



SAICA

STANDARD PURCHASING

TERMS AND CONDITIONS



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1 INTERPRETATION

- 1.1 Clause headings are for convenience and are not to be used in the interpretation of the Agreement in which the headings appear.
- 1.2 No provision shall be construed against or interpreted to the disadvantage of any Party by reason of that Party having or being deemed to have structured or drafted such provision. The rule of interpretation that an agreement will be interpreted against the Party responsible for the drafting and any similar rules of interpretation shall not apply to this Agreement and the Parties waive any rights they have to rely on such rules.
- 1.3 The expiration or termination of this Agreement shall not affect those provisions of this Agreement which expressly provide that they shall operate after any such expiration or termination or which by necessity must continue to have effect after such expiration or termination, notwithstanding the fact that the clauses themselves do not expressly provide for this.
- 1.4 Any notice required to be given by either Party to the other in terms of this Agreement shall be in writing, unless provided otherwise.
- 1.5 Terms other than those defined within this Agreement will be given their plain English meaning, and those terms, acronyms, and phrases known within a particular industry shall be interpreted in accordance with their generally accepted meanings.
- 1.6 If any provision in the definition clause is a substantive provision conferring rights or imposing obligations on a Party, then, notwithstanding that such provision is contained in this clause, effect shall be given thereto as if such provision were a substantive provision in the body of this Agreement.
- 1.7 When any number of days is prescribed in this Agreement, same shall be reckoned to exclude the first and include the last day.
- 1.8 Any reference in this Agreement to legislation or subordinate legislation is to such legislation or subordinate legislation at the date of signature hereof and as amended and/or re-enacted from time to time.
- 1.9 Words importing the singular shall include the plural, and vice versa, words importing the masculine gender shall include the feminine and neuter genders, and vice versa, and words importing natural persons shall include juristic persons, and vice versa.

2 DEFINITIONS

- 2.1 Unless the context indicates otherwise, the words and expressions set out below shall bear the following meanings and cognate expressions shall bear corresponding meanings:
- 2.1.1 **“Agreement”** means the agreement as set out in this document together with any annexures and schedules hereto;
- 2.1.2 **“BBBEE Act”** means the Broad Based Black Economic Empowerment Act, 53 of 2003;



- 2.1.3 “**BEE**” means Black Economic Empowerment;
- 2.1.4 “**Business Day**” means Monday to Friday between the hours of 08:00 to 16:00, excluding Saturdays, Sundays or a day which from time to time is proclaimed a public holiday in South Africa;
- 2.1.5 “**Calendar Day**” means a 24 (twenty-four) hour day from midnight to midnight denoted on a calendar. Same shall be reckoned exclusively of the first and inclusively of the last day;
- 2.1.6 “**Calendar Month**” means a month reckoned in terms of 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;
- 2.1.7 “**Commencement Date**” means the Signature Date;
- 2.1.8 “**Confidential Information**” means information of a confidential nature including, but not limited to:
- 2.1.8.1 the details of the Services;
 - 2.1.8.2 price information of the Services;
 - 2.1.8.3 the terms of this Agreement;
 - 2.1.8.4 information or material proprietary to or deemed to be proprietary to that Party;
 - 2.1.8.5 information designated as confidential by that Party;
 - 2.1.8.6 information acquired by the other Party solely by virtue of the provision of the Service;
 - 2.1.8.7 Personal Information;
 - 2.1.8.8 trade secrets of that Party; and
 - 2.1.8.9 Intellectual Property Rights.
- 2.1.9 “**Data**” means any information, including Personal Information supplied, stored, collected, collated accessed or Processed for and on behalf of SAICA by the Service Provider and vice versa for the purpose of rendering the Services;
- 2.1.10 “**Data subject**” an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
- 2.1.11 “**DPIA**” means a Data Protection Impact Assessment as defined in Article 35 of the GDPR;
- 2.1.12 “**DPO**” means a Data Protection Officer as follows:
- 2.1.12.1 a Data Protection Officer, as defined in Articles 37 to 39 of the GDPR;
 - 2.1.12.2 an Information Officer, as defined in section 1 of the POPIA;



whichever is applicable under the circumstances;

- 2.1.13 **"EME"** means Exempted Micro Enterprise;
- 2.1.14 **"FICA"** means the Financial Intelligence Centre Act, Act No. 38 of 2001;
- 2.1.15 **"GDPR"** means the General Data Protection Regulation of the European Union;
- 2.1.16 **"Intellectual Property"** includes, without limitation, Designs, Patents, rights in and to Inventions, rights in and to Copyright and related rights, Trademarks, trade names and Domain Names, trade dress, rights in get-up, rights in goodwill, rights to sue for passing off, rights in designs, rights in computer software (source or object code), database rights, rights in confidential information, including Know-how and Trade Secrets, goodwill and any other IP rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world;
- 2.1.17 **"Intellectual Property Rights"** includes rights to, without limitation, designs, patents, rights in and to Inventions, rights in and to copyright and related rights, trade marks, trade names and Domain Names, trade dress, rights in get-up, rights in goodwill, rights to sue for passing off, rights in designs, rights in computer software (source or object code), database rights, rights in confidential information, including Know-how and Trade Secrets, goodwill and any other Intellectual Property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.
- 2.1.18 **"Personal Information"** means information which relates to an 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. Its equivalent in terms of Article 4 of the GDPR shall apply under the circumstances;
- 2.1.19 **"Personal Information Breach"** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Information transmitted, stored or otherwise processed. Its equivalent in terms of the GDPR shall apply under the circumstances;
- 2.1.20 **"Personnel"** means any employee, agent, consultant, contractors, sub-contractors, directors, officers and/or other representatives of SAICA or the Service Provider;
- 2.1.21 **"POPIA"** means the Protection of Personal Information Act No, 4 of 2013;
- 2.1.22 **"Pre-existing Intellectual Property"** means all Parties' rights, titles, interest copyright in, including but not limited to; their methods of work, data, software, designs, proprietary information, utilities, tools, models, systems, working papers, computer programmes, methodologies, know-how, skills, experience, expertise and any associated or



related information maintained or owned by or licensed by either of the Parties in any form (whether oral, written, visual, electronic or other), in their Intellectual Property prior to entering into this Agreement;

- 2.1.23 “**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 and “**Processed**” or “**Process**” shall have a corresponding meaning;
- 2.1.24 “**QSE**” means Qualifying Small Enterprise;
- 2.1.25 “**SAICA**” means **The South African Institute of Chartered Accountants** Registration Number **NPO-020-050**, a body corporate not for gain established in terms of its own Constitution and incorporated in accordance with the laws of the Republic of South Africa;
- 2.1.26 “**Sanctions**” means any measures imposed by a Sanctioning Body, including but not limited to diplomatic, travel, trade and/or financial sanctions or embargoes;
- 2.1.27 “**Sanctions List**” means any list of Sanctioned Entities published by a Sanctioning Body, as updated from time to time;
- 2.1.28 “**Sanctioned Entity**” means: any natural or juristic person or country; in the case of a juristic person, any person who (i) owns or controls it; or (ii) it owns or controls (and for these purposes, owns means holding any percentage of ownership or beneficial interest and controls means the ability, directly or indirectly and whether through the voting of shares, the appointment of directors or similar officers or through any other means, to control the business or policy of the relevant juristic person); in the case of any country, its ministries, departments, agencies and/or any other governmental organisations, listed on any Sanctions List and/or who is subject to any Sanctions;
- 2.1.29 “**Sanctioning Body**” means the Targeted Financial Sanctions (TFS) established in terms of FICA, the United Nations Security Council (UNSC), the Office of Foreign Assets Control of the Department of Treasury of the United States of America (OFAC), the European Union (EU), Her Majesty’s Treasury (HMT), the Ministry of Economy, Finance and Industry (France) (MINEFI) and/or any other sanctioning body recognised by SAICA from time to time;
- 2.1.30 “**Services**” means services to be performed by the Service Provider.
- 2.1.31 “**Service Fees**” means the fees in cash to be paid or provided to the Service Provider for the Service rendered to SAICA by the Service Provider.
- 2.1.32 “**Service Provider**” means [insert company name], registration number [insert number], a [redacted] company duly incorporated and registered in accordance with the laws of the Republic of South Africa;
- 2.1.33 “**Service Report**” means the report to be submitted by the Service Provider in accordance with the reporting requirements.
- 2.1.34 “**Signature Date**” means the date of the last signature to this Agreement;



2.1.35 “Termination Date” means [insert date] from Signature Date;

2.1.36 “VAT” means value added tax at the rates specified in the VAT Act; and

2.1.37 “VAT Act” means the Value Added Tax Act No, 89 of 1991.

