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**ADMINISTRATION AGREEMENT**

entered into between

**THE NATIONAL DEPARTMENT OF HEALTH**

and

**THE NHI ADMINISTRATOR**

Registration No. \_\_\_\_\_

## WHEREBY IT IS AGREED AS FOLLOWS:

### 1. INTERPRETATION AND PRELIMINARY

The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof. Unless a contrary intention clearly appears:

1.1. words importing:

1.1.1. any one gender includes the other two genders;

1.1.2. the singular includes the plural and *vice versa*; and

1.1.3. natural persons include created entities (corporate or unincorporated) and the state and *vice versa*;

1.2. the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

1.2.1. “**Act**” means the Medical Schemes Act 131 of 1998, as amended;

1.2.2. “**Administration Services**” means the administration services to be provided by the NHI Administrator to the National Department of Health, as set out in **Error! Reference source not found.** (*Service Level Agreement*);

1.2.3. “**Agreement**” means this administration agreement, together with any annexures hereto;

1.2.4. “**B-BBEE Legislation**” means the Broad-Based Black Economic Empowerment Act 53 of 2003 and the Codes of Good Practice, respectively, issued under that Act as has or may be amended or substituted from time to time;

1.2.5. “**Business Day**” means any day other than a Saturday, Sunday or official public holiday in South Africa;

1.2.6. “**Committee**” means the NHI PHC Contracting Committee of the Scheme;

1.2.7. “**Claims**” means accounts by Contracted Providers for Relevant Health Services rendered to Enrolled Users in accordance with the Scheme Contract and Regulations;

- 1.2.8. **“Commencement Date”** means XXXX or such other date as may be agreed in writing by the Parties;
- 1.2.9. **“Condition Precedent”** means the term as defined in clause **Error! Reference source not found.**;
- 1.2.10. **“Confidential Information”** means valuable, technical, financial, proprietary, and confidential information and ideas pertaining to either or both Parties’ businesses, the contents of this Agreement, Scheme Data, any personal and health information of Users, information regarding business practices and trade secrets, which information may be furnished orally or in writing, or in any form, including electronically, including details of finances, price files, contracts, earnings, volume of business, methods, systems, practices, plans and/or pricing;
- 1.2.11. **“CPI”** means the index published by Statistics South Africa in its publication P0141.1, Table B, or any equivalent substitute publication;
- 1.2.12. **“Enrolled User”** means a User in the Health Patient Registry System (HPRS) who is enrolled with a Contracted Provider as per NHI PHC Contracting Regulations for Enrolment;
- 1.2.13. **“Contracted Provider”** means any public service entity legally constituted to contract and employ medical practitioners, any organisation accredited by the Health Professions Council of South Africa (HPCSA) to employ medical practitioners, and/or any private general practitioner or family physician (practicing as a solo practice, partnership, incorporated company or in an association);
- 1.2.14. **“Insolvency Event”** means, in relation to any person:
- 1.2.14.1. it is, or is deemed for the purposes of any applicable law, to be insolvent or unable to pay its debts as they fall due; or
  - 1.2.14.2. it admits an inability to pay its debts as they fall due; or
  - 1.2.14.3. a moratorium is declared in respect of any of its indebtedness; or
  - 1.2.14.4. any step (including a petition, proposal or convening of a meeting) is taken with a view to a moratorium or a general composition or similar arrangement with its creditors; or
  - 1.2.14.5. a meeting of its shareholders, directors or other officers is convened for the purpose of considering any resolution for, to bring an

- application for or to file documents with a court or any registrar for, its winding-up, judicial management, placement into business rescue or dissolution or any such resolution is passed; or
- 1.2.14.6. any person brings an application, or files documents with a court or any registrar, for its winding-up, judicial management, placement into business rescue or dissolution; or
- 1.2.14.7. an order for its winding-up or judicial management (whether on a provisional or final basis), placement into business rescue, dissolution or reorganisation (by way of a scheme of arrangement or otherwise) is made; or
- 1.2.14.8. any liquidator, judicial manager, business rescue practitioner or similar officer is appointed in respect of such person; or
- 1.2.14.9. its shareholders, directors or other officers request the appointment of, or give notice of their intention to appoint, a liquidator, judicial manager, business rescue practitioner or similar officer;
- 1.2.15. **“Measurement Period”** means the period over which the NHI Administrator’s performance of the Service Levels will be measured and, save as otherwise provided in this Agreement or the Service Level Agreement, the Measurement Period shall be 3 (three) months;
- 1.2.16. **“Medical Practitioner”** means a general practitioner or a specialist, registered as such in terms of the Health Professions Act 56 of 1974;
- 1.2.17. **“NHI Administrator”** means Medical Scheme Administrator, a company which is an administrator registered and accredited in terms of regulation 17 issued in terms of the Act with registration number 19;
- 1.2.18. **“Parties”** means the National Department of Health and the NHI Administrator, and **“Party”** shall mean either one of them as the context requires;
- 1.2.19. **“Personal Information”** has the same meaning as it does in the definition of the term in the POPI Act and shall include reference to ‘special personal information’ as defined in the POPI Act;
- 1.2.20. **“POPI Act”** means the Protection of Personal Information Act 4 of 2013;

