

REQUEST FOR QUOTATION:

**NEW GUIDE: TAX PRACTITIONER'S LEGAL
ACTIONS**

RFQ REF: RFQ006/2023

CLOSING DATE: 29 FEBRUARY 2024

CLOSING TIME: 12:00

CONDITIONS FOR COMPLETING BID DOCUMENTS

If any of the following bid forms are not completed and signed or not handed in with your bid proposal with accompanying supporting documents on closing date and time, your proposal may be disqualified.

Document	Comments	Submitted? (Yes / No)
Invitation to bid	Make sure it is signed	
Pricing schedule and total bid price	Attach annexure or addendum	
Tax Clearance Certificate	Certificate must be original and valid	
Vat Registration Certificate	If applicable	
Declaration of interest	Must be signed. Failure to sign will invalidate your bid.	
Certificate of Independent Bid Determination	Must be signed. Failure to sign will invalidate your bid.	
Certified copies of Company/ Close Corporation Registration Documentation	[If applicable] <ol style="list-style-type: none"> 1. certificate of registration, 2. change of name certificate (if applicable) 3. register of directors / members, and 4. most current registered business address 	
B-BBEE Status Confirmation	B-BBEE Certificate or B-BBEE Affidavit, as applicable	
Certified copies of identity documents	For all current shareholders / members / individuals?	
SAICA Standard General Conditions of Contract	Make sure its signed and witnessed	

INVITATION TO BID – REQUEST FOR SERVICES PROVIDERS TO PROVIDE A NEW GUIDE FOR TAX PRACTITIONER’S LEGAL ACTIONS

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE SOUTH AFRICAN INSTITUTE OF CHARTERED ACCOUNTANTS t/a SAICA

RFQ NAME: **NEW GUIDE: TAX PRACTITIONER’S LEGAL ACTIONS**

RFQ NUMBER: **RFQ006/2023**

CLOSING DATE: **29 FEBRUARY 2024**

CLOSING TIME: **12:00**

BID DOCUMENTS MUST BE EMAILED:

Email : Procurement@saica.co.za

ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS – (NOT TO BE RE-TYPED)

This bid is subject to the General Conditions of Contract (GCC) and, if applicable, any other special conditions of contract which will be furnished ONLY to the winning bidder.

NAME OF BIDDER

POSTAL ADDRESS

STREET ADDRESS

TELEPHONE NUMBERCELLPHONE NUMBER

EMAIL ADDRESS

VAT REGISTRATION NUMBER

SIGNATURE OF BIDDERDATE:

CAPACITY UNDER WHICH THIS BID IS SIGNED:

TOTAL BID PRICE INCLUDING VAT

2. DEFINITIONS

- 2.1 **“All Applicable Taxes”** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies.
- 2.2 **“B-BBEE status level of contributor”** means 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, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act.
- 2.3 **“Bid”** means a written offer in a prescribed or stipulated form in response to an invitation by an entity for the provision of services, works or goods, through quotations (i.e., Request for Quotation) or advertised competitive bidding processes (i.e., tender).
- 2.4 **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003, as amended).
- 2.5 **“Comparative price”** means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration.
- 2.6 **“Consortium (or joint venture)”** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill, and knowledge in an activity for the execution of a contract.
- 2.7 **“Contract”** means the agreement that results from the acceptance of a bid by an entity and shall include any schedule, drawings, patterns, samples attached to any agreement entered into and all other Schedule hereto.
- 2.8 **“Contractor(s)”** means a Bidder whose bid has been accepted by SAICA.
- 2.9 **“Cost of materials”** means the cost of components, parts or materials which are intended for the production, manufacturing or assembling of the goods bid for and which are not produced, manufactured or assembled in the factory where the production, manufacture or assembly of such goods occurs, including freight, landing costs, port charges, import duties and other import costs of such components, parts or materials and all costs in connection with the handling and transport thereof prior to delivery at that factory;
- 2.10 **“EME” (Exempt Micro Enterprise)** means any enterprise with annual total revenue of R5 million or less if being measured in terms of the Codes of Good Practice (2007), or R10 million or less if being measured in terms of Codes of Good Practice (2013).
- 2.11 **“Firm Price”** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;

- 2.12 **“Functionality”** means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder.
- 2.13 **“Joint Venture” or Consortium** see 2.6.
- 2.14 **“Letter of Appointment”** means the written communication by SAICA to the Contractor recording the acceptance by SAICA of Contractor’s bid subject to the further terms and conditions to be itemized in the contract.
- 2.15 **“Non-firm Prices”** means all prices other than “firm” prices.
- 2.16 **“Person”** includes a juristic person.
- 2.17 **“Purchase Order(s)”** means an official order issued by SAICA for the supply of goods pursuant to a contract or bid.
- 2.18 **“Rand Value”** means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties.
- 2.19 **“SAICA”** shall mean **The South African Institute of Chartered Accountants t/a SAICA** and its joint venture companies.
- 2.20 **“Signature date”** and in relation to any contract, means the date of the letter of appointment.
- 2.21 **“Sub-contract”** means the primary contractor’s assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract.
- 2.22 **“Tax Clearance Certificate”** means a tax clearance certificate issued by the South African Revenue Services (SARS) confirming that the natural or juristic person is a registered taxpayer.
- 2.23 **“Termination date”** in relation to any Contractor means the date of final delivery of services, works or goods, or the final delivery certificate.
- 2.24 **“Value Add”** means that portion of the bid price not constituting the cost of materials.
- 2.25 **“Warranties”** means collectively any, and all warranties listed and otherwise (if any) given by the Bidder in term of this agreement.

