

# THE SOUTH AFRICAN POST OFFICE SUPPLY CHAIN MANAGEMENT STANDARD: TERMS AND CONDITIONS

**RFQ 20/21/0018 I CAPE: PPE Equipment and products needed**

**Name of Bidder:** \_\_\_\_\_

**South African Post Office SOC Limited**

Registration No. 1991/005477/06

[Hereinafter referred to as "Post Office"]

## PART 1 – INTRODUCTION

### 1. DEFINITIONS

- 1.1 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 and cognate expressions bear corresponding meanings;
- 1.1.1 **"Agreement"** shall mean the SCM STC's, the Purchase Order, the RFQ Response and all other annexures attached thereto and hereto;
- 1.1.2 **"Business Day"** any day other than a Saturday, Sunday or official public holiday in South Africa as defined in the Public Holiday Act 36 of 1994;
- 1.1.3 **"Contact Person"** shall mean persons identified by the Parties as persons who are responsible for the execution of the Agreement and whose names are set out in the RFQ and the RFQ Response and who can be substituted in writing from time to time;
- 1.1.4 **"Confidential Information"** shall mean, in relation to the Party disclosing information ["Disclosing Party"] and the Party receiving such information ["Receiving Party"], all information [regardless of nature, type or form] that is [a] not publicly known including Commercial, financial, technical, Scientific and Research Information, Trade secrets, passwords, or other secret codes, information disclosed with the permission of third Parties in which such third Parties have confidentiality rights and information legally protected from disclosure and [b] may reasonably be regarded as being sensitive to the Disclosing Party, the unauthorized disclosure of which could reasonably be expected to cause harm or risk to the Disclosing Party, including in circumstances where that Party communicates such sensitivity to the other Party;
- 1.1.5 **"Commercial Terms"** means this Agreement excluding the Purchase Order;
- 1.1.6 **"Contract Period"** shall mean the period indicated as the contract period in the RFQ. In the event of a conflict between the RFQ and the Purchase Order, the Purchase Order will take precedence;
- 1.1.7 **"Contract Price"** shall mean the amount reflected as the price on the RFQ Response and on the Purchase Order. In the event of a conflict between the RFQ Response and the Purchase Order, the Purchase Order will take precedence;
- 1.1.8 **"Delivery Date"** shall mean the date that is reflected as the delivery date on the Purchase Order.
- 1.1.9 **"Effective Date"** shall mean, notwithstanding the Signature Date, the date on which the Goods and/or Services shall be supplied;
- 1.1.10 **"Goods"** shall mean goods to be provided and/or goods to be delivered by the Service Provider to the Post Office, as set out in the RFQ, RFQ Response, Purchase Order and Annexure "A";
- 1.1.11 **"Month"** shall mean a calendar month";
- 1.1.12 **"Parties"** shall mean Post Office and the Service Provider and **"Party"** shall mean either of them as the context requires;
- 1.1.13 **"Post Office"** shall mean the South African Post Office Limited, a public company with limited liability which is duly incorporated in accordance with the Company laws of the Republic of South Africa with Registration Number 1991/005477/06 herein represented by the Contact Person;
- 1.1.14 **"Purchase Order"** means a document titled Post Office Supply Chain Management, which is completed by the Contact Person with the purpose of ordering the Goods and/or Services;
- 1.1.15 **"RFQ"** means the request for quotation sent by the Post Office to various service providers requesting a quotation for the provision of Goods and/or Services as specified in the RFQ;
- 1.1.16 **"RFQ Response"** shall mean the written proposal submitted by a Vendor Service Provider to the Post Office in response to a RFQ;