- 1.2.21. “**Relevant Health Service**” means the Service Package as defined by the Scheme;
- 1.2.22. “**Scheme**” means the NHI PHC Contract, a scheme set up by the National Department of Health to test feasibility of NHI in contracting for primary health care (PHC) services;
- 1.2.23. “**Scheme Data**” means all registers, minute books, records and other data and details relating to the Scheme and its Users, including details relating to benefits, Enrolled Users and Claims;
- 1.2.24. “**Service Level Agreement**” means the service level agreement in respect of the Administration Services, as set out in **Annexure A** (*Service Level Agreement*);
- 1.2.25. “**Service Levels**” means the quantitative and qualitative performance metrics for the provision of the Administration Services, as set out in the Service Level Agreement;
- 1.2.26. “**Signature Date**” means the date of Signature of this Agreement by the Party signing last in time;
- 1.2.27. “**South Africa**” means the Republic of South Africa;
- 1.2.28. “**Transitional Services**” means the Administration Services to be rendered by the NHI Administrator for purposes of winding down the Administration Services rendered by it and to enable the transfer of such Administration Services to the Scheme’s new Administrator in the period prior to the date of termination or cancellation of this Agreement and matters ancillary thereto, all of which matters shall be identified by the Scheme as being reasonably necessary and materially required during the Transitional Services Period;
- 1.2.29. “**Transitional Services Period**” means the Valid Claim Period, reckoned from the date of termination or cancellation of this Agreement, or such shorter period as may be determined by the National Department of Health; and
- 1.2.30. “**User**” means a person admitted as a User, in the Health Patient Registry System (HPRS) and/or as defined by the National Health Insurance Bill of 2018 and final National Health Insurance Act;

1.2.31. **“Valid Claim Period”** means the period within which an Enrolled User’s claim must be submitted to the NHI Administrator in order to qualify for the payment of benefits, as provided for in the Scheme Contract and Regulations from time to time, and as at the Signature Date the Valid Claim Period is the period from the date of the rendering of a Relevant Health Service to an Enrolled User up to and including the last day of the 4<sup>th</sup> (fourth) month following the month during which such Relevant Health Service was rendered;

1.2.32. **“VAT”** means value added tax as contemplated in the Value-Added Tax Act 89 of 1991;

- 1.3. any reference to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time and includes any subordinate legislation made from time to time under such enactment. Any reference to a particular section in an enactment is to that section as at the Signature Date, and as amended or re-enacted from time to time and/or an equivalent measure in an enactment, provided that if as a result of such amendment or re-enactment, the specific requirements of a section referred to in this Agreement are changed, the relevant provision of this Agreement shall be read also as if it had been amended as necessary, without the necessity for an actual amendment;
- 1.4. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;
- 1.5. when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding day which is a Business Day;
- 1.6. if figures are referred to in numerals and in words and if there is any conflict between the two, the words shall prevail;
- 1.7. expressions defined in this Agreement shall bear the same meanings in the annexures to this Agreement which do not themselves contain their own conflicting definitions;
- 1.8. if any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause;

- 1.9. the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 1.10. the rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply;
- 1.11. any reference in this Agreement to a Party shall include a reference to that Party's assigns expressly permitted under this Agreement and, if such Party is liquidated or sequestrated, be applicable also to and binding upon that Party's liquidator or trustee, as the case may be;
- 1.12. the words "include", "including" and "in particular" shall be construed as being by way of example or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding word/s;
- 1.13. any reference in this Agreement to any other agreement or document shall be construed as a reference to such other agreement or document as same may have been, or may from time to time be, amended, varied, novated or supplemented; and
- 1.14. the words "other" and "otherwise" shall not be construed *eiusdem generis* with any preceding words if a wider construction is possible.