3. CONDITIONS OF BIDDING

Proprietary Information

- 3.1 SAICA considers this Request for Quotation (RFQ) and all related information, either written or verbal, which is provided to the respondent, to be proprietary to SAICA. It shall be kept confidential by the respondent and its officers, employees, agents, and representatives. The respondent shall not disclose, publish, or advertise this specification or related information to any third party without the prior written consent of SAICA.

Enquiries

- 3.2 All communication and attempts to solicit information of any kind relative to this RFQ should be in writing and channeled to email address procurement@saica.co.za on or before 28 February 2024 at 12:00.
- 3.3 All the documentation submitted in response to this RFQ must be in English.
- 3.4 The Bidder should check the numbers of the pages to satisfy themselves that none are missing or duplicated. No liability will be accepted by SAICA in regard to anything arising from the fact that pages are missing or duplicated.

Validity Period

- 3.5 Responses to this RFQ received from suppliers will be valid for a period of 60 days counted from the closing date of the RFQ.

Submission of RFQ

- 3.6 RFQ should be submitted electronically to procurement@saica.co.za by 29 February 2024 at 12:00, labelled “RFQ005/2023”.
- 3.7 Amended bids may be emailed, together with the original bid to email address procurement@saica.co.za. An amendment bid without original bid documents will not be considered.
- 3.8 The bidder is responsible for all the cost that they shall incur related to the preparation and submission of the bid document.
- 3.9 Kindly note that SAICA is entitled to amend any bid conditions, validity period, specifications, or extend the closing date of bids before the closing date. All bidders, to whom the bid documents have been issued, will be advised in writing of such amendments in good time.
- 3.10 SAICA reserves the right not to accept the lowest bid price of any RFQ in part or in whole. It normally awards the contract to the bidder who proves to be fully

capable of handling the contract in terms of outputs and services and who is financially advantageous to SAICA.

- 3.11 SAICA also reserves the right to award this bid to an empowerment entity or may award this bid on conditions that a joint venture with an empowerment entity is formed. This may be added to the criteria when evaluating the bids.
- 3.12 SAICA also reserves the right to award this bid as a whole or in part without furnishing reasons.
- 3.13 SAICA reserves the right to amongst other things, conduct unscheduled or schedule site visit to satisfy itself, as to the validity of the information provided on this bid documents.

Tax Clearance Certificate Requirements

- 3.14 It is a condition of bid that the taxes of the successful bidder **must be in order**, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the bidder’s tax obligations.

4. PREFERENCE POINTS CLAIM FORM IN TERMS OF SAICA’S PREFERENTIAL PROCUREMENT

- 4.1 This preference form must form part of all bids invited. It contains general information and serves as a guide to claim preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution.
- 4.2 SAICA’s Preferential procurement policy will apply for all bids in accordance with the table below:
- 4.3 SAICA makes use of the 60/40 evaluation criteria on Price and B-BBEE wherein 60 points are allocated for price and 40 points are allocated for B-BBEE Level of Contribution.
- 4.4 SAICA will be using the 60/40 evaluation criteria for this rfq proposal.

B-BBEE Status Level Contributor	Points allocated for B-BBEE Level Contributor
1	30*
2	20
3	10
4	5
5	4
6	3

B-BBEE Status Level Contributor	Points allocated for B-BBEE Level Contributor
7	2
8	1
Non-Compliant Contributor	0

* 30 (thirty) points are allocated to a B-BBEE level 1, as per the 60/40 evaluation criteria, the remaining ten (10) will be allocated for B-BBEE bonus points as follows:

An EME or QSE which is at least 51% black owned	5 Points
An EME or QSE which is at least 30% black owned by women	5 Points

- 4.5 A consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their **consolidated B-BBEE** scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.
- 4.6 Tertiary institutions and public entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice

5. SUB-CONTRACTING

- 5.1 A person or entity awarded a contract may not sub-contract more than **25%** of the value of the contract to any other entity that does not have **an equal or higher** B-BBEE status level than the person or entity concerned.
- 5.2 Will any portion of the contract be sub-contracted? YES / NO (delete which is not applicable)
- 5.3 If yes, indicate:
- what percentage of the contract will be subcontracted?
 - the name of the sub-contractor.....
 - Registration number
 - VAT registration number
 - the B-BBEE status level of the sub-contractor?
 - whether the sub-contractor is an EME? YES / NO (delete which is not applicable).

6. SCOPE OF WORK

6.1. Require a new Guide: Accountants and Tax Practitioner's lien over physical & electronic taxpayer documents, electronic and physical work-in-progress and access to software systems (e.g. SARS eFiling) or datasets (e.g. SARS Easyfile/payroll files) prepared for the completion of tax returns

6.1.1. Project scope and Objective

The cost of being tax compliant, especially if there are unforeseen costs for the tax practitioner, like queuing for hours or resubmitting volumes of documents, may result in fee disputes. Furthermore, the current economic downturn has resulted in late and non-payment substantially rising.

With the advent of SARS Efiling with taxpayer and tax practitioner profiles, one of the practices used by some tax practitioners to ensure payment for their services, was to withhold filing of online returns and the actual taxpayer profile until payment was made. This practice was frowned upon by SARS who subsequently introduced functionality for taxpayers to remove tax practitioners.

The collection of debt is a legal issue, and the tax practitioner would need to follow the remedies available to him/her, such as for example debtors/creditors lien (right of retention) or debt collection. The tax practitioner's letter of engagement and terms and conditions which the client agrees to will set the legal basis and remedies available to the tax practitioner upon the client's default to pay an outstanding account.