- 1.1.17 “**Service and/or Delivery Areas**” shall mean the areas that are identified as the areas at which the Goods and/or Services must be provided and/or delivered, in terms of the RFQ;
- 1.1.18 “**Service Provider**” shall mean an entity which is reflected on the RFQ Response and the Purchase Order, the Purchase Order will take precedence;
- 1.1.19 “**Services**” shall services to be provided by the Service Provider to the Post Office, as set out in the RFQ, RFQ Response, Purchase Order and Annexure “A”;
- 1.1.20
- 1.1.21 “**Signature Date**” shall mean the date of signature of this Agreement by the last Party signing, provided both Parties sign this Agreement;
- 1.1.22 “**South Africa**” means the Republic of South Africa as constituted from time to time;
- 1.1.23 “**Vendor**” means Vendors who are registered as Vendors and who supply various goods and/or services to the Post Office;
- 1.2 Heading and sub-headings are inserted for information purposes only and shall not be used in the interpretation of this/these Agreement;
- 1.3 Unless the context clearly indicates a contrary intention, any word connoting:
- 1.3.1 Any gender or any singular shall be deemed to include a reference to other genders and the plural and vice versa;
- 1.3.2 A natural person includes juristic person and vice versa.
- 1.4 The expiration or termination of these STC’s will not affect those terms and conditions which expressly provide that they will operate after any such expiration or termination of this Agreement. Provisions of which of necessity must continue to have effect after termination or expiry of this Agreement shall continue to have effect after such expiration or termination or this Agreement, notwithstanding that the Clauses themselves do not expressly provide for this.
- 1.5 The rule of interpretation that a written Agreement shall be interpreted against the Party responsible for the drafting or preparation of the Agreement shall not apply.
- 1.6 Where figures are referred to in numerals and in words and there is any conflict between the two, the words shall prevail.
- 1.7 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.
- 1.8 If any provision in the definitions is a substantive provision conferring any rights or imposing any obligations on any Party, then notwithstanding that it is only in the definitions
- Clause, effect shall be given to it as if it were a substantive provision in this Agreement;
- 1.9 The *eiusdem generis* rule shall not apply and accordingly, whenever a provision is followed by the word “including” and specific examples, such examples shall not be construed so as to limit the ambit of the provision concerned.
- 1.20 The term defined in the definitions Clause above shall be construed as a binding provision of this Agreement, any rights conferred, and obligations imposed upon the Parties by such definitions shall be binding upon them.
- 2. RFQ**
- 2.1 The Post Office issued an RFQ requesting various service providers to issue quotations in respect of the costs to be incurred by the Post Office in purchasing the Goods and/or Services. The Service Provider has responded by issuing an RFQ Response to the RFQ.
- 2.2 The Service Provider has responded by issuing an RFQ Response to the RFQ.
- 2.3 The Post Office requires various Goods and/or Services to be carried out and/or delivered in the Service Area.
- 2.4 The Parties wish to enter into this Agreement, in terms of which the Service Provider shall provide the goods and/or Services in the Service Area, to the Post Office in accordance with the terms and subject to the conditions
- 3. BLACK ECONOMIC EMPOWERMENT**
- 3.1 The Post Office promotes the objects of the Broad-base Black Economic Empowerment Act no 53 of 2003, as amended from time to time, [“BEE Act”] and has developed a procurement policy in terms of which the Service Provider shall be required at all times to comply with and be subject to.
- 3.2 The Post Office reserves the right to complete a due diligence exercise on the Service Provider to determine compliance of the BEE component and make the necessary recommendation in the event of any non-compliance.
- 4. APPOINTMENT**
- 4.1 The Post Office hereby appoints the Service Provider, who accepts such appointment, to provide the Goods and/or Services in the Service Area in accordance with the terms and conditions of the Agreement.
- 5. RELATIONSHIP**
- 5.1 Nothing in this 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 this Agreement is that of an independent Service Provider and its Agreement is that of an independent Service Provider and its status shall in no way be deemed to be that of an agent or employee of the Post Office, for any purpose whatsoever, and the Service Provider shall have no authority or power to bind the Post Office, or create a liability against the Post Office in any way or for any purpose.

## 6. DURATION

6.1 Subject to Clause 23, this Agreement shall commence on the Effective Date and shall terminate on the last day of the Contract Period.

6.2 The Post Office shall be entitled to terminate the Agreement, by giving the Service Provider 30 [thirty] day written notice, without any penalty, charge or cost.

## 7. ORDERS AND DELIVERY

7.1 The Post Office will from time to time, please written orders by way of the Purchase Orders with the Service Provider in respect of Goods.

7.2 The Service Provider shall deliver the Goods on the date that is reflected as the Delivery Date on the Purchase Order. Should the Service Provider be unable to deliver the Goods on the Delivery Date, the Service Provider shall inform the Post Office of its inability to deliver and provide the Post Office with an alternative "Delivery Date".

7.3 In the event that the Service Provider is unable to deliver the Goods, three time in a rolling period of 6 [six] months, the Post Office shall be entitled to terminate this Agreement on notice to the Service Provider.