## 2. **LEGAL NATURE OF THE AGREEMENT**

- 2.1. This Agreement is an Administration Agreement in terms of which the National Department of Health appoints the NHI Administrator as an Administrator to render the Administration Services to the Scheme and its Users.
- 2.2. The NHI Administrator is an independent contractor, and save as otherwise expressly provided or contemplated in this Agreement, this Agreement is not intended to constitute either Party as an agent, legal representative, subsidiary, joint venturer, partner, employee, or servant of the other for any purpose whatsoever.

## 3. **DURATION OF THE AGREEMENT**

- 3.1. Notwithstanding the Signature Date, this Agreement shall be effective as from the Commencement Date and shall endure for an initial period of five (5) calendar years ("**Initial Period**"), subject to earlier termination in accordance with the provisions of this Agreement.
- 3.2. The Parties may renew this Agreement after the Initial Period, for successive periods of such duration as they may deem appropriate, provided that the duration of each successive period may not exceed five (5) years and may not be less than twelve (12) calendar months.

3.3. Without prejudice to the rights and obligations of the Parties in terms of clause 3.2, for so long as the NHI Administrator is or intends to be the Administrator of the Scheme, whether in terms of this Agreement or otherwise, the NHI Administrator undertakes to remain committed to the value, service propositions, commercial and financial principles agreed to in and underpinning this Agreement.

3.4. Notwithstanding the preceding provisions of this clause 3 (*Duration of the Agreement*):

3.4.1. the National Department of Health shall have the right to terminate this Agreement at any time on not less than ninety (90) days' notice in writing to the NHI Administrator; and

3.4.2. the NHI Administrator shall have the right to terminate this Agreement at any time on not less than twelve (12) calendar months' notice in writing to the National Department of Health.

#### 4. **ADMINISTRATION SERVICES**

4.1. The NHI Administrator shall:

4.1.1. on behalf of the National Department of Health, administer the business of the Scheme; and

4.1.2. render the Administration Services to the Scheme and its Users,

in accordance with the Scheme Contract and Regulations, and this Agreement. The NHI Administrator shall provide the Administration Services and shall perform any other obligation reasonably imposed by the Scheme and/or accepted by the NHI Administrator in terms of this Agreement or any law in accordance with any written directions of the Contracting Committee, provided that such directions are not in conflict with this Agreement, the Scheme Contract and Regulations, or any other law.

4.2. The Administration Services shall be provided by the NHI Administrator as from the Commencement Date, and thereafter for the duration of this Agreement.

4.3. At all times during the duration of its appointment, the NHI Administrator warrants that it:

4.3.1. will use adequate numbers of expert and qualified staff with suitable training, education, experience and skill to perform the Administration Services; and

4.3.2. will perform all the Administration Services in a workmanlike manner and with due care, skill and expertise.



- 4.4. As from the date of this engagement with the National Department of Health on all matters and processes leading up to the conclusion of this Agreement and at all times whilst this Agreement is in force, the NHI Administrator warrants that it:
- 4.4.1. was and is accredited as an Administrator and it is permitted to perform all of the Administration Services in terms of its accreditation;
  - 4.4.2. was and is fit and proper to provide the Administration Services;
  - 4.4.3. had and has the necessary resources, systems, skills and capacity to render the Administration Services;
  - 4.4.4. was and is financially sound; and
  - 4.4.5. was not and is not involved in any manner whatsoever, directly or indirectly, in any business or venture that competes or conflicts with the performance by the NHI Administrator of its obligations in terms of this Agreement, unless the prior consent of the National Department of Health has been obtained in writing. For the avoidance of doubt, this clause 4.4.5 does not restrain the NHI Administrator from providing administration services to medical schemes other than the Scheme, provided such service provision does not compete or conflict with the NHI Administrator's performance of its obligations under this Agreement.
- 4.5. On or before each anniversary of the Commencement Date, the NHI Administrator shall provide to the National Department of Health:
- 4.5.1. an original valid Tax Clearance Certificate of Good Standing ("**TCC**") in respect of the NHI Administrator, issued by the South African Revenue Service not more than three (3) months prior to the date of submission of the TCC to the National Department of Health; and
  - 4.5.2. proof, in the form of a certificate, of the NHI Administrator's level contributor status in terms of the B-BBEE Legislation, issued by a South African National Accreditation System accredited verification agency or an Independent Regulatory Board for Auditors accredited auditor, or such other proof as may be permissible in terms of the B-BBEE Legislation.
- 4.6. As part of the Administration Services:
- 4.6.1. The NHI Administrator shall be responsible for the processing of all Claims from Contracted Providers in terms of the Scheme Contract and Regulations. All Claims shall be processed and paid in accordance with the Scheme Contract and Regulations and the Service Level Agreement.