A similar challenge has been faced by other professional including the legal profession and the courts have recognised "an attorneys' lien" over client documents until payment of debts are made in respect of services rendered. Similarly, accountants and tax practitioners would have similar right of lien over source and statutory documents and well as rights over work in progress

such as digital schedules and work papers in providing services relates to tax compliance obligations of a taxpayer client.

The Guide regarding ‘Tax Practitioner’s legal actions against non-paying clients must include inter alia:

- What legal action (including a debtors/creditors lien (right of retention) or debt collection) may be taken by a Accountant/Tax Practitioner against a client who does not settle the Accountants/Tax Practitioner’s invoice?;
- Are the rights of accountants and tax practitioners different?;
- What tax related documentation, whether paper-based work in progress (including spreadsheets) or digital work in progress (such as tax returns etc) (‘documentation’), in the possession of the accountant/tax practitioner, may and / or may not be withheld from a non-paying client;
- When it is appropriate to withhold tax documentation from this client due to non-payment;
- The various material timelines in this regard for example at what point in time may this documentation be withheld;
- The legal ramifications for the Tax Practitioner if their actions of withholding documentation prevent the client from filing tax returns / tax related information with SARS;
 - o Sections 237 & 240 to 243 of the Tax Administration Act, No. 28 of 2011;
 - and
- How does the Tax Practitioner prove / quantify the work they have done in order to withhold that work.
- The Tax Practitioner/Accountants options as relates to deletion of work in progress in the form of digital tax data populated on a SARS controlled system (e.g. eFiling) or SARS issued software (e.g. SARS Easyfile) or any third party data systems (e.g. cloud accounting software)

7. EVALUATION CRITERIA

No.	Evaluation Criteria	Weight
1	The senior / lead drafter must: Have a minimum of 10 years of experience in relation to the subject matter	40%
2	Demonstrate with a portfolio of evidence the subject matter experience	40%
3	Must have experience writing guides / guidance	20%
	Total	100%

8. BID EVALUATION METHOD

This bid will be evaluated as outlined in the table below:

Stage	Method of evaluation
Stage 1	Administrative responsiveness evaluation: All the proposals will be evaluated against the minimum list of returnable documents.
Stage 2	Technical evaluation: <u>Functionality requirement:</u> The bidder must provide a technical proposal that respond to the requirements set out in the functionality evaluation criteria below. A Minimum score of 70% must be achieved in order to proceed to be evaluated on Stage 3.
Stage 3	Price and Preference: Financial proposals for qualifying bidders will be opened and evaluated. Bidder's <u>pricing on (60% weighting)</u> and <u>BBBEE certificates on (40% weighting)</u> will be ranked according to price and preference points from the highest to the lowest number of points scored. Allocation of points for price will be done according to this formula: <i>Price Points = 60*[1 – (Price offered – Lowest price)/lowest price]</i>

ANNEXURES

A: DECLARATION OF INTEREST BY BIDDER

RFQ Name:

RFQ Ref:

- Any legal person, including persons employed by SAICA or persons having a kinship with persons employed by SAICA, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons connected with or related to persons employed by SAICA, who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority.
- As a Service Provider I hereby declare that I, or and parties directly related to me (i.e., relative and friend) have a personal association with an employee at SAICA.

Name of SAICA associate	Relationship

- As a Service Provider I hereby declare that neither I, nor any parties directly associated to me (i.e., relative and friend) have a personal association with an employee at SAICA.

Name of representative:

Signature: Date:

Bidding Company:

B: CERTIFICATE OF INDEPENDENT BID DETERMINATION

1. This Document must form part of all bids invited.
2. Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging). Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
3. Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices, or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.
4. SAICA reserves the right to:
 - (a) disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.
 - (b) cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.
5. I, the undersigned, in submitting the accompanying bid as stated below, certify that:
 - 5.1 I have read and I understand the contents of this Certificate.
 - 5.2 I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect.
 - 5.3 I am authorised by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder.
 - 5.4 Each person whose signature appears on the accompanying bid has been authorised by the bidder to determine the terms of, and to sign the bid, on behalf of the bidder.
 - 5.5 For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organisation, other than the bidder, whether or not affiliated with the bidder, who:
 - (a) has been requested to submit a bid in response to this bid invitation.
 - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities, or experience; and

- (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder
- 5.6 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement, or arrangement with any competitor. However, communication between partners in a joint venture or consortium will not be construed as collusive bidding.
- 5.7 In particular, without limiting the generality of paragraph 5.6 above, there has been no consultation, communication, agreement, or arrangement with any competitor regarding:
 - (a) prices.
 - (b) geographical area where product or service will be rendered (market allocation)
 - (c) methods, factors, or formulas used to calculate prices.
 - (d) the intention or decision to submit or not to submit, a bid.
 - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
 - (f) bidding with the intention not to win the bid.
- 5.8 In addition, there have been no consultations, communications, agreements, or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 5.9 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 5.10 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the entity for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

RFP name: RFP No.:

Name of representative:

Signature: Date:

Bidder:

C: STANDARD TENDER TERMS AND CONDITIONS

1 DEFINITIONS AND INTERPRETATION

1.1. Unless the context indicates otherwise, the words and expressions set out below shall bear the following meanings and cognate expressions shall bear corresponding meanings:

1.1.1. **“B-BBEE Status Level of Contributor”** means 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 issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act.

1.1.2. **“Bid”** means a Bidder’s tendered response to an RFP/RFQ to SAICA.

1.1.3. **“Bidder”** means a party who has submitted a Bid in response to the RFP/RFQ to SAICA.

1.1.4. **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act 46 of 2013.