7.4 Upon delivery of the Goods by the Service Provider, a representative of the Post Office shall sign the delivery document provided by the Service Provider as acknowledgement of receipt, and not as acceptance that the Goods were received in good condition and/or of any terms and conditions of the delivery document. In the event of any conflict in the terms and conditions of this Agreement and a delivery note issued by the Service Provider, this Agreement will take precedence.

7.5 With 7 [seven] days after receipt of the Goods by the Service Provider, the representative of the Post Office shall verify that the Goods were received in accordance with the Purchase Order and without any defect. If there are any defect the Post Office shall advise the Service Provider

of the defect in writing, failing which, the Service Provider can assume that the Goods were received in good condition. In the event that the Goods are defective and such defect could not have been detected by a visual inspection by the Post Office, the Service Provider will replace the Goods, notwithstanding that the 7 [seven] day period has elapsed.

7.6 Risk and ownership in the Goods will pass to the Post Office on payment.

## 8. AMENDMENT OR CANCELLATION OF PURCHASE ORDER

8.1 The Post Office may, without cost, penalty or charge, cancel a Purchase Order, reschedule a Delivery or the Goods or change Delivery Address provided that it does so on 5 [five] days' notice in writing to the Service Provider.

## 9. PRICE AND PAYMENT

9.1 The Contract Price for the Goods and/or Services shall be the price that was quoted by the Service Provider in the RFQ Response, which was submitted to the Post Office. Pricing will be fixed for a minimum period of 12 [twelve] months. In the event that Contract Period exceeds 12 [twelve] months, any escalation in pricing must be included in the RFQ submission. Failing which an increase linked to the consumer price index will be imposed.

9.2 The Contract Price for the Goods and/or Services provided by the Service Provider to the Post Office is exclusive of *Value Added Tax No. 89 of 1991* ["the VAT Act"]

9.3 On the last day of each Month the Service Provider shall supply the Post Office with a Tax Invoice and a schedule setting out of the Goods and/or Service rendered.

9.4 The Service Provider shall deliver the Tax Invoice and Statement to the **Regional Accounts Payable Manager, cnr. Sophie De Bruyn & Jeff Masemola Street, Pretoria 0002**

9.5 The Post Office shall only be liable to make payment to the Service Provider of the amount reflected on the Tax Invoice once the Post Office's Contact Person has verified and approved that the Goods and/or Services set out in the schedule have been rendered and/or received.

- 9.6 No liability to pay shall arise until such time as the Goods and/or Services are verified and approved.
- 9.7 The Post Office shall pay the Service Provider within 30 [thirty] days following the verification and approval of the Goods and/or Services.
- 9.8 All payments shall be transferred, by the Post Office to the Service Provider, electronically into the Service Provider bank account, the details of which are provided below:  
 Bank: **STANDARD BANK**  
 Account number: **010547002**  
 Branch code: **010045**  
 Reference:
- 9.9 The Service Provider shall comply with the requirements of the VAT Act, failing which, may result in the late payment of the total amount of an invoice, by the Post Office to the Service Provider.
- 9.10 The Post Office shall not be liable for any costs, penalties or charges incurred by the Service Provider as a result of such late payment.
- 9.11 If, at any time, the Post Office disputes all or any of the Contract Price before payment of the invoice:
- 9.11.1 The Post Office shall notify the Service Provider within 30 [thirty] days after the date or receipt of the invoice, specifying the Post Office's reason for disputing the invoice;
- 9.11.2 The Post Office shall pay the Service Provider after the date of receipt of the relevant invoice the amounts that are not disputed by the Post Office; and
- 9.11.3 If the Parties cannot resolve the dispute within 7 [seven] days of notice given in accordance with Clause 9.11.1, either Party may escalate the matter for resolution in accordance with the Clause 24.
- 9.12 Payment of an invoice shall not prevent the Post Office from subsequently disputing all or any Contract Price in good faith whether during or after the term of this Agreement.
- 10. OTHER EXPENSES OR COST**
- 10.1 Apart from the Contract Price, all other expenses or costs incurred by the Service Provider in the execution and implementation of this Agreement shall be borne by the Service Provider.
- 10.2 In the event that the Post Office requires the Service Provider to render goods and/or services incidental to the Goods and/or Services listed on the RFQ, the Parties shall negotiate the terms and the conditions of rendering the additional goods and/or service.
- 10.3 The Agreement for the additional Goods and/or Services shall not be any force or effect unless in writing and signed by both Parties.