3 INTRODUCTION

3.1 The South African Institute of Chartered Accountants (SAICA), South Africa’s pre-eminent accountancy body, is widely recognized as one of the world’s leading accounting institutes. The Institute provides a wide range of support services to members and associates who are chartered accountants [CAs(SA)], as well as associate general accountants (AGAs(SA)) and accounting technicians (ATs(SA)), who hold positions as CEOs, MDs, board directors, business owners, chief financial officers, auditors and leaders in every sphere of commerce and industry, and who play a significant role in the nation’s highly dynamic business sector and economic development.

3.2 [INSERT SERVICE PROVIDER’S DETAILS].

4 APPOINTMENT

4.1 SAICA hereby engages the Service Provider to provide the Services and the Service Provider hereby accepts such engagement on the terms and conditions set forth below.

4.2 The Service Provider has represented to SAICA that it has the required expertise and resources to deliver the Services to SAICA as and when requested to do so.

4.3 The provision of the Services shall be provided by the Service Provider in a periodic manner during the term of the Agreement, subject to the terms and conditions contained in this Agreement.

4.4 The Service Provider shall not be entitled to impose any terms and conditions on SAICA other than those contained in this Agreement.

4.5 This Agreement shall, from the Commencement Date hereof, supersede, substitute and replace any and all previous agreements between the Parties and all Services being provided under such previous agreements shall be governed by the terms and conditions of this Agreement.

5 DURATION

5.1 This Agreement shall come into force and effect on the Commencement Date and shall terminate on the Termination Date, Notwithstanding termination in terms of **clause 28 (“Breach and Termination”)** and subject further to the right of either Party to terminate this Agreement on 1 (one) Calendar Month written notice to the other Party.

5.2 Notwithstanding anything to the contrary, SAICA shall be entitled, in its sole discretion, to terminate this Agreement forthwith on written notice to the Service Provider, whereupon the Service Provider shall have no further obligations or liabilities to SAICA and SAICA shall have no claim against the Service Provider arising out of such termination, if:



- 5.2.1 the Service Provider fails to timeously procure any licence, qualification, clearance certificate or the like which may be requested or required of it by any regulatory authority having jurisdiction over the Service Provider;
 - 5.2.2 the Service Provider fails to provide any information which may be requested or required of it by any regulatory authority having jurisdiction over SAICA; or
 - 5.2.3 any regulatory authority requires the termination of this Agreement; or
 - 5.2.4 SAICA in good faith determines that the Service Provider or its Personnel is/are or might be engaged in, was/were previously or is/are about to be engaged in any activity or was/were or is/are involved in any relationship or association with an entity on the Sanctions List. These include, but not limited to those activities, relationships and associations with any organisation which is listed on the Sanctions List or as a specially designated national by a Sanctioning Body. which could or does jeopardise the business of or any licence or approvals granted to SAICA, or, if any such licence or licence application is threatened to be or is suspended denied, curtailed, restricted or revoked due in whole or in part to any such activity, association or relationship, provided that, to the extent that it is possible to do so without SAICA suffering the harm this **clause 5.2.4** seeks to prevent, SAICA has by written notice required the Service Provider, within the time stated in the notice, to cease to be so engaged or otherwise do whatever is necessary to prevent SAICA suffering such harm and the Service Provider has, within the time stated in such notice, failed to do so.
- 5.3 Termination in terms of **clause 5.2** shall in no way affect the liability of either Party in respect of any amounts which are, at the date of such termination, due, owing and payable by either Party to the other Party or which, by virtue of obligations already performed by either Party prior to the date of such termination, become due, owing and payable by either Party to the other Party after the date of termination or which become payable by either Party to the other Party within 15 (fifteen) Calendar Days after such termination in terms of the provisions of this Agreement.
- 5.4 In the event of termination in terms of **clause 5.2**, any amount paid by either Party to the other Party in respect of any obligation to be performed after such date of termination and which will not be performed as a result of such termination shall, within 15 (fifteen) Calendar Days after such termination, be repaid to the Party that has made such payment.

6 INDEPENDENT CONTRACTOR

- 6.1 The Service Provider shall, in their interaction with SAICA in terms of this Agreement, do so and at all times be regarded and conduct themselves as an independent contractor as defined in the Basic Conditions of Employment Act No, 75 of 1997. Nothing contained in this Agreement shall be construed as:
- 6.1.1 authorising any Party to enter into contracts, undertakings or arrangements for and on behalf of the other Party, or to bind a Party or the credit of a Party in any way whatsoever, other than as expressly provided for herein .
 - 6.1.2 creating any form of partnership, joint venture arrangement or agency between the Parties.
 - 6.1.3 neither Party shall be liable for the debts of the other Party, howsoever incurred.



7 SERVICES

- 7.1 In the event that SAICA requests Services from the Service Provider, it shall do so within the scope of Services provided by the Service Provider in terms of this Agreement.
- 7.2 The Service Provider shall provide the Services to SAICA in accordance with the service levels specified in **clause 15**.
- 7.3 Each request shall form part of and be subject to the terms in this Agreement but shall not constitute an amendment to the terms of this Agreement, unless specifically stated.

8 SAICA'S RESPONSIBILITIES

- 8.1 SAICA shall:
- 8.1.1 pay the Service Fees on time directly into the Nominated Bank Account of the Service Provider in accordance with this Agreement.
- 8.1.2 be liable for all costs it incurs in complying with its obligations in terms of this Agreement.
- 8.1.3 provide information required timeously to the Service Provider, to enable the Service Provider to perform its obligations.
- 8.1.4 ensure that:
- 8.1.4.1 personnel assigned to assist the Service Provider will be knowledgeable on SAICA's processes and will be active participants; and
- 8.1.4.2 SAICA's Personnel will be available to the Service Provider on a dedicated basis to facilitate access to information as well as to participate towards activity execution.
- 8.1.5 Be solely responsible for:
- 8.1.5.1 making all management decisions and performing all management functions.
- 8.1.5.2 designating one or more individuals who possess suitable skill, knowledge, and/or experience, preferably within senior management to oversee the Services.
- 8.1.5.3 evaluating the adequacy and results of the Services.
- 8.1.5.4 accepting responsibility for implementing the results of the Services.
- 8.1.5.5 establishing and maintaining internal controls, including, without limitation, monitoring ongoing activities.

9 SERVICE PROVIDER RESPONSIBILITIES AND SLA REQUIREMENTS

- 9.1 Service Provider shall:
- 9.1.1 render the Services in accordance with the provisions of this Agreement.