1.1.5. **“Business Days”** means any day other than a Saturday, Sunday, or statutory holiday in the Republic of South Africa and on which day the banks are open for a full range of business.

1.1.6. **“Calendar Month”** means a month reckoned in terms of 1 (one) day in a particular month until the corresponding day of the next month, it need not necessarily run from the beginning of a month.

1.1.7. **“Contract”** means a written agreement (depending on the type of Services to be provided) that establishes rights and obligations of any nature whatsoever, including but not limited to the Proposal.

1.1.8. **“Data”** means any information, including Personal Information supplied, stored, collected, collated accessed or processed for and on behalf of SAICA by the successful Bidder and *vice versa* for the purpose of rendering the Services.

1.1.9. **“DPO”** means Data Protection Officer.

1.1.10. **“Functionality”** means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder.

1.1.11. **“GDPR”** means the General Data Protection Regulation of the European Union (EU) 2016/679, as amended from time to time.

1.1.12. “**Letter of appointment**” means the written communication by SAICA to the contractor recording the acceptance by SAICA of the contractor’s bid subject to the further terms and conditions to be itemised in the contract.

1.1.13. “**Parties**” means SAICA, and the successful Bidder and “Party” shall mean any one of them as the context may indicate.

1.1.14. “**Person**” includes a juristic person.

1.1.15. “**Personal Data/Information Breach**” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, personal data transmitted, stored, or otherwise processed.

1.1.16. “**Personal Information**” means information which relates to and identified or identifiable natural person, and where applicable, an identifiable, existing juristic person, in particular by reference to an identifier factor such as a name, identification number, location data, online identifiers or other specific factors such as physical, physiological, genetic, mental, economic, cultural or social identity of a natural person, as defined in Section 1 of the POPIA and Article 4 of the GDPR including special personal information, whichever is applicable under the circumstances;

1.1.1. “**Proposal**” means the proposal submitted to or to be submitted to SAICA in response to the RFP and which includes the Parties’ deliverables.

1.1.2. “**POPIA**” means the Protection of Personal Information Act, 4 of 2013 and its Regulations.

1.1.3. “**Processing**” means any operation or set of operations performed on personal information or sets of personal information, as defined in Article 4 of the GDPR and Section 1 of the POPIA, whichever is applicable under the circumstances.

1.1.4. “**Purchase order(s)**” means an official order issued by SAICA for the supply of goods pursuant to a contract or bid.

1.1.5. “**RFP**” means this Request for Proposals together with any annexures thereto.

1.1.6. “**RFQ**” means SAICA’s Request for Quotations together with any annexures thereto.

1.1.7. “**SAICA**” shall mean The South African Institute of Chartered Accountants.

1.1.8. “**Services**” means the services required by SAICA, as specified in the RFP/RFQ.

1.1.9. “**Successful Bidder (s)**” means a Bidder whose Bid has been accepted by SAICA.

1.1.10. “**Signature date**” means the date of signature of the Contract by the last Party to sign.

1.1.11. “**Tax Clearance Certificate**” means a tax clearance certificate issued by the South African Revenue Service (SARS) confirming that the natural or juristic person is a registered taxpayer.

1.1.12. “**Termination date**” in relation to any contractor means the date of the final delivery certificate.

1.1.13. “**Value add**” means that portion of the bid price not constituting the cost of materials; and

1.1.14. “**VAT**” means value-added tax in terms of the Value-Added Tax Act 89 of 1991 as amended from time to time.

2. INTRODUCTION

2.1. The Bidders’ submission shall be subject to the qualifications set out in these terms and conditions below, with respect to the Bid and the formal agreement to be concluded between SAICA and the Successful Bidder.

2.2. The below terms and conditions are SAICA’s terms and conditions and by submitting the Bid, the Bidder agrees to be bound by these standard terms and conditions.

2.3. On acceptance of the Proposal by SAICA and on SAICA having provided the Successful Bidder with a Letter of appointment, SAICA and the Successful Bidder shall enter into negotiations to execute a definitive agreement (the “**Contract**”) on acceptable terms in addition to the terms and conditions set out below.

3. Risk

Risk in and to any equipment, hardware, plant, and materials to be delivered by the Successful Bidder to SAICA, shall pass to SAICA on delivery thereof.

Limitation of liability

SAICA does not consent to indirect, special, incidental, punitive, or consequential damages, losses or claims notwithstanding the cause of or the manner in which such may arise. Direct damages, claims and losses, penalties for late delivery, etc. shall be capped to a specific and predetermined value, usually a specified amount or a specified percentage of the annual contract value.

4. Payment Terms:

4.1. Payment in all instances shall be made within 30 (thirty) days from the date of the Successful Bidder's invoice, subject to the following:

4.1.1. For any hardware purchased by SAICA, an invoice will be issued on the date of delivery of such hardware.

4.1.2. If any hardware is bundled with Services, the pricing associated with such services are separated from the hardware pricing to enable split invoicing. Therefore, where a quotation or proposal is issued for the procurement, delivery, and installation of hardware, SAICA will be invoiced for the hardware portion on the date of delivery of such hardware to SAICA and will be invoiced for the installation services upon completion of such Service(s).

5. Subcontracts

The Successful Bidder shall notify SAICA in writing of all subcontracts awarded under the Contract if not already specified in the Bid. Such notification, in the original Bid or later, shall not relieve the Successful Bidder from any liability or obligation under the Contract.