## PART 11 – SERVICE

### 11. SCOPE OF SERVICE

- 11.1 The Service Provider shall, for the duration of this Agreement, provide the Goods and/or Service as set out in the RFQ, upon receipt by the Service Provider of a Purchase Order. Notwithstanding that the Parties have signed these SCM STC's, the Service Provider will have no expectation of the procurement of any Goods and/or Services by the Post Office until such time as the Post Office issues a Purchase Order, subject to Clause 9.1.

### 12. CONTACT PERSON

- 12.1 The Services to be performed or Goods to be delivered by the Service Provider in terms of this SCM STC's will be supervised by the Post Office's Contact Person.
- 12.2 In accordance with Clause 1.1.3, the Parties notify each other, in writing from time to time, of the details of their nominated Contact Person.
- 12.3 The Contact Person shall liaise and update each other, on the progress of the Goods and/or Services rendered and shall endeavour to resolve and remedy any problems or disputes that may arise in relation to the Goods and/or Services.
- 12.4 Either Party may substitute a Contact Person at its discretion provided that each Party shall give the other Party reasonable notice of such substitution and will provide replacement Employees of equivalent ability. Without derogating from the afore going, 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 new and the incumbent Contact Person.
- 12.5 All Goods and/or Services rendered under these SCM STC's shall comply with the standards and specifications, if applicable, 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 Goods and/or Services shall be delivered / performed by the Service Provider to the total satisfaction of the Post Office in compliance with such standards and specifications. In addition the Service Provider deliver/perform

the Goods and/or Services in accordance with the general supervision and direction of the Post Office.

### 13. SERVICE LEVELS

13.1 The Service Provider recognizes that the Post Office has entered into this Agreement relying specifically on the Service Providers representation regarding service levels including, inter alia:

13.1.1 Capacity allocations in accordance with the Service to be provided;

13.1.2 All Goods and/or Services rendered under that 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 specification, and the Goods and/or Services shall be deliver/performed by the Service Provider to the total satisfaction of the Post Office in compliance with such standard and specifications.

13.1.3 The Service Provider shall employ suitable qualified and trained Employees to provide the Goods and/or Service to the Post Office in terms of this Agreement, and shall allocate, in its discretion Employees and 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 Goods and/or Services by the Service Provider to the Post Office.

### 14. PENALTIES

14.1 Should the Service Provider fail to comply with its obligation in terms of this Agreement, the Post Office may:

14.1.1 Exercise its right in terms of Clause 23 and/or Clause 24.

14.1.2 Alternatively impose a penalty on the Service Provider, and an election of any of the above by the Post Office shall not mean that the Post Office has waived any other rights which the Post Office might have in terms of this Agreement or at law.

14.1.2.1 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 5 [five] days from the date of delivery of the notice.

14.1.2.2 Should the Service Provider fail to remedy the details within 5 [five] days after receiving the notice then the Post Office shall be entitled, without prejudice to any alternative or additional right of acting or remedy available to the Post Office and without prejudice to any alternative or additional right of action or remedy available

to the Post Office and without further notice, impose a penalty, which penalty shall be a deduction of not less than 10% of the Contract Price.

14.2 Should the Service Provider fail to deliver the Goods and/or Services due to the Post Office's default, the Post Office shall waive its rights to impose the penalty.

14.3 Should there be a dispute as to whether;

14.3.1 The failure to deliver was caused by the Post Office or the Service Provider; or

14.3.2 Whether the Post Office is entitled to impose the penalty, then such dispute shall be dealt with in accordance with Clause 24.

### 15. ACCESS

15.1 The Service Provider shall allow the Post Office access to its premises, provided that:

15.1.1 Access is related to the Services; and

15.1.2 The Post Office adheres to all rules, regulations and instructions applicable at the Service Provider's premises

15.2 The Service Provider is required to notify the Post Office monthly in advance of the Employees who are listed in the roster, who will be attending the Post Office premises in the following month.

15.3 The Post Office shall grant the Service Provider and/or its Employees/personnel who are listed in the roster reasonable access to its premises to perform its obligations in terms of the Agreement.

