).			
21	DISPUTES			

21.1	Save for any other clause in the Agreement which provides for its own remedies, should any dispute arise between the Parties in respect of or pursuant to the Agreement, including, without limiting the generality of the foregoing, any dispute relating to:			
21.1.1	the interpretation of the Agreement			
21.1.2	the performance of any of the terms of the Agreement			
21.1.3	any of the Parties' rights and obligations			
21.1.4	any procedure to be followed			
21.1.5	the termination or cancellation or breach of the Agreement			
21.1.6	the rectification or repudiation of the Agreement then any Party may give the other Party written notice of such dispute, in which event the provisions below shall apply.			
21.2	Within seven (7) days of the declaration of such dispute, the Parties' Chief Executive Officers or their nominated persons shall meet in the spirit of goodwill and endeavour to resolve the dispute, failing which (and without prejudice to any other alternative dispute resolution to which the Parties may agree, either prior to or concurrently with the arbitration) clause 21.3 0 below shall apply.			
21.3	If the Parties are unable to resolve the dispute within fourteen (14) days of the notice of the dispute (or such longer period as they may have agreed to in writing), then either Party may, on written notice to the other Party, require that the dispute be submitted to and decided by arbitration, in terms of the Arbitration Act, 42 of 1965 of South Africa ("the Arbitration Act").			
21.4	The arbitration shall be held under the provisions of the Arbitration Act provided that the arbitration shall be:			
21.4.1	held in Pretoria; and			

21.4.2	in accordance with such formalities and/or procedures as may be settled by the arbitrator and may be held in an informal and summary manner, on the basis that it shall not be necessary to observe or carry out the usual formalities of procedure, pleadings and/or discovery or in respect of rules of evidence.			
21.5	If the arbitration is:			
21.5.1	a legal matter, then the arbitrator shall be a practicing advocate or a practicing attorney of not less than ten (10) years' standing;			
21.5.2	an accounting matter, then the arbitrator shall be a practicing chartered accountant of not less than ten (10) years' standing; or			
21.5.3	any other matter, then the arbitrator shall be any independent person agreed upon between the Parties.			
21.5.4	Should the Parties fail to agree on an arbitrator within seven (7) days after the arbitration has been demanded, then the arbitrator shall be nominated at the request of either of the Parties, by the president for the time being of the Law Society of the Northern Provinces.			
21.5.5	Should the Parties fail to agree on an arbitrator within seven (7) days after the arbitration has been demanded, then the arbitrator shall be nominated at the request of either of the Parties, by the president for the time being of the Law Society of the Northern Provinces.			
21.5.6	Should the Parties fail to agree whether the dispute is of a legal, accounting or other nature within seven (7) days after the arbitration has been demanded, then it shall be deemed to be a dispute of a legal nature.			
21.6	The arbitrator may:			
21.6.1	investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with the dispute and for that purpose, shall have the widest powers of investigating all documents and records of any party having a bearing on the dispute;			
21.6.2	interview and question under oath the parties of any of their representatives;			

21.6.3	decide the dispute according to what he considers just and equitable in the circumstances; and			
21.6.4	make such award, including an award for specific performance, damages or otherwise, as he in his discretion may deem fit and appropriate.			
21.7	The arbitration shall be held as quickly as possible after it is demanded, with a view to it being completed within thirty (30) days after it has been so demanded.			
21.8	The arbitrator's decision and award shall be in writing with reasons and shall be final and binding upon the Parties.			
21.9	The arbitrators award may, on application by either Party to a court of competent jurisdiction and after due notice is given to the other Party, be made an order of court.			
21.10	Notwithstanding the provisions of this clause 21, in the event of either Party having a claim against the other Party for a liquidated amount or an amount which arises from a liquid document, or for an interdict or other urgent relief, then the other Party having such a claim shall be entitled to institute action therefore in a court of law rather than in terms of the above clauses, notwithstanding the fact that the other Party may dispute the claim.			
22	GOVERNING LAW			
22.1	The law governing the Agreement, including without limitation its interpretation, validity, existence or termination for any reason and all disputes out of the Agreement, is the law of the Republic of South Africa and subject to clause 21, the Parties submit to the exclusive jurisdiction of the South African Courts.			
23	PROPRIETARY RIGHTS			
23.1	Ownership in all Intellectual Property developed, discovered or communicated by either Party, as part of the Agreement and incidental to the delivery of the Services, including all documentation pertaining to the Request for Bid, the Service Provider's Bid and the Agreement, shall vest in the Post Office. Upon termination of the Agreement,			