- 9.1.2 be liable for all costs it incurs in complying with its obligations in terms of this Agreement.
- 9.1.3 carry out its obligations in terms hereof with professional competence, due care, skill and due diligence in all respects.
- 9.1.4 not subcontract any of its obligations under this Agreement without prior written consent from SAICA, which consent shall not be unreasonably withheld.
- 9.1.5 at its cost, source and procure all tools, equipment, materials, substances or other goods and ancillary services required for the performance of its obligations in terms of this Agreement.
- 9.1.6 not use SAICA owned or licensed software or any other related tools to provide any services of any nature to any person whatsoever at any place, other than the Services in terms of this Agreement.
- 9.1.7 perform its obligations in terms of this Agreement in a way which does not interrupt or causes the least possible interruption to the business of SAICA.
- 9.1.8 not render the Services in any way whatsoever which may constitute a violation of any law or regulation which may cause SAICA to be subject to any investigation, prosecution or legal action.
- 9.1.9 ensure that, at all times, it has sufficient resources, including but not limited to, a sufficient stock of such tools, equipment, materials, substances or other goods and/or suitably qualified, trained and skilled Personnel, to enable it to properly and promptly perform its obligations in terms of this Agreement.
- 9.1.10 comply with any reasonable instruction given by SAICA provided that such instruction falls within the scope of the Service Provider's obligations in terms of this Agreement.
- 9.1.11 ensure that it and its Personnel at all times abide by the terms of this Agreement and do not commit any act or behave in any manner that would bring disrepute to the name of SAICA.
- 9.1.12 upon written request from SAICA, promptly remove or procure the removal of any member of its Personnel from the performance of the Services and replace or ensure the replacement of any such member of its Personnel which SAICA reasonably believes is:
 - 9.1.12.1 incapable of performing its/his/her duties,
 - 9.1.12.2 incompetent or has breached any law, by-laws or regulations in terms of this Agreement,
 - 9.1.12.3 guilty of misconduct,
 - 9.1.12.4 guilty of any act or omission which is prejudicial to SAICA's interests or has performed any act or omission which may constitute a breach by the Service Provider of this Agreement.
- 9.1.13 at its own cost obtain all licenses, permits and the like that may be required in order for it to lawfully perform its obligations in terms of this Agreement.
- 9.1.14 ensure that its Personnel at all times abide by the terms and conditions of this Agreement and are contractually bound to abide by the terms and conditions of this Agreement.



9.1.15 ensure that at all times during this Agreement a suitably qualified person/s is/are appointed by the Service Provider to be responsible for and supervise the performance of the Services in terms of this Agreement and that such person/s is/are authorised to make all and any decisions regarding the performance of the Services or any of the Service Provider's other obligations in terms of this Agreement.

9.1.16 use its best endeavours to improve the standards of service set out in the service level requirements **clause 9** from time to time.

9.2 The Service Provider assumes professional and technical responsibility for its performance or the performance of its Personnel, which performance will be in accordance with recognised professional standards employed by service providers performing work of a comparable nature, and the qualitative and quantitative value added must be to the satisfaction of SAICA.

10 JOINT OBLIGATIONS AND RESPONSIBILITIES

10.1 The Parties shall not use the Personal Information obtained by virtue of this Agreement in any manner that infringes any third party's Intellectual Property or personal privacy rights in terms of any Data Privacy and protection legislation.

10.2 Each Party hereby warrants to the other that it is duly authorised and has obtained the necessary approvals to enter into this Agreement.

10.3 Either Party shall, on request by the other Party, at any time during this Agreement, meet and consult with the other Party and any other persons that either Party deems necessary, in order to negotiate any amendments to the scope of Services and/or service level requirements, provided that no such amendments shall be of any force or effect unless and until they are reduced to writing and signed by both Parties.

10.4 The Parties must ensure that a request of Services in accordance with Annexure B is completed and signed such request must be part of the MSA.

11 WARRANTIES BY THE SERVICE PROVIDER

11.1 In addition to any warranties contained elsewhere in this Agreement, the Service Provider warrants that:

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

11.1.2 any person employed by the Service Provider in the execution of its obligations in terms of this Agreement 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 this Agreement.

11.1.3 it has full capacity and all necessary skills, resources, rights, consents, permissions and licenses to provide the Services and enter into this Agreement.



- 11.1.4 in proceeding with the provision of the Services it will observe and comply with all statutory requirements imposed on it in terms of the appropriate legislation of South Africa.
- 11.1.5 in concluding this Agreement, it does not breach the terms of any agreement to which it is a party.
- 11.1.6 any materials the Service Provider uses to perform the Services will be free from defects in design, performance and workmanship; and
- 11.1.7 it complies with the requirements of the BBBEE Act and its codes of good practice in particular, that it meets the accreditation between 1-4 for the duration of this Agreement and commits to only subcontract to suppliers that comply with the requirements of the BBBEE Act and meet BBBEE level 1-4.
- 11.1.8 Each warranty is:
 - 11.1.8.1 a separate warranty and is in no way limited or restricted by inference to the terms of any other warranty; and
 - 11.1.8.2 is deemed to be material and to be a material representation inducing SAICA to enter into this Agreement.
- 11.2 The Service Provider further warrants that subject to any cyber-attack:
 - 11.2.1 its workplace systems have adequate capability and capacity for the current and future requirements of the Service Provider for the processing of information and other functions required to be performed for the purposes of the provision of the Services,
 - 11.2.2 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
 - 11.2.3 in addition to the data back-up plans referred to in **clause 11.2.2**, 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 Service Provider's systems fail, the Disaster Recovery Plan shall activate immediately, subject to **clause 12.3** and operate without causing material disruption to the provision of the Services, for as long as the Service Provider's systems continue to be operational. Such system failure shall not interfere with any Services governed by this Agreement.

12 DISASTER RECOVERY

- 12.1 The Service Provider shall ensure that information and data under its responsibility are properly backed up on a daily basis and also that arrangements are made for recovery processes to be installed to minimize any potential disruption to its business. The Service Provider is required to ensure that proper measures are in place to enable continuation of Services in the event of unexpected disruptive events. These measures should include implementation and pre-testing of formal disaster recovery and business continuity planning within the Service Provider's business.
- 12.2 The Service Provider undertakes to provide SAICA with its Disaster Recovery Plan as well as the most recent report of the tests conducted on the effectiveness of the recovery processes and measures constituting the Disaster Recovery Plan.



- 12.3 The Service Provider shall provide SAICA with written notice of any unexpected disruptive events within 48 hours of such event.
- 12.4 The occurrence of unexpected disruptive events applicable to this **clause 12**, are and in so far as the Disaster Recovery Plan should have measures to ensure business continuity, expressly excluded from Force Majeure as set out in **clause 17**.
- 12.5 The Service Provider undertakes to provide SAICA with effective and adequate disaster recovery services to ensure that the Service Provider's system can be replaced and/or substituted within 5 (five) Calendar Days without material disruption to the provision of the Services.

13 FEES AND PAYMENTS

- 13.1 As consideration for the Services to be rendered by the Service Provider in terms of this Agreement, SAICA shall pay to the Service Provider the Service Fees as agreed upon herein.
- 13.2 The Service Fees shall be fixed and firm for the entire duration of the relevant Request for Services.
- 13.3 The Service Provider warrants that the Service Fee is at least as favourable as those offered by the Service Provider to any of its other customers that are of the same or similar standing as SAICA.
- 13.4 SAICA shall be entitled to set off any amounts owing by the Service Provider to SAICA against any amount SAICA owes to the Service Provider in terms of this Agreement.
- 13.5 The Service Provider shall ensure that the invoice complies with the provisions of the VAT Act, failing which SAICA shall not make any payment in respect thereof until such time as it receives an invoice which complies with the provisions of the VAT Act. The Service Provider acknowledges that, in accordance with Section 20(4) of the VAT Act, it is mandatory for the Service Providers to print SAICA's VAT Registration Number on each and every invoice that the Service Provider issues to SAICA.
- 13.6 All original invoices must be forwarded to SAICA to the address stated below:

Attention: Chief Finance Officer

17 Fricker Road

Illovo

Sandton

Johannesburg,

2196

or at the following email address: accounts@saica.co.za.

- 13.7 Subject to the satisfactory performance of Services, payment of invoices will be affected not later than 30 (thirty) Calendar Days' following receipt of a correct, valid and original tax invoice together with all supporting documentation.



Invoices should be raised and submitted within 1 (one) Calendar Month of the Calendar Month in which Services were rendered and supplied.