15.4 The Service Provider and its Employees/personnel listed on the roster shall at all times when entering the Post Office's premises and/or Service Areas of the Post Office comply with all rules, laws, regulations and policies of the Post Office.

### 16. THE SERVICE PROVIDER'S PERSONNEL

16.1 Liability for criminal act of Employees

16.1.1 The Service Provider shall be liable to the Post Office and indemnify and hold harmless the Post Office against any loss that the Post Office or any third Party may suffer as a result of any theft, fraud or other criminal act undertaken by any of the Service Provider's Employees/personnel or other person for whom the Service Provider is responsible in law.

16.2 Character of Employees

- 16.2.1 Due to the nature of certain aspects of the Goods and/or Service and the position of trust which members of the Service Provider Employees will fulfil, the Service Provider hereby warrants that it only employs Employees who are fit and proper persons who display the highest standards of personnel integrity and honesty and who have not to their knowledge, being convicted of any crime.
- 16.2.2 The Service Provider shall at its own cost, conduct all reasonable background checks into members of Employees/personnel [including agents and contractors] prior to utilizing same to provide the Goods and/or Service in terms of this Agreement. The Service Provider will not deploy any person into the Post Office was not successfully cleared the background checks and/or criminal checks contemplated in this Clause 16.2.
- 17. STATUARY AND EMPLOYMENT ISSUES**
- 17.1 The Service Provider shall comply with all employment legislation.
- 17.1.1 The Service Provider warrants that it has full knowledge of all relevant statutory, collective and other stipulations applicable to the relationship with its personnel an its relationship with the Post Office including but not limited to:
- 17.1.1.1 The Labour Relations Act
- 17.1.1.2 The Basic Conditions of Employment Act, 1977
- 17.1.1.3 The Employment Equity Act, 1998, and
- 17.1.1.4 Any other applicable employment legislation currently in force.
- 17.1.2 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 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 legislation in writing, the Service Provider shall within 10 [ten] days after receipt of such notice, take all steps necessary to remedy such contravention and shall keep the Post Office informed regarding the steps taken, and the implementation and results thereof.
- 17.2 No Employment information
- 17.2.1 The Service Provider warrants that none of its personnel shall be regarded as Employees of the Post Office. The Service Provider shall assist to defend and bear all cost in the event that the Post Office is required to defend a claim, whether civil or employment related, instituted against it by the Service Providers personnel [including agents and contractors]. Should the Post Office defend the matter, the Service Provider hereby indemnifies the Post Office and hold the Post Office harmless 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 defence of the claim.
- 17.3 Occupational Health and Safety Act, 1993  
The Service Provider shall be responsible for ensuring compliance with all the provisions of the Occupational Health and Safety Act, 1993 and it indemnifies the Post Office against any claim which may be connected to or arise in respect of such Act by its personnel against the Post Office.
- 18. INSPECTION**
- 18.1 The Post Office and/or the Contact Person may at any time inspect the Goods and/or Service levels of the Post Office in terms of this Agreement.
- 18.2 If the Post Office is, at any time dissatisfied with the Service level then the Post Office shall notify the Service Provider in writing of the failure or default.
- 18.2.1 The Service Provider shall immediately upon receipt of written demand by the Post Office, remedy such failure or default, within 5 [five] days form the date of receipt of the notice free of charge.
- 18.2.2 Should the Service Provider fail to remedy the failure or default [referred to in Clause 18.2.1] then the Post Office shall have the right to impose the provisions of Clause 14, 23 and/or.
- 18.3 The Service Provider's Records.
- 18.3.1 The Service Provider shall ensure that complete and accurate records of the Goods and/or Services rendered to the Post Office are kept, in a safekeeping area for a period of 5 [five] years after this Agreement is terminated.
- 18.3.2 To enable the Post Office to determine whether the Goods and/or Services rendered in terms of this Agreement are being compiled with, the Service Provider shall:
- 18.3.2.1 Provide the Post Office with such information as it may reasonably require as it relates to the Goods and/or Services or this Agreement.
- 18.3.2.2 Allow the Post Office to inspect and take copies of any records of the Service Provider relating