	all such records or documents, including copies thereof, shall be left with the Post Office or, in so far as they are in possession of the Service Provider, the same shall be handed over to the Post Office or shall be destroyed at the Post Office's written request.			
24	LIMITATION OF LIABILITY			
24.1	The Service Provider shall be liable for any damages and/or losses and/or claims of whatsoever nature howsoever arising incurred and/or suffered by the Post Office as a result of any breach of the Agreement whether in contract, delict or otherwise or arising as a result of negligence, wilful default or otherwise of the Service Provider and/or its employees and/or agents and/or sub-contractors and or any other third party related to the Service Provider and the provision of the Services.			
24.2	The Service Provider's total liability in terms of the Agreement shall be limited to three (3) times the amount actually paid by the Post Office to the Service Provider under the Agreement.			
24.3	The Service Provider shall not be liable to the Post Office or any cessionary or third party claiming through or on behalf of the Post Office for any indirect, special damages whatsoever or for any consequential or other loss or damages beyond the maximum liability of three (3) times the amount actually paid by the Post Office to the Service Provider under the Agreement			
24.4	The Post Office's total liability in terms of the Agreement shall be limited to an amount equal to the Contract Price. Notwithstanding the aforesaid, the Post Office shall not be liable to the Service Provider for any indirect, special and/or consequential damages of whatsoever nature and howsoever arising.			
25	THE SERVICE PROVIDER'S WARRANTIES AND INDEMNITIES			
25.1	Service Warranties			

25.1.1	The Service Provider warrants that in relation to each Service provided in terms of the Agreement it will provide the Services:			
25.1.1.1	with promptness and diligence and in a skilful manner and in accordance with the practices and professional standards of operations performing services similar to the Services.			
25.1.1.2	in terms of the standards and specifications that are laid down by the Post Office from time to time.			
25.1.1.3	it will use and adopt (and ensure that its sub-contractors use and adopt) any standards, processes and procedures required under the Agreement and/or the Post Office.			
25.1.1.4	the Service Provider warrants that it shall employ and/or contract suitably qualified and trained persons to provide the Services to the Post Office and it shall allocate such persons in accordance with the technical skill and knowledge required.			
25.2	Indemnity			
25.2.1	The Service Provider shall indemnify the Post Office against any claim which may be brought against the Post Office by any third party arising from or pursuant to the Agreement as a result of the Service Provider's breach of any of the provisions of the Agreement, provided that the Post Office shall notify the Service Provider in writing within a reasonable time of the Post Office becoming aware of any such claim to enable the Service Provider to take steps to contest it and shall provide the Service Provider with such reasonable assistance as may be necessary to enable the Service Provider to defend the claim to the extent only that it is in a position to render such assistance. The Service Provider may, within five (5) days of receipt of written notice from the Post Office aforesaid, elect in writing to contest such a claim in the name of the Post Office and shall be entitled to control the proceedings in regard thereto. The Service Provider indemnifies the Post Office against all and any costs (including attorney and own client costs) which may be incurred by or awarded against the Post Office as a			

	consequence of the Post Office's and/or the Service Provider's defense of the claim.			
26	INSOLVENCY			
26.1	Should the Service Provider seek to compromise with its creditors, or if execution is issued against the Service Provider by virtue of any judgment, or if the Service Provider is placed under judicial management, or commences to be wound up in a liquidation that is not merely a voluntary liquidation for the purpose of reconstruction, then the Post Office may, without prejudice to any of its rights in terms of the Agreement or common law, forthwith terminate the Agreement without notice to the Service Provider.			
27	CONSORTIA/ JOINT VENTURES			
27.1	A consortium / joint venture of Service Providers will be allowed.			
27.2	Consortia/ joint ventures are required to have a signed written agreement, which should be submitted with their Bid.			
27.4	The joint venture agreement must confirm the joint and several liability of the parties to the joint venture, to the Post Office, for the performance of the Agreement, which party will be the Contracting Entity and have authority to bind the parties and that the parties shall not alter their composition or legal status or the composition or legal status of the joint venture without the prior written consent of the Post Office.			
28	ADDITIONAL INFORMATION REQUIREMENTS			
28.1	During evaluation of the Bids, additional information may be requested in writing from Bidders. Replies to such request must be submitted, within three (3) Business Days or as otherwise indicated. Failure to comply may lead to your Bid being disqualified.			
28.2	No additional information will be accepted from any individual Bidder without such information having been requested by the Post Office.			