- 13.8 Payment of the Service Fees by SAICA shall be affected via electronic funds transfer directly into the Nominated Bank Account furnished to SAICA in writing.
- 13.9 The Service Provider shall ensure that SAICA, at all times, has the correct bank account details in order to affect the electronic funds transfer.
- 13.10 SAICA's liability towards the Service Provider shall be deemed to have been met when the electronic funds transfer has been made into Nominated Bank Account. The Service Provider assumes the entire risk for the bank transfer.
- 13.11 Should SAICA dispute any amount appearing on an invoice submitted to SAICA, ("**Affected Invoice**"), SAICA shall, within 10 (ten) Calendar Days of receipt of the Affected Invoice, notify the Service Provider, in writing, of such dispute, specifying the:
 - 13.11.1 Affected Invoice;
 - 13.11.2 specific amount in dispute; and
 - 13.11.3 alleged reasons or grounds for dispute.
- 13.12 Any amount disputed by SAICA shall not be regarded as payable by SAICA and if the Parties are unable to resolve such dispute it shall be referred to the financial manager of the Service Provider and the financial manager of SAICA or their nominated representatives for determination. If these representatives are unable to resolve the dispute, such dispute shall be referred to arbitration for resolution in accordance with **clause 26** of this Agreement.
- 13.13 The Service Provider will preserve their records for such period as the South African Revenue Services may require or 5 (five) years from date of payment of the Service Fee, whichever is longer.
- 13.14 Any declaration of dispute in terms of this **clause 13** shall not preclude the Parties from continuing to adhere to their obligations in terms of this Agreement.
- 13.15 Any other dispute shall be dealt with in accordance with the provisions of **clause 26** below.

14 **ACCESS**

- 14.1 The Service Provider shall have reasonable access to SAICA's premises for the purposes of fulfilling its obligations in terms of this Agreement, as long as reasonable notice is provided to SAICA.
- 14.2 With the exception of fraud or gross negligence by SAICA or any of SAICA's Personnel, and subject to any non-observance or non-compliance by SAICA or SAICA's Personnel of its duties and obligations under this Agreement and/or any statutory duties and obligations applicable to SAICA, the Service Provider acknowledges that access to SAICA premises is granted subject to disclaimers and terms and conditions which govern the accessibility and use of such facilities. In addition to SAICA's disclaimers and terms and conditions governing the accessibility and use of SAICA premises by the Service Provider, and in addition to any indemnities and/or limitations of liability granted to



SAICA by the Service Provider in terms of this Agreement, the Service Provider undertakes that, in respect of its access to SAICA premises:

- 14.2.1 neither SAICA, nor SAICA's personnel shall be responsible or may be held liable for any loss, damage, costs, expenses, injury or economic disadvantage suffered by or caused to the Service Provider and the Service Provider's personnel and any third party, whether or not such loss, damage, costs, expenses, injury or economic disadvantage is occasioned by any act, omission, representation or statements made by SAICA or its personnel for the duration of this Agreement or anyone else for whose actions they or any of them would be liable in law by any reason or cause of whatsoever nature and however arising; and
- 14.2.2 it shall, at all times, hold SAICA and SAICA's personnel indemnified against and harmless from and shall in no manner whatsoever seek to hold any of them liable for any loss, damage, costs, expenses injury or economic disadvantage suffered by the Service Provider and the Service Provider's personnel as a result of loss, damage, costs, expenses, injury or economic disadvantage arising directly or indirectly from any act, omission, representation or statements made by SAICA and its Personnel to a member of SAICA's Personnel, whether such loss, injury, costs, expenses, damage or economic disadvantage can be attributed directly or indirectly to any negligence of whatsoever nature of degree on the part of SAICA or its Personnel.
- 14.3 Should SAICA at any time have reason to believe that any of the Service Provider's Personnel are failing to comply with such standard health, safety and security procedures and guidelines, SAICA may deny such person access to any part of or all of the SAICA premises.
- 14.4 In the event that the Services are rendered at the Service Provider's premises, SAICA shall indemnify the Service Provider against any loss, damage, costs, expenses, injury or economic disadvantage suffered by SAICA and/or its Personnel, in so far as accessibility and use of such facilities by SAICA, is concerned, with the exception of:
 - 14.4.1 fraud or gross negligence by the Service Provider or any of the Service Provider's Personnel, and
 - 14.4.2 any non-observance or non-compliance by the Service Provider or the Service Provider's Personnel of its duties and obligations under this Agreement and/or any statutory duties and obligations applicable to the Service Provider.

15 SERVICE STANDARDS/ LEVELS

- 15.1 The Service Provider shall provide the Services in compliance and in accordance with the service standards detailed in this Agreement.
- 15.2 The Service Provider shall perform the Services with promptness, diligence and courtesy. The Service Provider 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.
- 15.3 The Service Provider recognises that its failure to meet service levels may have a material adverse impact on the business and operations of SAICA. Should the Service Provider fail to meet the service levels, in addition to any



other remedies available to SAICA in law, SAICA may terminate this Agreement by providing the Service Provider with 14 (fourteen) Calendar Days' notice of its intention to terminate this Agreement.

- 15.4 If the Service Provider fails to comply with any obligation imposed upon it by this Agreement and/or fails to provide the Services within a reasonable time after receipt of a written notice from SAICA requiring it to so comply, SAICA shall, without prejudice to any other rights it may have in law or in terms of this Agreement, be entitled, but not obliged, to perform or procure the performance of such obligation from a third party at the expense of the Service Provider and to recover such expenses from the Service Provider.
- 15.5 The Parties shall hold a formal service review meeting following the issuing of the final Service Report by the Service Provider to SAICA. The agenda for such meeting shall be agreed to by the Parties. The agenda will include service performance and any other matters concerning service quality as well as any recommendations by the Service Provider on the Services provided or performed.
- 15.6 In the event that the Service Provider fails to meet the service levels as set out in this Agreement (excluding failures as set out in **Clause 17**), the following process will be implemented:
- 15.6.1 SAICA will issue a notification of failure to meet the service standards/levels, in writing to the Service Provider, within 2 (two) Business Days of learning of the failure;
- 15.6.2 SAICA senior management and the Service Provider or its authorised representatives shall meet forthwith in terms of the notification above to discuss the failure to meet the service standards/levels;
- 15.6.3 The Service Provider shall, within 5 (five) Business Days, provide a comprehensive report detailing the reason for the failure to meet the service standard/level and corrective action it has taken as well as measures it has put in place to prevent the recurrence of such incidents as well as the time limit to remedy the failure.
- 15.7 Notwithstanding the provisions of **clause 15.6**, should the Service Provider consistently (more than once) fail to meet the service levels such failure will be deemed as consistent failure and constitutes a breach of the Agreement.
- 15.8 Should the Service Provider fail to deliver in respect of any of the Services provided for in this Agreement, as a result of a service failure by the Service Provider or any of its Personnel under its direct control, all costs, charges and expenses SAICA incurs shall be part of the damages to be paid by the Service Provider to SAICA as a result of such failure or refusal to perform, including, but not limited to, attorneys' fees, on an attorney and client scale, and expenses.

16 FAILURE TO PERFORM

In the event of failure or refusal of the Service Provider to perform the Service Provider's obligations under this Agreement (other than failure to perform for reasons beyond the service provider's control), all costs, charges and expenses SAICA incurs shall be part of the damages to be paid by Service Provider to SAICA as a result of such failure or refusal to perform, including, but not limited to, attorneys' fees, on an attorney and client scale, and expenses.



17 FORCE MAJEURE

- 17.1 If either Party is prevented or restricted directly or indirectly from carrying out all or any of its obligations under this Agreement 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, strikes by persons other than those employed by the Parties 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 14 (fourteen) Calendar Days by the affected Party.
- 17.2 The Parties agree that, should force majeure last more than 6 (six) weeks, that either Party may terminate this Agreement by giving 14 (fourteen) Calendar Days’ written notice to the other Party.
- 17.3 This clause shall apply to cybercrimes and breaches to cyber Security only to the extent that the Service Provider can satisfactorily demonstrate that it had taken appropriate, reasonable technical and organisational measures to prevent loss or damage to or unauthorised destruction within the cyberspace and unlawful access to or processing of Data in cyberspace. These measures include:
- 17.3.1 identifying all reasonably foreseeable internal and external risks;
 - 17.3.2 establishing and maintaining appropriate safeguards against the risks identified;
 - 17.3.3 regularly verifying that the safeguards are effectively implemented;
 - 17.3.4 ensuring that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards; and
 - 17.3.5 strict application of the generally accepted cybersecurity practices and procedures which may apply generally or be required in terms of specific industry or professional rules and regulations.