- 4.6.2. The NHI Administrator will collect all amounts owed by Contracted Providers in accordance with the Scheme's then current credit control policy.
- 4.7. In the event that the National Department of Health requires the NHI Administrator to perform new or additional administration services ("**Additional Services**") other than ordinary enhancements which can reasonably be expected as part of continuous improvement or of an integrated offering (such ordinary enhancements being included in the Administration Services, for the avoidance of doubt), the Parties shall comply with the following:
- 4.7.1. the National Department of Health shall provide the NHI Administrator with its requirements regarding the Additional Services in writing, in sufficient detail to enable the NHI Administrator to determine its ability to render the Additional Services;
- 4.7.2. the NHI Administrator shall respond to the National Department of Health's request in writing within twenty (20) Business Days (or within such other period as the Parties may agree in writing), such response to include a reasonable proposed fee for the provision of the Additional Services; and
- 4.7.3. the NHI Administrator shall not begin performing any Additional Services until the scope thereof and the related fees have been agreed to by the Parties in writing and made part of this Agreement.
- 4.8. If any of the Administration Services are to be subcontracted by the NHI Administrator to a third party ("**Subcontractor**"):
- 4.8.1. the NHI Administrator shall ensure that:
- 4.8.1.1. it retains its primary functions and character as a provider of Administration Services to the National Department of Health;
- 4.8.1.2. where accreditation is required to perform the subcontracting function, the Subcontractor is the holder of such accreditation; and
- 4.8.1.3. it notifies the National Department of Health in writing of any subcontracting arrangement for approval at least twenty (20) Business Days prior to commencement of such arrangement, which approval shall not be unreasonably withheld;
- 4.8.2. such subcontracting arrangement shall not relieve the NHI Administrator of any of its obligations or liabilities hereunder and the NHI Administrator shall be liable for any act of its Subcontractors regardless of whether such acts are negligent or otherwise;

- 4.8.3. should the National Department of Health, acting reasonably, be of the view that the performance or services provided by any Subcontractor is compromising or is likely to compromise the NHI Administrator's ability to provide the Administration Services in accordance with the Service Level Agreement as set out in **Annexure A** (*Service Level Agreement*), it shall give notice thereof to the NHI Administrator and the NHI Administrator undertakes to take such reasonable measures as may be necessary to ensure that the NHI Administrator's fulfilment of its obligations in terms of this Agreement are not lessened or otherwise affected by the subcontracting and, if the circumstances so warrant, to remove and/or replace the Subcontractor in question as soon as is reasonably possible; and
- 4.8.4. the NHI Administrator undertakes to procure that the Subcontractor is bound by the undertakings contained in clause 10(*Scheme Data and Personal Information*) and clause 11 (*Confidentiality*) of this Agreement.

## 5. **SERVICE LEVELS AND REPORTING**

- 5.1. The NHI Administrator shall perform the Administration Services with promptness, diligence and courtesy. The NHI Administrator shall execute the Administration Services in a professional manner and in accordance with the practices and professional standards used in well-managed operations performing services of the nature of the Administration Services. The Service Level Agreement sets out the Service Levels by which the NHI Administrator's performance of the Administration Services are to be measured in a Measurement Period.
- 5.2. As soon as the NHI Administrator reasonably suspects that it will not be able to deliver any Administration Services on time or within the Service Level or fee parameters, as specified or contemplated in this Agreement, the NHI Administrator shall give the National Department of Health notice to this effect in writing.
- 5.3. The NHI Administrator shall be responsible for monitoring and measuring its performance of the Administration Services against the Service Levels in a format agreed by the Parties. The NHI Administrator shall provide the National Department of Health with reports (in both hard and soft copy) as frequently and as regularly as may be agreed to between the Parties setting out the NHI Administrator's performance in terms of the Service Level Agreement and this Agreement, including detailed supporting information, where applicable.
- 5.4. The NHI Administrator shall be excused from failing to comply with the Service Level Agreement to the extent that non-performance or delayed performance is caused by the National Department of Health or its staff or is a consequence of regulatory intervention or a

change to a legislative requirement that materially affects the manner in which Administration Services are to be rendered to the Scheme.