6. DISPUTE RESOLUTION

6.1. If a dispute of any nature arises between the Parties, including in regard to the interpretation of, the effect of, the Parties' respective rights or obligations hereunder, a breach of or the termination of this Contract, then, upon written request of either Party, each of the Parties will appoint a senior representative whose task it will be to meet for the purposes of resolving such dispute. Such representatives will discuss the matter in dispute and negotiate in good faith in an effort to resolve the dispute on amicable terms within 14 (fourteen) Business Days. No formal proceedings may be commenced until the designated representatives conclude in good faith that an amicable resolution of the matter is not likely to occur.

6.2. Should the representatives of the Parties be unable to resolve a dispute in accordance with the foregoing, such dispute will be submitted to and decided by a court of competent jurisdiction or, upon the Contract between the Parties, by arbitration in terms of this clause 6.

6.3. The arbitrator shall be appointed by the Parties, and failing, shall be nominated by the Chairman for the time being of the Association of Arbitrators (Southern Africa).

6.4. The arbitration shall be held at Johannesburg.

6.5. The arbitration shall be held in accordance with the Arbitration Act, 42 of 1965, as amended from time to time.

6.6. The arbitrator shall be entitled to:

6.6.1.1. determine and settle the formalities and procedures, which shall be in an informal and summary manner, that is, it shall not be necessary to observe or carry out either the usual formalities or procedure or the strict rules of evidence.

6.6.1.2. investigate or cause to be investigated any matter, fact, or thing which he considers necessary or desirable in connection with any matter referred to him for decision.

6.6.1.3. decide the matters submitted to him according to what he considers just and equitable in all the circumstances, having regard to the purpose of the Contract; and

6.6.1.4. make such award, including an award for specific performance, an interdict, damages or a penalty or the costs of arbitration or otherwise as he in his discretion may deem fit and appropriate.

6.7. The arbitration shall be held as quickly as possible after it is demanded, with a view to it being completed within 30 (thirty) Business Days after it has been so demanded.

6.8. This clause is severable from the rest of the Contract and shall therefore remain in effect even if the Contract is terminated.

6.9. This clause **6** shall not preclude any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

6.10. The Parties hereby consent to the non-exclusive jurisdiction of the High Court of South Africa, in respect of the proceedings in this clause 6, where applicable, and the above court shall have jurisdiction to enforce any award made by an arbitrator under this clause 6.

7. CONFIDENTIALITY

7.1. The Parties shall treat as and keep confidential all information whether of a technical, commercial or any other nature relating to the other Party and shall not, during the period of the Contract, or at any time after its termination, divulge any such information to any person not authorised by the divulging party to receive it and shall not utilise any secret or confidential knowledge or information acquired in connection with the Contract to the detriment or prejudice of the other party or use the same for any purposes save for the purposes of the Contract.

7.2. Neither Party will make or permit to be made any announcement or disclosure of its prospective interest in the Contract without the prior written consent of the other Party. In addition, neither Party shall make use of the other Party's name, or any information acquired through its dealings with the other Party for publicity purposes without the prior, written consent of the other Party.

7.3. The obligations of this **clause 7** shall survive the termination of the Contract for any reason whatsoever and remain binding on the Parties indefinitely.

8. INTELLECTUAL PROPERTY

8.1. All intellectual property rights, including copyright, patents, trademarks, and designs arising in connection with the Contract shall belong to and remain vested with SAICA and the Successful Bidder shall execute any document necessary for this purpose.

8.2. The Parties agree and warrant that they will not use or copy each other's Intellectual Property, without a prior written consent of the other Party.

9. COMPLIANCE WITH THE BBBEE ACT

9.1. Without limiting the Successful Bidder's obligations in terms of this clause, the Successful Bidder shall:

9.1.1. for the duration of the Contract, retain its B-BBEE rating as awarded the contract. Should the successful Bidder persist in failing to comply with the B-BBEE rating, SAICA reserves a right to cancel the Contract by giving the successful Bidder's notice of its intention to do so.

9.1.2. advise SAICA within 10 (ten) Business Days if its B-BBEE rating adversely changes from the B-BBEE rating as at the Signature Date.

9.1.3. in the event of an adverse change to its B-BBEE rating, the successful Bidder shall advise SAICA within a period of 1 (one) Calendar Month, what steps have and/or will be taken by the successful Bidder to restore the original B-BBEE contributor status; and

9.1.4. failure to take the necessary steps in assisting SAICA to comply with the B-BBEE Act shall constitute a material breach of the provisions of the Contract and SAICA shall reserve the right to terminate the Contract.

9.1.5. the Successful Bidder acknowledges and warrants that it has read and is fully conversant with and will comply (where applicable to it), with SAICA's B-BBEE requirements. B-BBEE certificate shall be submitted to SAICA on an annual basis.

9.1.6. the Successful Bidder shall prior to the Signature Date provide SAICA with a certificate prepared by an accredited B-BBEE rating agency reflecting the Bidder's B-BBEE rating and compliance by the successful Bidder with the B-BBEE Act.

9.1.7. the Successful Bidder shall prior to the Signature Date provide SAICA with a valid Tax Clearance Certificate.

10. PERSONAL INFORMATION PROTECTION AND SECURITY

10.1. SAICA shall, in its use of the Successful Bidder's Services, provide instructions for the Processing of Personal Information. The subject matter, nature, purpose, and duration of the processing of Personal Information, as well as the types of Personal Data collected and categories of data subjects. SAICA shall further ensure that its instructions comply with all regulatory requirements, in relation to Personal Information, and that the Processing in accordance with the SAICA's instructions will not cause the successful Bidder to be in a breach of POPIA, the GDPR and other relevant regulatory requirements.