18 PATENT AND INTELLECTUAL PROPRIETARY RIGHTS

- 18.1 SAICA and the Service Provider shall retain all rights, title and interest in Pre-existing Intellectual Property.
- 18.2 The Parties acknowledge that the Service Provider’s Pre-existing Intellectual Property includes its ideas, concepts, know-how, methods, techniques, processes and skills used in the performance of the Services.
- 18.3 The Parties further acknowledge that the Service Provider, in connection with performing the Services, may develop or acquire general experience, skills, knowledge and ideas which it may use and disclose subject to the obligations of confidentiality set out in **clause 23**.
- 18.4 SAICA agrees and warrants that it shall not use or copy any Pre-existing Intellectual Property which belongs to the Service Provider, without the Service Provider’s prior written consent.



- 18.5 In rendering the Services, the Service Provider undertakes not to use SAICA's Intellectual Property for the benefit of any entities or third parties including any Intellectual Property produced specifically for SAICA which is not owned by the Service Provider. Except as otherwise requested or approved by SAICA, the Service Provider shall cease all use of SAICA's Intellectual Property upon termination of the Services.
- 18.6 For the purposes of delivering the Services to SAICA, the Service Provider shall own any unique formulas, methodologies and the like gained through performing the Services ("Incidentally Developed IP"), unless such unique formulas, methodologies and the like gained through performing the Services were specifically stated in the Request for Services as the object of the Service or any part thereof, in which instance SAICA shall own any such unique formulas, methodologies and the like gained through performing the Services ("Developed IP"). In the latter instance, the Service Provider shall execute any document necessary to transfer, cede or assign the Developed IP to SAICA.
- 18.7 SAICA shall not own and the Service Provider shall not be obliged to transfer, cede or assign: -
- 18.7.1 any copyright in any part of the product of the Service that may be owned by a third party;
- 18.7.2 the Service Provider's Pre-existing Intellectual Property rights and copyright in their methods of work, data, software, designs, proprietary information, utilities, tools, models, systems, working papers, computer programmes, methodologies, know-how, skills, experience, expertise and any associated or related information maintained or owned by or licensed by the Service Provider in any form (whether oral, written, visual, electronic or other), all of which remains vested in the Service Provider; and
- 18.7.3 any Incidentally Developed IP.
- 18.8 The Service Provider warrants that subject to **clause 18.5** above, the provision of the Services for the intended purpose will not infringe any South African or foreign patent, trademark, copyright, trade name registered design or Intellectual Property and the Service Provider indemnifies SAICA against all actions, costs, claims, demands, expenses and liabilities whatsoever resulting from any actual or alleged infringement.

19 ANTI BRIBERY AND CORRUPTION

- 19.1 The Parties agree that in connection with this Agreement, they will comply with all anti-bribery, anti-money laundering and corruption laws, rules, regulations or equivalents applicable to the Parties including but not limited to: the Prevention of Organised Crime Act 121 of 1998, Public Finance Management Act 1 of 1999, Prevention and Combating of Corrupt Activities Act 12 of 2004, Companies Act 71 of 2008, Income Tax Act 58 of 1962 or any other equivalent international laws (hereafter referred to as "**Anti-Corruption Laws**").
- 19.2 The Service Provider acknowledges that SAICA has a zero-tolerance policy towards bribery and corruption. The Parties confirm and agree that they and their 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 the other Party 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 this Agreement or any other business transactions involving the other Party and/or any of its affiliates (hereafter referred to as the “**Anti-Corruption Obligations**”).

- 19.3 Subject to any Data privacy or protection laws, any Party shall immediately report to the other Parties:
- 19.3.1 any request or demand received by the Party that could amount to a breach of the Anti-Corruption Laws or Anti-Corruption Obligations; or
 - 19.3.2 any allegations or investigations relating to bribery, corruption or money laundering against the Party or any of its Personnel engaged in connection with this Agreement.
- 19.4 The Parties shall maintain an internal accounting controls system that is sufficient to ensure proper authorisation, recording and reporting of all transactions and payments made by the other Party/ Parties and is sufficient to ensure, and enable the other Party/ Parties to verify compliance with Anti-Corruption Laws and its Anti-Corruption Obligations as set out in **clauses 19.2 and 19.3** It is recorded that such transactions shall be maintained at the place of business of the relevant Party for the duration of this Agreement and for at least 7 (seven) years following expiration and/or termination of this Agreement for any reason whatsoever.
- 19.5 Any Party and/or any of its Personnel shall have the right to suspend all and/or any aspect of the Service and/or terminate this Agreement in whole or in part with immediate effect if any other Party and/or its Personnel reasonably believe in good faith that the Party has failed to comply with or breached in any material aspect any of the requirements set out in this clause **19**.
- 19.6 It is specifically recorded that the provisions of this clause shall survive expiration or termination of this Agreement for any reason whatsoever and remain binding on the Parties for a period of 7 (seven) years thereafter.

20 **PERSONAL INFORMATION PROTECTION AND SECURITY**

- 20.1 SAICA shall, in its use of the Services of the Service Provider, 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 Information collected and categories of Data Subjects, shall be confirmed to the Service Provider. 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 Service Provider to be in a breach of POPIA, the GDPR and other relevant regulatory requirements.
- 20.2 SAICA is solely responsible for the accuracy, quality, and legality of the Personal Information provided to the Service Provider, the means by which SAICA acquired any such Personal Information, and the instructions it provides to the Service Provider in regard to the processing of Personal Information. SAICA shall not provide or make available to the Service Provider any Personal Information in violation of this Agreement or otherwise inappropriate for the nature of the Services and shall indemnify the Service Provider from all claims and losses in connection therewith.



- 20.3 The Service Provider acknowledges that in rendering the Services in terms of this Agreement, it may be required to process SAICA's Personal Information, its members and Personnel's 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 this Agreement and any other documented instructions provided by SAICA, and in compliance with the POPIA, the GDPR and any other relevant regulatory requirements.
- 20.4 The Service Provider undertakes to:
- 20.4.1 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 this Agreement;
 - 20.4.2 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;
 - 20.4.3 support its Personal Information security, confidentiality and privacy through robust policies and procedures;
 - 20.4.4 employ reliable and experienced staff, who received appropriate training and made aware of the confidential nature of Personal Information.
 - 20.4.5 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;
 - 20.4.6 limit access to Personal Information to Personnel strictly necessary for the performance, management and monitoring of this Agreement;
 - 20.4.7 adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing of Personal Information, a Personal Information breach and to the nature of the Personal Information concerned in order to:
 - 20.4.8 prevent any unauthorised person from having access to computer systems processing Personal Information, and especially:
 - 20.4.8.1 unauthorised reading, copying, alteration or removal of storage media; unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored Personal Information; and
 - 20.4.8.2 unauthorised using of data-processing systems by means of data transmission facilities;
 - 20.4.8.3 ensure that authorised users of a data-processing system can access only the Personal Information to which their access right refers;
 - 20.4.8.4 record which Personal Information has been communicated, when and to whom;
 - 20.4.8.5 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;



- 20.4.8.6 ensure that, during communication of Personal Information and transport of storage media, the data cannot be read, copied or erased without authorisation;
- 20.4.8.7 design its organisational structure in such a way that it meets personal information protection requirements and more specifically Privacy by Design.
- 20.4.9 shall not share any of SAICA's, its members', employees' 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 agreement 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;
- 20.4.10 shall assist SAICA in terms of its obligation to perform DPIA;
- 20.4.11 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;
- 20.4.12 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;
- 20.4.13 shall provide SAICA with all information necessary to demonstrate compliance with the POPIA, GDPR and all other relevant data protection regulatory requirements, and contribute to audits, including inspections, which are conducted by SAICA or an auditor mandated by SAICA; and
- 20.4.14 to ensure that it deletes or returns all personal information to SAICA on expiry of this Agreement 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 this agreement has been destroyed.