5.5. Notwithstanding anything to the contrary in this Agreement, in the event that a failure by the NHI Administrator to comply with the Service Level Agreement, the Scheme Contract and Regulations, any other applicable law, results in a financial loss to the National Department of Health, the National Department of Health shall be entitled to claim such financial loss from the NHI Administrator incurred by it in connection with such claim, subject to the following:

5.5.1. such a claim for financial loss can only be instituted if the loss arising from such failure exceeds a threshold of 0.125% (zero point one two five percent) of the National Department of Health's annual gross contributions within any particular year except that in the event of any loss attributable to fraud, gross negligence or wilful default by the NHI Administrator;

5.5.2. the National Department of Health shall have no entitlement to institute a claim for loss if:

5.5.2.1. it was aware of the NHI Administrator's conduct that gave rise to the failure that caused the loss and the Scheme's failure and/or refused to take any steps to ensure that the NHI Administrator desists from such conduct; or

5.5.2.2. it expressly consented to the NHI Administrator's conduct that eventually gave rise to the failure; or

5.5.2.3. if the NHI Administrator's conduct that gave rise to the failure was not negligently or wilfully performed; or

5.5.2.4. the financial loss was a consequence of a regulatory intervention or a change to a legislative requirement that materially affected the manner in which the business of a medical scheme is required to be conducted.

5.6. The NHI Administrator shall notify the National Department of Health in writing of any potential claim the National Department of Health may have against it in terms of clause 5.5 as soon as possible after becoming aware of such potential claim and in any event, within 5 (five) Business Days of becoming so aware.

## 6. INDEMNITY AND FIDELITY INSURANCE

- 6.1 The NHI Administrator shall procure and maintain in force for the duration of this Agreement, at its sole expense, an appropriate level of professional indemnity insurance and fidelity guarantee insurance, including insurance against loss resulting from the dishonesty, negligence, fraud, error, omission or any other wrongful conduct of any of the directors, officers and/or employees of the NHI Administrator.
- 6.2 A minimum of R100 000 000.00 (one hundred million Rand) insurance cover is to be held by the NHI Administrator for the purposes of this clause.

## 7. NATIONAL DEPARTMENT OF HEALTH OBLIGATIONS

- 7.1. The National Department of Health shall from time to time, as and when reasonably required by the NHI Administrator, furnish the NHI Administrator with full details of its Enrolled Users and such further information as the NHI Administrator may reasonably require for purposes of rendering the Administration Services.
- 7.2. The National Department of Health shall give the NHI Administrator reasonable prior notice in writing of the intended take-on of new Users.

## 8. ADMINISTRATION SERVICE FEES

- 8.1. With effect from the Effective Date, for the provision of the Administration Services, the National Department of Health will pay the NHI Administrator in accordance with the rate set out in **Annexure B (Service Fees)**. The rate table in **Annexure B (Service Fees)** will apply for the duration of 201X and is inclusive of VAT.
- 8.2. Unless otherwise agreed, the fee to be paid to the NHI Administrator, as set out in the rate table in **Annexure B (Service Fees)** will increase on 1 January of each year, by the average CPI published for the month of October in the year immediately preceding the year to which the increase relates.
- 8.3. The fees shall be payable monthly in arrears. The NHI Administrator shall issue an invoice to the National Department of Health for the fees payable.
- 8.4. Notwithstanding the provisions of clauses 8.1 and 8.2, either Party reserves the right, at any time, to re-negotiate the fee payable to the NHI Administrator, in the event of a material increase or decrease in:
- 8.4.1. the number of Enrolled Users of the Scheme; or
- 8.4.2. the scope of Administration Services provided to the Scheme.

8.5. The Parties agree that in the event of termination of this Agreement for any reason, the costs for the NHI Administrator to provide further Administration Services to the Scheme after the termination date shall be agreed upon between the Parties and included in the Transition Plan, as defined in clause 16.1.

## 9. ALLOCATION OF COSTS

9.1. The cost of the following items directly related to the Administration Services shall be borne by the National Department of Health:

9.1.1. audit and other professional fees;

9.1.2. bank charges on Scheme bank accounts;

9.1.3. interest on borrowed funds properly authorised by the National Department of Health;

9.1.4. any fees and/or levies payable under the Act;

9.1.5. insurance or reinsurance, but excluding the insurance referred to in clause 6 (*Indemnity and Fidelity Insurance*);

9.1.6. Scheme specific stationery which is printed at the request of the National Department of Health;

9.1.7. all costs associated with Scheme specific communication, including notices to Users, brochures, newsletters; and

9.1.8. any other costs incurred at the request of the National Department of Health that have not been included in the Service Level Agreement.