- to the Goods and/or Services, including all hardware, software, data, information, visuals, procedures, event logs, transaction logs, audit trail, books, records, contracts and correspondence; and
- 18.3.2.3 Allow the Post Office or its authorized representatives to conduct interviews with any of the Service Providers Employees and/or contractors, subject to reasonable notice being given to the Service Provider.
- 18.4 The Service Provider to provide reasonable assistance
- 18.4.1 Where any information is required for inspection in terms of this Clause 18 is kept by means of a computer, the Service Provider shall give the Post Office reasonable assistance required to facilitate inspection and the taking 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 any material that is or has been in use in connection with the keeping of the
- 18.4.2 Any information required to be provided to the Post Office pursuant to this Clause 18 shall be provided by the Service Provider as the case may be at the Post Office's cost, in such form [including a form otherwise than in writing] as the Post Office may reasonably specify.
- 18.4.3 The cost of any inspection contemplated in terms of this Clause 18 shall be for the account of the Post Office unless any material irregularity or failure on the part of the Service Provider is determined by the Post Office in the course of such inspection, in which case the cost of the audit will be for the account of the Service Provider.
- 18.4.4 The inspection contemplated in this 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 to the provision of the Goods and/or Services and the Service Provider's after operations.

## **PART 111 – GENERAL**

### **19. CONFIDENTIALITY**

- 19.1 The Parties acknowledge that during negotiations and meetings with each other for the purpose of concluding and/or carrying out their obligations in terms of this Agreement, either Party may gain access to Confidential Information that may be of a secret and confidential nature, which is not available in the public domain.
- 19.2 The Parties hereby agree to hold and retain such Confidential Information in the strictest confidence without limiting the afore going, whether orally, visually or in computer language

or by reason of inspection of documentation or other matter, to prevent any copying thereof other than for the purpose of the negotiations and to release it only to such properly authorized directors, Employees or third Parties requiring such information for the purpose of the provision of the Goods and/or Services or this Agreement.

- 19.3 The Parties further agree not to disclose such Confidential Information to any person whomsoever other than as may be required by law or to their Employees [which shall include any Directors, Agents, Professional Advisors and/or Service Providers so as to enable the Parties to consider whether or not to enter into further negotiations or a formalized business relationship.
- 19.4 Before revealing such Confidential Information to any such Employees, Agents, Professional Advisors and/or Service Providers, the Parties undertake to procure that the Employees, Agents, Professional Advisors and/or Service Providers sign a similar confidentiality undertakings no less onerous than those contained in this Agreement in favour of the of the designated person and that they are aware of the confidential nature of the information being made available to them.
- 19.5 The Parties undertake to ensure that their employees will observe and comply with their confidentiality obligations contained in this Agreement, whether or not they remain employees.
- 19.6 The Parties will not directly or indirectly use for their benefit or the benefit of any other person any Confidential Information other than for the purposes contemplated in this Agreement unless any part of such information is or becomes public knowledge and is in the public domain by reason of becoming public property other than through and act or omission on the part of the other Party restrained in terms of this Agreement or the Employees, Agents, Professional Advisors and/or Service Providers, the Parties undertake to procure that the Employees, Agents, Professional Advisors and/or Service Providers contemplated in this Clause, or such Confidential Information as the Parties are able to show came lawfully into their

- possession from a third Party lawfully possessing such Confidential Information.
- 19.7 For the purpose of the foregoing 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 or in the other Party's possession; any combination of features shall not be deemed to be within such exception merely because individual features thereof are generally available to the public or in other Party's possession.
- 19.8 The Parties acknowledge that:
- 19.8.1 The aforesaid Confidential Information is being made available solely for the purpose of this Agreement and for no other purpose whatsoever, and that such Confidential Information would not have been made available but for this undertaking: and
- 19.8.2 For the purpose of this undertaking "Confidential Information" shall without detracting from the general meaning, include letters, telexes, telefaxes, Agreements, formulae, processes and manufacturing methods, inventions or patents whether actual or proposed and whether in writing or otherwise or any information that is or may be of value to any of us whether directly or indirectly.
- 20. FORCE MAJEURE**
- 20.1 For the purpose hereof, "force majeure" shall mean strikes, lock-outs, civil strife, Riots, insurrection, sabotage, national emergency, acts of war of a 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. If force majeure causes delays in or failure or partial failure of performance by a Party or all or any of its obligations hereunder, this Agreement shall be suspended for a period agreed in writing between the Parties.
- 20.2 In the event of interrupting circumstances arising which a Party believes to be force majeure [the "Affected Party" then such
- Affected Party shall send, within 5 [five] days from the interrupting circumstances, a written notice to the other Party of the interrupting circumstances specifying the nature and date of commencement of the interrupting event to the other Party. The Parties shall agree, in writing to suspend the implementation of this Agreement for a specific period ["Agreed Period"].
- 20.3 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 this Agreement on notice to the other Party.
- 20.4 The Party whose performance is interrupted by the force majeure shall be entitled, provided that such Party shall give written notice to that effect to, to extend the period of this Agreement by a period equal to the time that its performance is so prevented.
- 21. CESSION**
- 21.1 The Post Office shall be entitled to cede and assign any of its rights and obligations in terms of this Agreement to any third Party.
- 21.2.1 The Service Provider shall not be entitled to cede or assign or transfer or in any other way alienate its rights and obligation in term of this Agreement without the period written consent of the Post Office.
- 22. CHANGE OF CONTROL / CIRCUMSTANCE**
- 22.1 The Service Provider shall notify the Post Office in writing of any change in the Service Providers 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.
- 22.2 The Post Office may terminate this Agreement upon becoming aware of such material change.
- 22.3 The Parties agree that should there be a change as envisaged in this Clause 22, the Service Provider will no longer exist and a new third Party/entity shall have been constituted. In this