21 COMPLIANCE WITH LEGISLATION AND SAICA POLICIES

- 21.1 The Parties shall comply with all laws including (but not limited to) legislation, regulations, ordinances, rules of governmental and/or professional bodies and all other relevant enactments of any governmental authorities.
- 21.2 For the duration of this Agreement and in addition to the Parties' obligations provided in this Agreement, the Parties undertake to comply with the requirements of the Protection of Personal Information Act 4 of 2013 as amended from time to time, with regards to any or all Personal Information provided to each other or obtained by the Parties through the performance of this Agreement.
- 21.3 SAICA is committed to conduct its dealings with service providers on the highest of ethical standards, which includes ethical purchasing to support the reputation of SAICA, its employees and its stakeholders.



SAICA shall not tolerate any breaches of this Code of Ethical Purchasing (Code), as Annexure D of these Standard Purchasing Terms and, whether directly or indirectly, intentionally, or unintentionally, by SAICA employees, suppliers, and service providers.

This Code sets out the principles and behavioural standards which are expected from SAICA's service providers, including any subcontractors. These principles and behavioural standards are aligned with the United Nations (UN) Global Compact Principles and Organisation for Economic Co-operation and Development (OECD) Recommendation relating to corruption.

SAICA expects its suppliers and service providers to comply with all applicable laws, regulations, standards and to adhere to the principles set out in this Code.

21.4 The Service Provider acknowledges that in entering into this Agreement, it is aware of and adopts SAICA policies and procedures which include inter alia the Employee Code of Ethics, Employee Code of Conduct, Fraud Prevention Policy and Whistleblowing Procedure and Conflict of Interest & Gift Policy as applicable, or at least the principles thereof. These policies and procedures can be accessed on SAICA's website: www.saica.org.za under 'Terms and Conditions'.

21.5 The Service Provider undertakes to report any non-compliance with the SAICA policies and procedures by any third parties, including SAICA employees via the Whistleblowing Procedure which is available on the SAICA website.

22 COMPLIANCE WITH THE BBBEE ACT

22.1 The Service Provider undertakes to assist SAICA to comply with the provisions of the BBBEE Act.

22.2 Without limiting the Service Provider's obligations in terms of this clause, the Service Provider shall:

22.2.1 for the duration of this Agreement, retain and/or improve its BEE rating. Should the Service Provider persist in failing to comply with the BEE rating, SAICA reserves the right to cancel this Agreement by giving the Service Provider notice of its intention to do so;

22.2.2 advise SAICA within 10 (ten) Business Days if its BEE rating changes materially from the BEE rating as at the Commencement Date;

22.2.3 in the event of an adverse change to its BEE rating, the Service Provider shall advise SAICA within a period of 1 (one) Calendar Month, what steps have and/or will be taken by the Service Provider to restore the original BEE contributor status; and

22.2.4 take the necessary steps in assisting SAICA to comply with the BBBEE Act and failure to do so shall constitute a material breach of this Agreement and SAICA shall reserve the right to terminate this Agreement.

22.3 The Service Provider acknowledges and warrants that it has read and is fully conversant with and will comply (where applicable to it), with SAICA's BBBEE requirements.

22.4 The Service Provider shall prior to the Signature Date provide SAICA with a certificate prepared by an accredited BBBEE rating agency reflecting the Service Provider's latest and most current BBBEE rating and compliance by the



Service Provider with the BBBEE Act, which certificate, EME or QSE affidavits shall be attached as **Annexure "C"** hereto.

23 CONFIDENTIALITY

- 23.1 Except as otherwise provided in this clause, the terms and conditions of this Agreement, all data, reports, records and other information of any kind whatsoever developed or acquired by any Party in connection with this Agreement shall be treated by the Parties as confidential. No Party shall reveal or otherwise disclose such Confidential Information to any third party without the prior written consent of the other Party hereto. The foregoing restrictions shall not apply to the disclosure of necessary Confidential Information to employees and advisors of the Parties. Any third party that may for the purpose of performing this Agreement become privy to such Confidential Information shall first undertake in writing to protect the confidential nature thereof.
- 23.2 The obligations set out in **clause 23.1** shall not apply to any:
- 23.2.1 Confidential Information which the receiving Party can demonstrate is already in the public domain or becomes available to the public through no breach by the receiving Party;
- 23.2.2 Confidential Information which was rightfully in the receiving Party's possession without obligation of confidence prior to receipt from the disclosing Party, as proven by its written records;
- 23.2.3 Confidential Information which can be proved to have been rightfully received by the receiving Party from a third party without obligation of confidence;
- 23.2.4 Confidential Information which is independently developed by the receiving Party as proven by its written records;
- 23.2.5 Confidential Information which is approved for release with the prior written consent of the disclosing Party; and
- 23.2.6 disclosure of Confidential Information which is required by law to be disclosed or must be disclosed in order to comply with a judicial order or decree, provided that the receiving Party has (where reasonably possible) given the disclosing Party written notice of such request such that the disclosing Party has an opportunity to defend, limit or protect such disclosure.
- 23.3 The rights and obligations in terms of this clause **23** are divisible from the rest of this Agreement, and shall remain of full force and effect, notwithstanding termination of this Agreement for any reason whatsoever, and shall continue to be effective indefinitely.
- 23.4 The Parties shall not at any time during the term of this Agreement, release any statement to the press, or make any other public statement of any nature which could reasonably be expected to be published in any media regarding the relationship or the subject matter of this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld.



- 23.5 The Parties acknowledge that any breach of the confidentiality undertakings in this clause **23** will cause the other to suffer damages and loss and accordingly, each Party indemnifies the other Party against any loss or damage suffered by the other Party as a result of such breach.
- 23.6 Save as otherwise provided for in this Agreement, neither Party shall acquire any right in or to any of the Confidential Information as a result of disclosure to it in terms of this Agreement, nor attempt to acquire or assert any such rights.
- 23.7 Notwithstanding anything to the contrary, either Party shall be entitled, before disclosing any Confidential Information to the other Party, to require that the Personnel of the other Party to whom such Confidential Information will be disclosed, sign confidentiality undertakings substantially similar to the provisions set out in this clause **23**, and the other Party shall ensure that no persons other than such Personnel have access to such Confidential Information, and accordingly indemnifies the disclosing Party against any loss or damage suffered by the disclosing Party arising out of or in connection with a breach of this obligation, or any breach by any such employee, agent, consultant, contractor or officer.
- 23.8 The Service Provider agrees to, at the expiry of this Agreement or on termination of this Agreement for whatsoever reason, return all Confidential Information whether in soft copies, hardcopies, in electronic and/or any other format to SAICA and/or provide SAICA with evidence that it has destroyed all copies of Confidential Information in its possession.
- 23.9 The obligations of this clause **23** shall survive the termination of this Agreement for any reason whatsoever and remain binding on the Parties indefinitely.

24 **INDEMNITY**

The Service Provider hereby indemnifies, holds harmless and defends SAICA and its Personnel from and against any damages, loss, costs and expenses (hereinafter collectively referred to as "**Liability**") of any nature whatsoever as a consequence of or which may arise from or is attributable to any wilful or negligent acts suffered by the Service Provider or any third party in the course of the supply of the Services.

25 **LIMITATION OF LIABILITY**

- 25.1 The Parties agree that the total amount of either Party's Liability arising out of the performance of its obligations under this Agreement and whether in contract, delict, breach of statutory duty or otherwise, shall be limited to the total fees paid under this agreement, any direct losses and legal costs suffered by SAICA as a result thereof giving rise to the Liability in the preceding 12 (twelve) month period.
- 25.2 The Service Provider hereby waives any claim of any nature relating to any aspect of this Agreement or any other cause whatsoever that the Service Provider or any of its Personnel or any third party might institute against SAICA, with the exception of gross negligence by SAICA.



25.3 Neither Party shall be liable to other Party for any indirect, special, consequential, or exemplary loss or damage, including without limitation, loss of profit, revenue, anticipated savings, business transactions or other contracts whether arising from negligence or breach of this Agreement.