9.2. The cost of the following items indirectly related to the Administration Services shall be borne by the NHI Administrator:

9.2.1. costs relating to document retention and storage;

9.2.2. general stationery utilised by the NHI Administrator in the normal course of business;

9.2.3. Tax Certificates provided at the request of Users;

9.2.4. Users cards and printing of User details on User cards;

9.2.5. general printing and photocopying costs; and

- 9.2.6. all costs, ordinarily borne by the NHI Administrator, associated with general communications; and specific communications specified in the Service Level Agreement.

## 10. **SCHEME DATA AND USERS' PERSONAL INFORMATION**

- 10.1. In the course of rendering Administration Services to the National Department of Health, the NHI Administrator will come into possession of Scheme Data. The NHI Administrator acknowledges that the National Department of Health has proprietary rights over Scheme Data and other documents that were furnished to the NHI Administrator in terms of this Agreement and that no lien may be held over such data by the NHI Administrator. The Parties also acknowledge that their respective rights to Scheme Data may be affected by current or future statutory provisions. In these circumstances, the Parties undertake to deal with or process and exercise or transfer proprietary rights over Scheme Data in accordance with such provisions.
- 10.2. Without limiting the generality of clause 10.1:
- 10.2.1. Documentation relating to Scheme Contract and Regulations and minute books in respect of Committee meetings, shall at all times be the sole property of the National Department of Health and no lien may be held over such items by the NHI Administrator. The NHI Administrator shall keep these items in hard copy format and shall on termination of this Agreement forthwith deliver these items to the National Department of Health.
- 10.2.2. Whenever a document of title relating to assets held by the National Department of Health or to be held on behalf of the National Department of Health comes into possession of the NHI Administrator, the NHI Administrator undertakes to make adequate arrangements to ensure the continued safety of the assets held in safe custody. Any such documents must be marked by the NHI Administrator in a manner which will render it possible to establish readily that the National Department of Health is the owner of such assets and the NHI Administrator shall maintain a register to identify the National Department of Health's ownership of assets.
- 10.3. The NHI Administrator shall, during the duration of this Agreement, at the request of the National Department of Health, compile and make available to the National Department of Health such Scheme Data as the National Department of Health may require from time to time. The National Department of Health, or any person appointed by it, shall on reasonable notice be granted access to Scheme Data during normal business hours at the offices of the NHI Administrator.

- 10.4. The NHI Administrator must secure the integrity and confidentiality of Scheme Data in its possession or under its control by taking appropriate, reasonable technical and organisational measures to protect:
  - 10.4.1. loss of, damage to or unauthorised destruction of any Scheme Data; and
  - 10.4.2. unlawful access to or processing of Scheme Data, and for the purposes of this clause 10.4.2, the term “processing” shall bear the meaning ascribed to it in section 1 of the POPI Act.
- 10.5. In order to give effect to clause 10.4, the NHI Administrator shall take reasonable measures to:
  - 10.5.1. identify all reasonably foreseeable internal and external risks to the Scheme Data in its possession or under its control;
  - 10.5.2. establish and maintain appropriate safeguards against the risks identified;
  - 10.5.3. regularly verify that such safeguards are effectively implemented; and
  - 10.5.4. ensure that such safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.
- 10.6. In particular, the NHI Administrator must:
  - 10.6.1. take the required measures to procure the protection of all Scheme Data against disclosure other than as authorised in terms of this Agreement, including ensuring that appropriate security systems and processes are put in place which safeguard against the unauthorised transmission of or access to any Scheme Data between the NHI Administrator and any of its Subcontractors or agents;
  - 10.6.2. take the required measures to procure the protection of all Scheme Data against data corruption by any means, including electronic viruses; and
  - 10.6.3. have due regard to generally accepted information security practices and procedures which may apply to it generally or be required in terms of specific industry or professional rules and regulations.
- 10.7. The NHI Administrator must have information management policies and procedures in place that explain how confidentiality of the Scheme Data is to be maintained on its systems and by its officers and staff. The NHI Administrator shall provide the National Department of Health with a copy of such information management policies and procedures, on request.