10.2. SAICA is solely responsible for the accuracy, quality, and legality of the Personal Information provided to the Successful Bidder, the means by which SAICA acquired any such Personal Information, and the instructions it provides to the Successful Bidder in regard to the processing of Personal Information. SAICA shall not provide or make available to the Successful Bidder any Personal Information in violation of the

Contract or otherwise inappropriate for the nature of the Services and shall indemnify the Successful Bidder from all claims and losses in connection therewith.

10.3. the Successful Bidder acknowledges that in rendering the Services in terms of the Contract, it may be required to process SAICA's Personal Information, its members and personnel Personal Information, and it undertakes to only process such Personal Information on instruction of SAICA or with SAICA's knowledge for the purposes set forth in the Contract in accordance with the terms and conditions set forth in the Contract and any other documented instructions provided by SAICA, and in compliance with the POPIA, the GDPR and any other relevant regulatory requirements.

10.4. the Successful Bidder undertakes to:

10.4.1. treat all Personal Information as confidential and will not disclose such unless it is required by law or in the course of performing its duties in terms of the Contract.

10.4.2. designate a DPO who has undertaken to commit himself/herself to confidentiality and ensuring its physical and technical security in terms of personal information security.

10.4.3. support is Personal Information security, confidentiality and privacy through robust policies and procedures.

10.4.4. employ reliable and experienced staff, who received appropriate training and made aware of the confidential nature of Personal Information.

10.5. supervise the purposes of the processing of Personal Information, the classification of different categories of Personal Information, the recipients of the Personal Information, and the means by which the data subject (owner of Personal Information) may exercise his/her rights, who has undertaken to commit him/herself to confidentiality.

10.6. limit access to Personal Information to Personnel strictly necessary for the performance, management and monitoring of the Contract.

10.7. adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing, a data breach and to the nature of the Personal Information concerned in order to:

10.7.1. prevent any unauthorised person from having access to computer systems processing Personal Information, and especially:

10.7.2. unauthorised reading, copying, alteration or removal of storage media.

10.7.3. unauthorised data input as well as any unauthorised disclosure, alteration, or erasure of stored Personal Information.

10.7.4. unauthorised using of data-processing systems by means of data transmission facilities.

10.7.5. ensure that authorised users of a data-processing system can access only the Personal Information to which their access right refers.

10.7.6. record which Personal Information has been communicated, when and to whom.

10.7.7. ensure that Personal Information being processed on behalf of third parties can be processed only in the manner prescribed by SAICA or in terms of legislation.

10.7.8. ensure that, during communication of Personal Information and transport of storage media, the data cannot be read, copied, or erased without authorisation.

10.7.9. design its organisational structure in such a way that it meets personal information protection requirements and more specifically Privacy by Design.

10.8. shall not share any of SAICA's, its members', personnel or stakeholders personal information with any of its Personnel and/or trans- or cross borders without the prior written consent of SAICA and subject to the fact that the country to whom transfer will be done is subject to law or a binding contract that provide for adequate protection of upholding the principles of reasonable processing and are substantially similar to the principles and conditions relating to the POPIA, GDPR and all other relevant data protection regulatory requirements;

10.9. shall assist SAICA in terms of its obligation to perform Data Protection Impact Assessments on the services provided by the successful Bidder.

10.10. shall assist SAICA through appropriate technical organisational measures for the fulfilment of SAICA's obligation to responds to requests from data subjects in terms of their rights.

10.11. ensure that it is able to respond to a data breach swiftly and effectively and shall, with undue delay, notify SAICA of a data breach.

10.12. provide SAICA with an annual audit report from a credible organization to demonstrate compliance with the POPIA and GDPR all other relevant data protection regulatory requirements at own cost; and

10.13. to ensure that it deletes or returns all personal information to SAICA on expiry of the Contract and deletes existing copies on request of SAICA, unless it is required by law to hold same, and provide SAICA with evidence that the Personal Information it possessed in terms of the Contract has been destroyed.

11. ANTI – BRIBERY AND CORRUPTION

11.1. The Successful Bidder agrees that in connection with this Contract, it will comply with all South African anti-bribery, anti-money laundering and corruption laws, rules, regulations or equivalents applicable to SAICA, including but not limited to: the Prevention of Organized Crime Act 121 of 1998, Prevention and Combating of Corrupt Activities Act 12 of 2004, Companies Act of 2008, Income Tax Act 58 of 1962 or any other equivalent international laws which apply (hereafter referred to as “Anti-Corruption Laws”).

11.2. The Successful Bidder acknowledges that SAICA has a zero-tolerance policy towards bribery and corruption. The Successful Bidder confirms and agrees that it and any of its Personnel will not, offer, give, promise to give or authorise the giving to any person whatsoever (including but not limited to private individuals, commercial organisations, any Personnel of SAICA and/or any of its affiliates (hereafter referred to as “Person”) or solicit, accept or agree to accept from any Person, either directly or indirectly, anything of value including, without limitation, gifts or entertainment or facilitation payments, in order to obtain, influence, induce or reward any improper advantage in connection with the Contract or any other business transactions involving SAICA and/or any of its affiliates (hereafter referred to as the “Anti-Corruption Obligation”).

11.3. Subject to any Data privacy or protection laws, the Successful Bidder shall immediately report to SAICA:

11.3.1. any request or demand received by the Successful Bidder that could amount to a breach of the Anti-Corruption Laws or Anti-Corruption Obligation; or

11.3.2. any allegations or investigations relating to bribery, corruption, or money laundering against the Successful Bidder or any of its directors, officers or employees engaged in connection with the Contract.