26 DISPUTE RESOLUTION

26.1 If a dispute of any nature arises between the Parties relating to the following;

26.1.1 the interpretation of this Agreement;

26.1.2 the effect of the Parties' respective rights or obligations hereunder;

26.1.3 a breach of this Agreement; and

26.1.4 the termination of this Agreement.

26.2 Then, upon written request of either Party, each of the Parties will appoint a senior representative whose task it will be to attempt to reach an amicable resolution to the 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) Calendar Days. Any agreement reached by the representatives shall be in writing and binding on the Parties. No formal proceedings may be commenced until the representatives conclude in good faith that an amicable resolution of the matter is not likely to occur.

26.3 Should the representatives of the Parties be unable to resolve a dispute in accordance with the a foregoing, such dispute will be submitted to and decided by a court of competent jurisdiction or, upon agreement between the Parties, by arbitration in terms of this clause **26**.

26.4 The arbitrator shall be appointed by the Parties, and failing agreement by the Parties, shall be appointed by the Chairman of the Johannesburg Bar Council or its successor in title.

26.5 The arbitration shall be held at Johannesburg.

26.6 The arbitration shall be held in accordance with the Arbitration Act, 42 of 1965 and any statutory modification or re-enactment thereof.

26.7 The arbitrator shall be entitled to:

26.7.1 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 procedures or the strict rules of evidence;

26.7.2 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;

26.7.3 decide the matters submitted to him according to what he considers just and equitable in all the circumstances, having regard to the purpose of this agreement; and



- 26.7.4 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.
- 26.8 The arbitration shall be held as quickly as possible after it is demanded, with a view to it being completed within 30 (thirty) Calendar Days after it has been so demanded.
- 26.9 This clause is severable from the rest of the Agreement and shall therefore remain in effect even if this Agreement is terminated.
- 26.10 This clause **26** 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.
- 26.11 The Parties hereby consent to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg in respect of the proceedings in this clause **26**, where applicable, and the above Court shall have jurisdiction to enforce any award made by an arbitrator under this clause.

27 NOTICES AND DOMICILIUM

- 27.1 The Parties choose as their domicilium citandi et executandi (address for purpose of legal proceedings and legal notices) their respective addresses set out in clause **27.2** below, at which addresses all processes and notices arising out of or in connection with this agreement, its breach or termination may validly be served upon or delivered to the Parties.
- 27.2 For the purposes of this Agreement the Parties' domicilium citandi et executandi is:
- 27.2.1 as regards SAICA at:
- 17 Fricker Road
- Illovo
- 2196
- Attention:
- Tel No:
- Email:
- 27.2.2 Legal Notices:
- Attention: Project Director Commercial
- Email: governance@saica.co.za; contracts@saica.co.za
- Cc: Project Director Commercial
- 27.3 as regards the Service Provider at:

[insert address]



Attention: [insert name]

Tel No: [insert no]

Email: [insert email address]

27.4 or at such other physical address, not being a post office box or poste restante, of which the Party concerned may notify the other in writing.

27.5 Any written notices required in terms of Clause 27.1 shall only be satisfied if such notice is given in a written form.

27.6 Any notice given in terms of this Agreement shall be in writing and shall:

27.7 be delivered by hand, courier or email and deemed to have been duly received by the addressee on the date of delivery;

27.8 Notices in terms of Clause 27.2.2 shall only be accepted and deemed to have been received in terms of the Electronic Communications and Transactions Act, 25 of 2002 if emailed to governance@saica.co.za and contracts@saica.co.za as indicated in Clause 27.2.2 above

27.9 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by a Party at its chosen domicilium address set out above, shall be an adequate written notice of communication to such Party.

28 BREACH AND TERMINATION

28.1 A Party to this Agreement shall be in default if it:

28.2 fails to pay any amount due by it in terms of this Agreement, by the due date, and fails to remedy such breach within 14 (fourteen) Calendar Days of written notice to do so; or

28.3 commits a material breach of any provision of this Agreement and fails to remedy such breach within 5 (five) Calendar Days (or such period as may be reasonable in the circumstances) written notice to do so; or

28.4 is deregistered or applies for deregistration in terms of the Companies Act 71 of 2008, alternatively Section 26 of the Close Corporations Act 69 of 1984 as the case may be; or

28.5 ceases or threatens to cease to carry on business; or

28.6 commits an act of insolvency within the ambit of Section 8 of the Insolvency Act, 24 of 1936; or

28.7 is subject to an application by a person other than a Party to this Agreement for the provisional or final winding up or judicial management of such Party, or commences business rescue proceedings, or a special resolution is passed for the winding up of such Party.

28.8 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 this Agreement, to terminate this Agreement by providing a 30 (thirty) Calendar Days written



notice. Termination of this Agreement will not relieve a Party of obligations imposed upon such Party by statute or regulation or by this Agreement prior to its termination.

- 28.9 Notwithstanding the provisions of this Agreement, SAICA may, without prejudice to any other rights herein, at any time and by giving written notice, forthwith terminate this Agreement if:
- 28.9.1 the Service Provider fails to satisfy a judgement against it by any third party within 21 (twenty-one) Calendar Days after the Service Provider becomes aware of the judgement, except if the Service Provider provides evidence on an ongoing basis to the reasonable satisfaction of SAICA that steps have been initiated within the 21 (twenty-one) Calendar Days to appeal or rescind the judgement and to procure suspension of execution of the judgement and that such steps are being expeditiously pursued. The period of 21 (twenty-one) Calendar Days shall run from the date succeeding the date on which judgement becomes final, or the date on which the attempts to procure the suspension of the execution fail;
 - 28.9.2 the Service Provider carries on business under a receiver, trustee or manager for the benefit of creditors, or any similar circumstance that may arise and have a similar effect;
 - 28.9.3 the Service Provider has provided incorrect information on expertise, capability, capacity or reliability to perform its obligations under the Agreement;
 - 28.9.4 the conduct of the Service Provider constitutes unethical behaviour such as bribery or other unethical conduct;
 - 28.9.5 regulatory or statutory requirements and/or conditions are not fulfilled and in particular when those regulatory requirements and/or conditions relate to an actual or threatening delay by the Service Provider regarding fulfilment of its obligations under the Agreement or
 - 28.9.6 the Service Provider acts against the expressed policies and instructions of SAICA as expressed in terms of this Agreement.
- 28.10 The termination of this Agreement 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 this Agreement prior to such termination.
- 28.11 Notwithstanding any other provision contained in this Agreement, in the event that the Service Provider fails to deliver the Services in terms of this Agreement, SAICA shall, at its election, be entitled, but not obliged to, terminate this Agreement forthwith and procure services similar to the Services from any third party and recover such additional expenditure and damages (if any) from the Service Provider.
- 28.12 SAICA shall, notwithstanding the provisions of this Agreement, without just cause, be entitled to terminate this Agreement upon 30 (thirty) Calendar Days written notice to the Service Provider.



29 JURISDICTION

29.1 The Parties irrevocably agree that the High Court of South Africa, Gauteng Local Division shall have jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of or in connection with this Agreement.

29.2 The submission to the jurisdiction of the court referred to in clause 29.1 shall not be construed so as to limit the rights of either Party to institute proceedings against the other Party in any other court of competent jurisdiction for the purpose of obtaining urgent or interdictory relief.

30 NON-EXCLUSIVITY

This Agreement is not exclusive. Notwithstanding the signing of this Agreement, SAICA reserves the right to procure any service similar to the Services from any other Service Provider.

31 NON-SOLICITATION OF EMPLOYEES

31.1 The parties agree that from the commencement date not to act in any way which may give rise to a conflict of interest in relation to the other party.

31.2 The Parties agree that neither Party shall, without the prior written consent of the other, either during, or within 12 (twelve) months of the termination of this Agreement, engage, employ or otherwise solicit for performance of services in any manner whatsoever, whether directly or indirectly, any Personnel of the other Party to this Agreement involved in the provision of Services in terms hereof.