- 10.8. In the performance of any Administration Services, where the integrity of any Scheme Data may be affected, the NHI Administrator shall ensure that, prior to commencing any such services, an up-to-date back-up copy of all affected Scheme Data is undertaken in accordance with its documented procedure for data back-ups.
- 10.9. With regard to the retention of documents, the Parties agree that:
- 10.9.1. the NHI Administrator shall not be required to retain any documentation beyond any period required by any applicable law or, where there is no legal requirement for a particular document, beyond a period of 5 (five) years;
  - 10.9.2. the NHI Administrator shall be entitled to decide the medium on which any data or any other material relating to the Scheme is to be retained, after consultation with the National Department of Health;
  - 10.9.3. the NHI Administrator shall maintain a system of archiving in respect of all documentation, which shall enable it and the National Department of Health to have reasonable access to such documentation; and
  - 10.9.4. upon the expiry of the periods referred to in clause 10.9.1, the NHI Administrator shall be entitled to destroy the documentation which it no longer requires or is no longer obliged to keep, unless requested by the National Department of Health to store the said documentation on its behalf for a further period (which costs will be for the Scheme's account) or to hand such documentation over to the National Department of Health. The NHI Administrator will provide the National Department of Health with a destruction certificate upon request by the National Department of Health.
- 10.10. The NHI Administrator or any of its Subcontractors may use any Scheme Data for any analytical, statistical or other purposes only as contemplated in this Agreement. In the event that the NHI Administrator or any of its Subcontractors require use of any Scheme Data for purposes beyond the scope of this Agreement (which shall include but not be limited to academic purposes), the prior written permission of the National Department of Health must be obtained. No Scheme Data may be used for analytical or statistical purposes or for purposes beyond the scope of this Agreement (as contemplated in this sub-clause), unless it is de-identified and cannot be re-identified. For purposes of this clause, the terms "de-identify" and "re-identify" shall bear the meanings ascribed to them in section 1 of the POPI Act.
- 10.11. Each of the Parties undertakes to comply with all legislation relating to data privacy and the protection of Personal Information as may be in force in South Africa, from time to time, including the POPI Act and the National Health Act 61 of 2003.

10.12. Unless the National Department of Health or a User expressly grants formal written consent to do so, the NHI Administrator or any entity affiliated to the NHI Administrator as its holding or subsidiary company or any other entity affiliated to such holding or subsidiary company including a joint venture partner, (each, a “**Partner**”) may not market or distribute to a User any of its products, goods or services, including those of any Partner, for the duration of or after the termination of this Agreement.

10.13. If any communication is made:

10.13.1. by the NHI Administrator to Users in terms of this clause in a capacity other than as Administrator to the Scheme; or

10.13.2. by a Partner of the NHI Administrator to Users in terms of this clause,

the NHI Administrator or the Partner, as the case may be, will clearly disclose in such communication its corporate identity and the capacity in which it is communicating with Users. The NHI Administrator undertakes to procure that its Partners will comply with the provisions of this clause.

10.14. The NHI Administrator further undertakes to ensure that all of its staff are fully trained and regularly informed of the onus to maintain the secrecy of the Confidential User Information.

10.15. The Parties acknowledge and record that the principles set out below shall constitute the framework for interpreting and giving effect to this clause:

10.15.1. all Personal Information (including but not limited to such Personal Information contained in any electronic format or repository) in relation to a User shall at all times belong to that User. A User may, however, consent to the processing of his or her Personal Information by the Scheme or by the NHI Administrator on the Scheme’s behalf, for purpose of receiving benefits and/or processing claims in terms of the Scheme Contract and Regulations, and any other Applicable Law.

10.15.2. circumstances may arise where an individual could be an Enrolled User of the Scheme, on the one hand, and a client of the NHI Administrator or its affiliate (as described in clause 10.12 above), on the other, (“**the/an Individual**”) and the Individual had given his or her consent to the NHI Administrator or its affiliate to process or has agreed with them to have his/her Personal Information dealt with on such terms as may validly be agreed with the Individual and to source such Personal Information from the Scheme. It is thus conceivable that the National Department of Health and the NHI Administrator or its affiliates may have concurrent rights to Process or otherwise use an Individual’s Personal Information.

10.15.3. subject to clause 10.12, the provisions of this clause 10 (*Scheme Data and User's Personal Information*) shall not be interpreted to preclude the NHI Administrator from acquiring ownership rights or retaining any processing rights or such other rights as may be conferred by an Individual over any Personal Information acquired by it as contemplated in this clause 10 (*Scheme Data and User's Personal Information*) or to de-identify any Personal Information howsoever received under its control or possession.

## 11. **CONFIDENTIALITY**

11.1. The Parties hereby acknowledge that:

11.1.1. in the course of their involvement with Users and with each other, Confidential Information will be disclosed to and come to their attention; and

11.1.2. in the event of the unauthorised disclosure of Confidential Information by either Party the other Party may suffer irreparable financial and other harm.

