

**CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT****1 DEFINITION**

Unless otherwise expressly stated, or the context otherwise requires, the words and expressions listed below shall, when used in this Confidentiality Agreement, bear the meanings ascribed to them:

- 1.1 ~~%~~Bidder+shall mean any person who attends the briefing session and/or any entity which is represented at the briefing session whose details and signature are set out in the attendance register;
- 1.2 ~~%~~Confidentiality Agreement+shall mean this confidentiality Agreement; and
- 1.3 ~~%~~Post Office+shall mean the South African Post Office, a public company with limited liability duly incorporated in accordance with company laws of the Republic of South Africa with registration number 1991/005477/30.
- 1.4 “Postbank+means South African Postbank SOC Ltd (Registration number: 2017/177755/30, a Public Company incorporated in terms of the Companies Act 71 of 2008 which is a State Owned Company in the banking and financial services industry;

**2 INTRODUCTION**

- 2.1 The Bidder has attended a briefing session which is hosted by the Post Office and Postbank, at which the Post Office and Postbank shall provide information to Bidders who wish to enter into discussions with the Postbank concerning a number of issues pertaining to the possible provision of services by the Bidder to the Postbank, which discussions may or may not result in the Postbank and the Bidder entering into an agreement, arrangements, discussions or alliances.
- 2.2 During the briefing session and in negotiating the business relations, the Postbank shall disclose confidential information relating to its business to the Bidder.
- 2.3 The Bidder agrees to be bound by the terms and to be subject to the conditions of this Confidentiality Agreement.

**3 CONFIDENTIAL INFORMATION**

Confidential Information in respect of this Confidentiality Agreement shall include, but not be limited to, all oral, written, printed, photographic and recorded information of all types that is:

- 3.1 Confidential or secret information relating to the commercial and financial activities of the Post Office and/or Postbank, which would include legal, financial, contractual or commercial arrangements between the Post Office group of companies, its subsidiary, customers and/or third parties;
- 3.2 Confidential information and details concerning current or prospective customers, suppliers, commercial associates and other parties with whom the Postbank enjoys a commercial relationship;
- 3.3 Proposed, impending or actual commercial transactions, arrangements, ventures, agreements or opportunities which are of a confidential or secret nature;
- 3.4 Trade secrets, operating procedures, quality control procedures, approximate operation personnel requirements, descriptions, trade names, trade marks, know how, techniques, technology, copyright, and all goodwill relating to the business and any other existing intellectual property rights or any intellectual property created as a result of the provision of services;
- 3.5 Confidential or privileged information concerning disputes, claims, litigation or similar actions in which any party is or may become involved; and
- 3.6 Any other information surrounding the nature of the discussions giving rise to this Confidentiality Agreement.

**4 EXCLUDED INFORMATION**

There will be no obligation of confidentiality or restriction on the use of information where:

- 4.1 The information is publicly available, or becomes publicly available otherwise than by action of the Bidder; or
- 4.2 The information was already known to the Bidder (as evidenced by its written records) prior to its receipt under this or any previous confidentiality agreement between the parties or their affiliates; or
- 4.3 The information was received from another party not in breach of an obligation of confidentiality.

**5 NON-DISCLOSURE**

- 5.1 The Bidder acknowledges that the Confidential Information is a valuable and unique asset proprietary to the Postbank.

- 5.2 The Bidder agrees that it shall not disclose the Confidential Information to any third party for any reason or purpose whatsoever without the prior written consent of the Post Office and Postbank.
- 5.3 The Bidder may disclose the Confidential Information only to its directors and other officers, employees and professional advisors agents and consultants only on a strictly need-to-know basis and on the terms and conditions provided for in this Confidentiality Agreement.
- 5.4 The Bidder undertakes not to use the Confidential Information for any purpose other than:
  - 5.4.1 that for which it is disclosed; and
  - 5.4.2 in accordance with the provisions of this Confidentiality Agreement.
- 5.5 The Bidder undertakes to ensure that their employees will observe and comply with their obligations in respect thereof, whether or not they remain employees of the Bidder.
- 5.6 The Bidder agrees that it shall only, where necessary, disclose the Confidential Information to its professional advisers, agents and consultants, provided that such professional advisers, agents and consultants sign a similar undertaking and that they are aware of the confidential nature of the information being made available to them.
- 5.7 The Bidder shall takes all steps necessary to procure that such professional advisers, agents and consultants agree to abide by the terms of this Confidentiality Agreement to prevent the unauthorized disclosure of the Confidential Information to third parties.