- regards, such third Party shall not be entitled to inherit any of the Service Providers rights and obligations in terms of this Agreement.
- 22.4 The Service Provider shall notify the Post Office of any changes of the circumstances which might have led the Post Office to appoint the Service Provider to provide Goods and/or 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 Providers shall be deemed to have breached a material term of this Agreement and the Post Office shall be entitled to cancel the Agreement without any prior notice.
- 23. DEFAULT**
- 23.1 Subject to Clause 24, should either Party commit a breach of any terms of this 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 14 [fourteen] days and should the Defaulting Party fail to remedy the breach within 14 [fourteen] days after receipt of the notice, the Aggrieved Party shall be entitled, without prejudice to any of its rights under this Agreement or in law or other remedy for breach to contract to:
- 23.1.1 Immediately terminate this Agreement without giving written notice and claim damages [which shall include legal costs on an Attorney/client scale]; or
- 23.1.2 Request specific performance and claim damages [which shall include legal costs on an Attorney/client scale].
- 24. DISPUTES**
- 24.1 Save for any other Clauses which provide for their own remedies, should any dispute arise between the Parties in respect of, connected or pursuant to this Agreement, including, without limiting the generality of the afore going, any dispute relating to:
- 24.1.1 The interpretation of the Agreement;
- 24.1.2 The performance of the any of the terms of the Agreement;
- 24.1.3 Any of the Parties’ rights and obligations;
- 24.1.4 Any procedure to be followed;
- 24.1.5 The termination or cancellation or breach of this Agreement; or
- 24.1.6 The rectification or repudiation of this Agreement, then any Party may give other Party written notice of such dispute, in which event the provisions below shall apply.
- 24.2 In the event of a dispute arising between the Parties, the Parties Contact Persons and any other persons whose attendance may be necessary or useful must meet and attempt to resolve dispute within 5 [five] days of declaration of the dispute.
- 24.3 In the event that the dispute cannot be resolved in terms of Clause 24.2, the dispute may be escalated by either Party to the most Senior Executive Officer of the Service Provider and the Post Office or their delegates for attempted resolution within 10 [ten] days of referral. If the dispute is not resolved through this referral in Clause 24.3, the dispute will be resolved by way of arbitration at the instance of either Party.
- 24.4 The arbitration shall be held under the rules of Arbitration Foundation South Africa [“AFSA”] provided that the arbitration shall be;
- 24.4.1 At any place which the Parties agree in writing, to be mutually convenient; In accordance with such formalities and/or procedures, as may be settled by the arbitrator and may be held in an informal manner should the Parties so wish.
- 24.5 The arbitrator shall be a practicing Advocate or a practicing Attorney of not less than 10 [ten] years’ standing.
- 24.6 Should the Parties fail to agree on an arbitrator within 7 [seven] days after the arbitration has been demanded, then the arbitrator shall be nominated at the request of either of the Parties, by the secretariat of AFSA.
- 24.7 Should the Parties fail to agree whether the dispute is of a legal, accounting or other nature within 7 [seven] days after the arbitration has been demanded, it shall be deemed to be a dispute of a legal nature.
- 24.8 The arbitrator may;-
- 24.8.1 Investigate or cause to be investigated any matter, fact or things which he considers necessary or desirable in connection with the dispute and for that purpose and shall have the widest powers of investigating all documents and records of any Party having a bearing on the dispute;
- 24.8.2 Interview and question, under oath, the Parties or any of their representatives or any person with information about the dispute;
- 24.8.3 Decide the dispute according to what he considers just and equitable in the circumstances;
- 24.8.4 Make such award, including an award for specific performance, damages or otherwise, as he in his discretion may deem fit and appropriate.