29	FORMAT OF BIDS			
29.1	Bidders must complete all the necessary Bid documents and undertakings required in this Request for Bid. Bidders are advised that their proposal should be concise, written in English and simply presented.			
29.2	Bidders are to set out their response in the format prescribed hereunder.			
29.3	Part 1: Conditions of Bid			
29.3.1	Bidders must complete and return the Conditions of Bid.			
29.3.2	Failure to complete and return the Conditions of Bid may deem a Bid to be non-responsive.			
29.4	Part 3: Pricing Schedule			
29.4.1	All costs related to this assignment are to be allowed for in the Pricing Schedule and in the formats prescribed and must be returned as part of the Bid.			
29.4.2	<u>As price will be evaluated separately, Bidders are not allowed to indicate the price OR refer to the price anywhere in the Bid submission except for the Pricing Schedule.</u>			
29.4.3	Bidders have to indicate the Bidder's details as required in the Pricing Schedule.			
29.4.4	A Bid containing an incomplete Pricing Schedule will be deemed non-responsive.			
29.4.5	Note:VAT must be included and be shown separately.			
29.6	Part 4: SARS Tax Clearance Certificate(s)			
29.6.1	An original valid SARS Tax Clearance Certificate must accompany the Bid and must be valid at the date of closing of the Bid. In case of a consortium/ joint venture, or where sub-contractors are utilised, an original valid SARS Tax Clearance Certificate for each consortium/ joint venture member and/or sub-contractor (individual) must be submitted.			

29.6.2	Where no tax clearance exists for any party noted above, a letter from SARS needs to be provided for that party, indicating that satisfactory arrangements have been made with SARS to meet the party's tax obligations.			
29.6.3	A bid which fails to comply with this clause 29.6 will be deemed non-responsive.			
29.7	Declaration of Interest Annexure 'L'			
29.7.1	Each party to the Bid must complete and return the Declaration of Interest form. In the case of a consortium/ joint venture, or where sub-contractors are utilised, a Declaration of Interest for each consortium/ joint venture member and/or sub-contractor (individual) <u>must</u> be submitted.			
29.7.2	A Bid which fails to comply with this clause 29.7 will be deemed non-responsive.			
29.8	Declaration of Bidder's past Supply Chain Management practices Annexure 'M'			
29.8.1	Each party to the Bid must complete and return the "Declaration of Bidder's past Supply Chain Management practices". In the case of a consortium/ joint venture, or where sub-contractors are utilised, a Declaration of Bidder's past Supply Chain Management practices for each consortium/ joint venture member and/or sub-contractor (individual) must be submitted.			
29.8.2	A Bid which fails to comply with this clause 29.8 will be deemed non-responsive.			
29.9	Organisational structure/ Ownership of the Bidder			
29.9.1	In order to verify potential interest between Bidders and the Post Office, each party to the Bid is required to submit the following information:			
29.9.1.1	A detailed breakdown of ALL the shareholders in their entity per name and surname, percentage shares held, race and gender.			
29.9.1.2	If shareholding is held by other companies, Bidders have to provide a detailed breakdown of the shareholding within those entities as per name and surname, percentage shares held, race and gender.			

29.9.1.3	Where the ownership is held by a trust or employee share scheme, Bidders have to provide a list of beneficiaries to the trust or participants in share scheme per name and surname, percentage (%) shares held, race and gender.			
29.10	Claim in terms of the BBBEE			
29.10.1	Each party to the Bid must provide proof, in the form of a certificate, of their level contributor status in terms of the B-BBEE. Such certificate must be issued by a dti, ABVA or SANAS accredited BBBEE verification or rating agency and must be valid at the closing date and time of the submission. Note: The Post Office reserves the right to request the contact details of the verification agency used.			
29.10.2	EME's that want to claim preferential points should submit an affidavit duly signed by Commissioner of Oaths.			
29.10.3	A trust, consortium or joint venture will qualify for points for their BBBEE status level as a legal entity, provided that the entity submits their BBBEE status level certificate			
29.10.4	A trust, consortium or joint venture will qualify for points for their BBBEE status level as an unincorporated entity, provided that the entity submits their consolidated BBBEE scorecards as if they were a group structure and that such a consolidated BBBEE scorecard is prepared for every separate tender			
29.10.5	Failure to submit the required proof of level contributor status will result in the Bidder scoring 0 (zero) points for BBBEE Level.			