## **6 OWNERSHIP**

- 6.1 All Confidential Information disclosed by the Post Office and/or Postbank to the Bidder is acknowledged by the Bidder to be proprietary to the Post Office and/or Postbank who shall retain all right, title and interest in and to that information.
- 6.2 The possession of the Confidential Information by the Bidder does not to confer any rights of whatever nature in such Confidential Information to the Bidder.
- 6.3 No provision in this Confidentiality Agreement shall be interpreted to confer any right of license under any trademark, patent or copyright, or any applications for such a trademark, patent or copyright which may be pending now or in the future to the Bidder.

## **7 STANDARD OF CARE**

The Bidder agrees that it shall protect the Confidential Information disclosed pursuant to the provisions of this Confidentiality Agreement using the same standard of care that it applies to its own proprietary, secret or confidential information, but in any event not less than a reasonable standard of care, and that

the Confidential Information shall be stored and handled in such a way as to prevent any unauthorized disclosure thereof.

**8 RETURN OF CONFIDENTIAL INFORMATION**

- 8.1 The Post Office and/or Postbank may at anytime request the return of the Confidential Information disclosed to the Bidder. Upon the return of the Confidential Information, the Bidder shall submit a written statement to the Post Office confirming that the Bidder has not retained in its possession or under its control, either directly or indirectly, any Confidential Information.
- 8.2 Alternatively to the return of the material contemplated in clause 8.1 above, the Bidder shall, at the request of the Post Office and/or Postbank, destroy the Confidential Information and furnish the Post Office and/or Postbank with a written statement to the effect that all Confidential Information in the possession or under the control of the Bidder has been destroyed.
- 8.3 The Bidder shall comply with the request in terms of this clause 8 within forty-eight hours of receipt of such a request.

**9 BREACH**

- 9.1 Any breach of any obligation or undertaking by the Bidder will constitute a material breach of this Confidentiality Agreement.
- 9.2 The Bidder shall be liable to pay the Post Office and/or Postbank all costs incurred in the protection of its interests in terms of this Confidentiality Agreement on an attorney and own client scale.
- 9.3 The Bidder acknowledges that the Post Office and/or Postbank shall be entitled to apply to court for an interdict or other appropriate relief against the Bidder, should the Post Office and/or Postbank have any reasonable basis to believe that the Bidder is or may be in breach of this Confidentiality Agreement and thus endangering the proprietary interests of the Post Office and/or Postbank

**10 DURATION**

The obligations undertaken by the Bidder in terms of this Confidentiality Agreement shall endure notwithstanding the termination of this Confidentiality Agreement or notwithstanding that either party decides at any time, whether before or after the commencement of this Confidentiality Agreement, not to pursue the discussions to enter into a business relationship or that the relationship between the parties pursuant to those discussions is terminated for any reason whatsoever.

**11 GENERAL**

- 11.1 This Confidentiality Agreement constitutes the sole record of the agreement between the parties with regard to the subject matter hereof. No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.

- 11.2 No addition to, variation of, or agreed cancellation of this Confidentiality Agreement shall be of any force or effect unless in writing and signed by or on behalf of the parties.
- 11.3 No relaxation or indulgence which the Post Office and/or Postbank may grant to the Bidder shall constitute a waiver of the rights of the Post Office and/or Postbank and shall not preclude the Post Office and/or Postbank from exercising any rights which may have arisen in the past or which might arise in future.
- 11.4 The Bidder agrees and confirm by their signature to the RFP Documents that any present and/or previous discussions or correspondence shall, for purposes of this Confidentiality Agreement, be considered to be Confidential Information.
- 11.5 An approval or consent given by a party under this Confidentiality Agreement shall only be valid if in writing and shall not relieve the other party from responsibility for complying with the requirements of this Confidentiality Agreement nor shall it be construed as a waiver of any rights under this Confidentiality Agreement except as and to the extent otherwise expressly provided in such approval or consent, or elsewhere in this Confidentiality Agreement.

**SIGNATURE** : .....

**NAME OF DELEGATED SIGNATORY:** .....

**(PRINT)** in his capacity of

**DESIGNATION OF SIGNATORY** : .....

**(PRINT)** who warrants his authority to sign on behalf of

**NAME OF BIDDER (COMPANY)** : .....

**DATE** : .....