- 24.8.5 The arbitration shall be held as quickly as possible after it is demanded, with a view to it being completed within 30 [thirty] days after it has been so demanded;
- 24.8.6 The arbitrator’s decision and award shall be in writing with reasons;
- 24.8.7 The arbitrator’s decision shall be subject to appeal, by either the Party, in terms of the AFSA rules;
- 24.8.8 The Arbitrator’s 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; and
- 24.8.9 Notwithstanding the provisions of this Clause 24, 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 Party, having such a claim, shall be entitled to institute action, in a court of law, rather than in terms of the above Clauses, notwithstanding the fact that the other Party may dispute the claim.

**25. DOMICILIA AND NOTICES**

- 25.1 The Parties hereby choose their *Domicile citandi et executandi* for all purposes arising from pursuant to this Agreement as follows:  
Service Provider: the address that is indicated on the Purchase Order/RFQ Response together with the facsimile -  
Post Office:  
**HEAD OFFICE, CNR. SOPHIE DE BRUYN & JEFF MASEMOLA STREET, PRETORIA, 0002**

Bidder: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- 25.2 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*.
- 25.2.1 Any notice given and/or payment made by either party to the other which-
  - 25.2.1.1 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 rebuttable presumed to have been received by the addressee at the time of delivery;
  - 25.2.1.2 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 reputedly presumed to have been received by the addressee on the 7<sup>th</sup> [seventh] business day after the date of posting;

- 25.2.1.3 Is sent by Telefax copier during the normal business hours of the addressee to the addressee’s *domicilium citandi et executandi* for the time being shall be rebuttable presumed to have been received on the 1<sup>st</sup> [first] business day following the date of successful transmission thereof.
- 25.3 The word “Agreement” and the number allocated to this Agreement shall be quotes by both Parties on all correspondence, notices or other documents of any description relating to this Agreement.

**26. INSOLVENCY**

- 26.1 Should an application be made for the surrender or sequestration of a Party’s estate, or should an order be issued, whether provisional or final, for the sequestration of a Party’s estate or should a Party enter into or propose any deed of assignment to any of its creditors for settlement of its debts, or if execution is issued against a party by virtue of any judgment, or if a party commits any act of insolvency, or being a legal entity, 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 other Party may, without prejudice to any of its rights in terms of this Agreement or common law, forthwith terminated this Agreement.

**27. GENERAL**

- 27.1 No latitude, indulgence, consent or forbearance or any other similar act by either Party in enforcing any provisions of this Agreement shall constitute a variation or novation of this Agreement or a waiver of right or estoppels in terms of this Agreement.
- 27.2 All provisions and the various Clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or Clause of this Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions and Clauses of this Agreement shall remain of full force and effect. The Parties declare that it is their intention that

- this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.
- 27.3 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the Clauses themselves do not expressly provide for this.
- 27.4 Except as otherwise specifically provided herein, each Party will bear and pay its own legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Agreement.
- 27.5 The Parties, by signing this Agreement shall be deemed to have satisfied themselves as to all the conditions and circumstances affecting this Agreement.
- 27.6 This Agreement is signed by the Parties on the dates and at the place indicated below.
- 27.7 This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.
- 27.8 The persons signing this Agreement in a representative capacity warrant their authority to do so.

27.9 The Parties record that it is not required for this Agreement to be valid and enforceable that a Party shall initial the pages of this Agreement and/or have its signature of this Agreement verified by a witness.

SIGNED at \_\_\_\_\_

on the \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
For and on behalf of  
**The South African Post Office**  
Name:  
Capacity:  
Who warrants authority here to

SIGNED at \_\_\_\_\_

on the \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
For and on behalf of  
**The Service Provider**  
Name:  
Capacity:  
Who warrants authority here to