11.4. The Successful Bidder shall maintain an internal accounting controls system that is sufficient to ensure proper authorization, recording and reporting of all transactions and payments made by SAICA and is sufficient to ensure, and enable SAICA to verify compliance with Anti-Corruption Laws and its Anti-Corruption Obligations as set out in this **clause 11**. It is recorded that such transactions shall be maintained at the place of business

of the Successful Bidder for the term of the Contract and for at least 7 (seven) years following expiration and/or termination of the Contract for any reason whatsoever.

11.5. SAICA and/or any of its Personnel shall have the right to suspend all further Services and payments under and/or terminate the Contract in whole or in part with immediate effect if SAICA and/or its Personnel reasonably believe in good faith that the Successful Bidder has failed to comply with or breached in any material aspect any of the requirements set out in this clause.

11.6. It is specifically recorded that the provisions of this clause shall survive expiration or termination of the Contract for any reason whatsoever and remain binding on the Parties for a period of 7 (seven) years thereafter.

12. INDEMNITY

12.1. The Successful Bidder hereby indemnifies and holds harmless SAICA from any claim, demand, loss, liability, damage, or expense arising in any way from the successful Bidder's performance of the Services.

12.2. The Successful Bidder hereby indemnifies and holds harmless SAICA and its Personnel from and against any damages, loss, costs, claims and expenses (hereinafter collectively referred to as "**Liability**") arising as a result of the fraudulent, intentional, or grossly negligent acts and/or of the Successful Bidder in the course of performing the Services.

12.3. Save as otherwise set out in the Contract, the Successful Bidder hereby indemnifies and holds SAICA harmless against any loss, damage, costs, and/or expenses which the Successful Bidder may suffer or incur and any claim which may be brought against the Successful Bidder by any third party in respect of any loss, liability, damage, costs and/or expenses of any nature whatsoever as a consequence of or which may arise from or is attributable to any wilful or negligent acts or omissions on the part of the Successful Bidder or any of its Personnel.

13. SERVICE LEVELS

13.1. The Successful Bidder shall provide the Services in compliance and in accordance with the service standards as set out in clause 13.2 below.

13.2. The Successful Bidder shall perform the Services with promptness, diligence, and courtesy. The Successful Bidder shall execute the Services in a professional manner and in accordance with the practices and professional standards used in well-managed operations performing similar services.

13.3. If the Successful Bidder fails to satisfy any service level requirements in clause 13.2 above, then it shall, upon being advised of such failure by SAICA:

13.3.1. investigate and report on the root causes of the deficiencies in the Services.

13.3.2. promptly correct the deficiency in its Services and begin meeting the service levels.

13.3.3. advise SAICA, as and to the extent requested by SAICA, of the status of remedial efforts being undertaken with respect to such deficiencies; and

13.3.4. take appropriate preventive measures so that the deficiency in its Services does not recur.

13.4. In the event where SAICA wishing to impose service level credits for a failure to meet service levels, then such will be negotiated and agreed upon between the parties and will be based upon the agreed service levels.

14. WARRANTY

14.1. The Successful Bidder warrants that:

14.1.1. it, and its employees have the necessary expertise (commercial and technical), experience, capacity and facilities required to perform its obligations and responsibilities in accordance with the Contract and will use due care and skill in the performance of Services.

14.1.2. any person employed by the Successful Bidder, save for any third parties for which the Successful Bidder may be vicariously liable for, in the execution of its obligations in terms of the Contract will be qualified and suitable to perform such duties and shall perform such duties properly, diligently, promptly, timeously, efficiently and in compliance with requirements and standards stipulated in the Contract.

14.1.3. the conclusion of the Contract shall not constitute conflict of interest on the part of the Successful Bidder. In this regard, the Successful Bidder warrants that it does not have any special relationship with any of the SAICA staff members and none of the SAICA staff members are Connected Person(s) as defined by Section 1 of the Income Tax Act, 58 of 1962.

14.1.4. it has full capacity and all necessary skills, resources, rights, consents, to provide Service and enter into a Contract.

14.1.5. in proceeding with the provisions of the Services it will observe and comply with all statutory requirements imposed on it in terms of the appropriate legislation of the Republic of South Africa in relation to the provision of the Services.

14.1.6. in concluding the Contract, it does not breach the terms of any Contract to which it is a party.

14.1.7. any materials the Successful Bidder uses to perform the Services will be free from defects in design, performance, and workmanship, and

14.1.8. it is a Successful Bidder which complies with the requirements of the B-BBEE Act and its codes of good practice. To this end, the Successful Bidder warrants that it shall

ensure that for the duration of the Contract that it maintains or improve its current B-BBEE level.

14.2. The Successful Bidder further warrants that subject to any cyber-attack:

14.2.1. its workplace systems have as at the Signature Date and will continue to, for the duration of the Contract, be satisfactorily maintained and supported in all material respects.

14.2.2. its workplace systems have adequate capability and capacity for the current and future requirements of the Successful Bidder for the processing of information and other functions required to be performed for the purposes of the provision of the Services.

14.2.3. data back-up plans are in effect and are adequate to ensure that the data can be replaced or substituted without material disruption to the provision of the Services; and

14.2.4. in addition to the data back-up plans referred to in **clause 14.2.3**, it shall provide and operate a complete disaster recovery system, which system shall be utilised as a system recovery back-up in the event of its equipment failure. If the Successful Bidder's systems fail, the disaster recovery plan shall activate immediately and operate without causing material disruption to the provision of the Services, for as long as the Successful Bidder's systems continue to be in-operational. Such system failure shall not interfere with any Services governed by the Contract.

14.3. The Successful Bidder warrants that their Bid has not been prepared with any consultation, communication, contract, arrangement or understanding with any competitor, other than:

14.3.1. where certain joint venture arrangements exist between the Successful Bidder and a competitor.