31.3 To the extent that a Party whose Personnel is solicited, engaged or employed ("**Affected Party**"):

31.3.1 consents to any such employment, solicitation, engagement the recruiting Party ("**Recruiting Party**") shall pay the Affected Party a recruitment fee equal to 25% (twenty five percent) of the gross annual package (including any quantifiable bonuses or incentives and annualised if necessary) paid by the Affected Party to the Personnel concerned ("**Gross Package**"); or

31.3.2 does not consent to any such employment, solicitation or engagement the Recruiting Party shall, on written demand from the Affected Party, pay the Affected Party a recruitment fee equal to 50% (fifty percent) of the Gross Package of the Personnel concerned.

31.4 The Parties acknowledge and agree that any amount to be paid under **clause 31** shall be payable within 30 (thirty) days of commencement of such Personnel's appointment by the Recruiting Party.

31.5 Nothing in this **clause 31** ("**Non-Solicitation**") shall prevent either Party from hiring or contracting with any person who applies for a job or contract as a response to a generally advertised invitation by the relevant Party.

32 PROTECTION OF RIGHTS

If the Service Provider fails to comply with any obligation imposed upon it by this Agreement within a reasonable time, but no more than 30 (thirty) Calendar Days, after receipt of a written notice from SAICA requiring it to so comply,



which notice shall contain comprehensive detail of the items requiring compliance, SAICA shall, without prejudice to any other rights it may have, be entitled, but not obliged, to perform or procure the performance of such obligation.

33 **ASSIGNMENT AND CESSION**

33.1 The Service Provider shall not:

33.1.1 transfer any rights and/or obligations arising out of this Agreement without the prior written consent of SAICA. In so far as SAICA does permit the same, this shall not relieve the Service Provider of any obligations with respect to any covenant, condition, or obligation required to be performed by the Service Provider under this Agreement; and

33.1.2 make or allow any change to its shareholding or management control as it is at the time of signature of this Agreement in the absence of prior notification of such change to SAICA.

34 **ENTIRE AGREEMENT AND VARIATION**

34.1 This document embodies the entire Agreement between the Parties hereto.

34.2 No amendment or variation of any of the provisions of this Agreement shall be of any force or effect unless reduced to writing and signed by both Parties. This requirement will only be satisfied if such amendment or variation is made in a written form.

35 **APPLICABLE LAW**

This Agreement shall be governed exclusively, in all respects by, and shall be interpreted in accordance with the laws of the Republic of South Africa

36 **COUNTER PARTS**

This Agreement may be signed in counterparts and the copies signed in counterpart shall constitute the Agreement. This shall include emailed copies of this document.

37 **NON-WAIVER**

The failure of either Party to insist upon the strict performance of any provision of this Agreement or to exercise any right, power or remedy consequent upon a breach hereof shall not constitute a waiver by such Party to require strict and punctual compliance with each and every provision of this Agreement.

38 **SEVERABILITY**

The invalidity, illegality or unenforceability of any of the provisions of this Agreement shall not affect the validity, legality and enforceability of the remaining provisions of this Agreement

39 **COSTS**

Each Party shall pay its own cost of negotiating, drafting, preparing and implementing this Agreement.



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40 **PUBLICATION**

A public announcement in connection with this Agreement or any transaction contemplated by it must be agreed by the Parties before it is made, except if required by law in which case the Party required to make an announcement must, to the extent practicable, first consult with and take into account the reasonable requirements of the other Party.

SIGNATURE PAGE FOLLOWS:



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SIGNED AT _____ ON THIS _____ DAY OF _____ 20**

for and on behalf of

**THE SOUTH AFRICAN INSTITUTE OF
CHARTERED ACCOUNTANT**

Name of Signatory Duly Authorised

Designation of Signatory

SIGNED AT _____ ON THIS _____ DAY OF _____ 20**

for and on behalf of

[INSERT NAME]

Name of Signatory Duly Authorised

Designation of Signatory



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ANNEXURE "A"

NOMINATED BANK ACCOUNT

ANNEXURE "B"

SERVICES



SAICA

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ANNEXURE "C"

B-BBEE CERTIFICATE



ANNEXURE “D”

SAICA Code of Ethical Purchasing

Code of Ethical Purchasing

SAICA is committed to conduct its dealings with suppliers and service providers on the highest of ethical standards, which includes ethical purchasing to support the reputation of SAICA, its employees and its stakeholders.

SAICA shall not tolerate any breaches of this Code of Ethical Purchasing (Code), whether directly or indirectly, intentionally, or unintentionally, by SAICA employees, suppliers, and service providers.

This Code sets out the principles and behavioural standards which are expected from SAICA's suppliers and service providers, including any subcontractors. These principles and behavioural standards are aligned with the United Nations (UN) Global Compact Principles and Organisation for Economic Co-operation and Development (OECD) Recommendation relating to corruption.

SAICA expects its suppliers and service providers to comply with all applicable laws, regulations, standards and to adhere to the principles set out in this Code.

Principle 1: Ethics

- To enforce a strong ethical culture SAICA adopted the following MIPART Values which includes member centricity, integrity, professionalism, accountability, respect and transparency. SAICA expects suppliers and service providers to adopt SAICA's [Employee Code of Ethics Policy](#) or the principles thereof.
- SAICA expects its employees, suppliers, service providers and other relevant stakeholders to consider what is good and right in its business activities and operations, have the ability to distinguish between right and wrong, and to be committed to doing what is right. Employees, suppliers, service providers and other relevant stakeholders are encouraged to raise their concerns to SAICA's Anonymous Tip-Off Hotline, which is an independent, secure, and confidential channel whereby actual or potential unethical and misconduct can be reported without fear of victimisation, occupational detrimental and retaliation. Reports can be made via this [link](#). Reports will be handled in accordance with SAICA's Whistleblowing Procedure.
- All individuals are expected report any real or perceived conflict of interest involving SAICA's business and or interests. SAICA expects suppliers and service providers to adopt SAICA's [Employee Conflict of Interest Policy](#) or principles thereof.

Principle 2: Anti-Corruption

- SAICA expects suppliers and service providers to adopt SAICA's [Fraud Prevention Policy](#) or the principles thereof.
- SAICA expects its employees, suppliers, and service providers to not engage in any way or in any way encourage bribery, corruption, extortion, fraud or any other unethical conduct or unlawful activity, whether directly or indirectly, including but not limited to improper offers for payments or kickbacks of any kind to or from employees, members, suppliers, service providers, or other any individuals.



Principle 3: Human Rights

- SAICA expects its employees, suppliers, and service providers to:
 - support and respect the protection of internationally proclaimed human rights; and
 - ensure that it and SAICA is not complicit in any human rights abuses

Principle 4: Labour

- SAICA expects its suppliers and service providers to:
 - uphold the freedom of association and the effective recognition of the right to collective bargaining.
 - eliminate all forms of forced and compulsory labour.
 - effectively abolish child labour.
 - eliminate discrimination in respect of employment and occupation; and
 - have in place appropriate disciplinary procedures to address, among other things, violations, at all levels of SAICA unethical and misconduct.

Principle 5: Environment

- SAICA expects its suppliers and service providers to:
 - Promote and support environmental protection and to comply with applicable environmental laws and regulations.
 - support a precautionary approach to environmental challenges.
 - undertake initiatives to promote greater environmental responsibility and support the use of goods and services which mitigate SAICA's environmental impact.
 - better manage and utilise resources such as energy, water, paper, and waste. and
 - encourage the development and diffusion of environmentally friendly technologies.

DECLARATION

We request all our suppliers and service providers to adhere to this Code as a formal position statement that details the behaviours that SAICA expects from its suppliers and service providers involved in the delivery of the goods and services to SAICA.

Acceptance to supplying and delivering goods and services to SAICA, the Supplier and service providers acknowledges and agrees that SAICA may investigate any behaviour that the Supplier is misaligned to the Code, and that if in SAICA's reasonable opinion, such behaviour is misaligned to the Code, then SAICA may terminate its Contract immediately by notice to the Supplier.



SAICA

DIFFERENCE
MAKERS™

SIGNED AT _____ ON THIS _____ DAY OF _____ 20 ()

for and on behalf of

Name of Signatory Duly Authorised

Designation of Signatory