14.3.2. where the Successful Bidder and a competitor have an agreement that has been authorised by the relevant competition authority; and

14.3.3. where the supplier/bidder has communicated with a competitor for the purpose of subcontracting a portion of the Bid, and where the communication with that competitor is limited to the information required to facilitate that particular subcontract.

14.3.4. In such a situation the Successful Bidder agrees to fully disclose the full nature and extent of any agreements with competitors to the tendering body. In the event that no such disclosure is made, the Successful Bidder warrants that their bid has not been prepared with any consultation, communication, contract, arrangement or understanding with any competitor regarding:

14.3.4.1. prices.

14.3.4.2. methods, factors, or formulas used to calculate prices.

14.3.4.3. the intention or decision to submit, or not submit, a Bid.

14.3.4.4. the submission of a Bid that is non-conforming.

14.3.4.5. the quality, quantity, specifications or delivery particulars of the products or services to which this call for bids relates; and

14.3.4.6. the terms of the Bid.

14.3.5. The Successful Bidder acknowledges that if the procuring authority accepts the Successful Bidder's offer and completes any contract the procuring authority will do so in reliance of this warranty.

15. HEALTH AND SAFETY

The Parties shall comply with all applicable health and safety legislation and codes of practice.

16. BREACH AND TERMINATION

16.1. A Party to the Contract shall be in default if it:

16.1.1. fails to pay any amount due by it in terms of the Contract, by the due date, and fails to remedy such breach within 30 (thirty) Calendar Days of written notice to do so; or

16.1.2. commits a material breach of any provision of the Contract and fails to remedy such breach within 14 (fourteen) Business Days (or such period as may be reasonable in the circumstances) written notice to do so; or

16.1.3. commits an act of insolvency within the ambit of Section 8 of the Insolvency Act, 24 of 1936.

16.2. If a Party is in default, the aggrieved Party shall be entitled, in addition to all other remedies to which it may be entitled in law or in terms of the Contract, to terminate the Contract. Termination of the Contract will not relieve a Party of obligations imposed upon such Party by statute or regulation or by the Contract prior to its termination.

16.3. Notwithstanding the provisions of the Contract, SAICA may, without prejudice to any other rights herein, at any time and by giving written notice, forthwith terminate the Contract if:

16.3.1. there is a substantial change of the ownership in or in the control of the Successful Bidder (save in the event of the restructuring of the group of companies of which the Successful Bidder forms part), without prior notification of such change to SAICA; or

16.3.2. the Successful Bidder has provided incorrect information on expertise, capability, capacity, or reliability to perform its obligations under the Contract; or

16.3.3. the conduct of the Successful Bidder constitutes unethical behavior such as bribery or other unethical conduct; or

16.3.4. the Successful Bidder acts against the expressed policies and instructions of the Contract as expressed in terms of the Contract.

16.4. The termination of the Contract will not prejudice the rights of SAICA to claim damages or to obtain any other relief in respect of any antecedent breach of the terms and conditions of the Contract prior to such termination.

16.5. SAICA shall, notwithstanding the provisions of the Contract, with or without cause, be entitled to terminate the Contract upon 30 (thirty) Calendar Days written notice to the Successful Bidder. For the sake of clarity, all events that are scheduled to run within the 30 (thirty) Calendar Days' notice period will still run as scheduled. SAICA shall also be entitled to cancel individual events in the event that the numbers of attendees are not secured under similar notice conditions, and this will not be construed as a cancellation of the entire Contract.

17. ASSIGNMENT AND CESSION

17.1. Neither Party shall:

17.1.1. transfer any rights and/or obligations arising out of the Contract subject to receiving written consent of the other Party, which consent shall not be unreasonably withheld. In so far as that Party does permit same, this shall not relieve the other Party of any obligations with respect to any covenant, condition, or obligation required to be performed by the other Party under the Contract.

18. CONTRACTS VARIATION OR AMENDMENTS

No variation in or modification of the terms of the Contract shall be made except by written amendment signed by the Parties concerned.

19. FORCE MAJEURE

19.1. If either Party is prevented or restricted directly or indirectly from carrying out all or any of its obligations under the Contract by any cause beyond the reasonable control of that Party, including, without limitations, acts of God, civil commotion, riots, insurrection, acts of government, fire, explosion, the elements, epidemics, governmental embargoes, cyber-attack, lack of access to essential resources, or like causes ("force majeure"), the Party so affected shall, to the extent so prevented, be relieved of its obligations hereunder during the period of such events and shall not be liable for any delay or failure in the performance of any obligations hereunder or loss or damage either general, special or consequential which the other Party may suffer due to or resulting from such delay or failure; provided always that written notice of the occurrence constituting force majeure shall be given within 1 (one) Calendar Day by the affected Party.

19.2. The Parties agree that should a force majeure event last more than 10 (ten) Calendar Days, the Party who has not invoked force majeure to excuse any non-performance of its obligations may terminate the Contract by giving 5 (five) Calendar Days written notice to the other Party.

20. GOVERNING LAW

The Contract shall be construed in accordance with the laws of South Africa and the South African courts shall have sole jurisdiction.

SIGNED by the Parties on the following dates and at the following places respectively:

DATED at _____ on this the ____ DAY of _____ 20__

for: _____

Duly authorised thereto:

Name (print): _____

Designation: _____

Signature: _____

WITNESS

DATED at _____ on this the ____ DAY of _____ 20__

for: _____

Duly authorised thereto:

Name (print): _____

Designation: _____

Signature: _____