11.2. The confidentiality obligations contained in this Agreement shall not apply to Confidential Information which:

11.2.1. at the time of its disclosure is part of the public domain or which subsequently becomes, through no fault or failure of the disclosing Party, part of the public domain; or

11.2.2. was rightfully in a Party's possession without obligation of confidence prior to receipt from the disclosing Party, as proven by such Party's records; or

11.2.3. is required by law or court order to be disclosed.

11.3. Each Party undertakes not to disclose, in whole or in part any Confidential Information to any third party without the prior written approval of the Party concerned.

11.4. The disclosing Party shall only disclose so much of the Confidential Information and at such time as may be strictly necessary to enable any of its employees, agents, associates, or professional advisors to fulfil their function as such. Each Party warrants that such employee, agent, associate or professional advisor will comply with the aforesaid confidentiality undertakings.

11.5. The Parties' confidentiality obligations hereunder shall remain in force for an indefinite period after the Signature Date.

11.6. Each Party agrees that the sole purpose of the Confidential Information being disclosed or made accessible to it, is in connection with fulfilling the terms and conditions of the Agreement.

- 11.7. Each Party undertakes not to use the Confidential Information for any other purpose or in any manner that is adverse or detrimental to the interests of the other Party.
- 11.8. A Party shall be entitled, forthwith, without any prior written notice to the other Party and without prejudice to any rights which it may be entitled:
- 11.8.1. to obtain an interdict in any competent court to prohibit the other Party to continue with the contravention of its undertakings in terms of this clause 11 (*Confidentiality*); and/or
- 11.8.2. to obtain a court order in any competent court for the delivery of any relevant document, writings, copies, extracts or reproductions.
- 11.9. The Parties agree to keep confidential the terms, although not the existence, of this Agreement. In this regard, the Parties further specifically undertake that they shall not disclose to any person the financial transactions of this Agreement, provided that this prohibition shall not extend to any information which is required by the provisions of any law, statute or regulation, or during any court proceedings to be disclosed.
- 11.10. The provisions of clauses 10.4, 10.5, 10.6 and 10.7 shall apply, *mutatis mutandis*, to Confidential Information in the possession or under the control of the NHI Administrator.
- 11.11. Notwithstanding anything to the contrary set forth in this Agreement, the NHI Administrator agrees that it shall be liable to the other for all losses which constitute direct, indirect, special and/or consequential damages where such damages are caused by a breach of the data privacy and protection undertakings contained in clause 10, a breach of any Confidential Information undertaking contained in this clause 11, and/or an infringement of clause 12 in relation to the Scheme's Intellectual Property.

## 12. **INTELLECTUAL PROPERTY**

- 12.1. Save as is otherwise expressly provided in this Agreement, neither Party shall acquire any rights, title or interest of any kind in any intellectual property owned by the other Party. All intellectual property owned by a Party and all modifications made by it to that intellectual property, shall at all times remain the sole property of that Party.
- 12.2. Copyright in this Agreement vests in the National Department of Health.
- 12.3. Save as otherwise expressly provided in this Agreement, any material made available by a Party for use by the other Party in terms of this Agreement is provided on a non-exclusive, perpetual and royalty free basis solely for the duration of this Agreement.
- 12.4. Where a Party ("**Owner**") has provided intellectual property to the other Party in relation to this Agreement, the other party shall be entitled to use the intellectual property only for the

purposes for which it is intended in relation to this Agreement and need not obtain the Owner's permission to copy such intellectual property for use.

12.5. The Owner shall not be liable in any way for the use of any intellectual property other than as originally intended under this Agreement and the other Party hereby indemnifies the Owner against any claim which may be made against the Owner by any person arising from the use of such intellectual property for other purposes.

12.6. In respect of innovations and/or interventions, the Parties acknowledge, record and agree that, subject to clause 12.7:

12.6.1. if any Party innovates or invents any product or process including those associated with or related to and/or connected or relevant to the provision of Administration Services as contemplated in this Agreement, ownership of the intellectual property rights embodied therein vests with the Party that actually innovated or invented the product or process. Such vesting arises irrespective of:

12.6.1.1. which Party commissioned the development of the innovated or invented product or process;

12.6.1.2. the other Party making incidental improvements on or changes to the product of process being invented or innovated; or

12.6.1.3. whose information was used to effect the innovation or invention;

12.6.2. upon termination of this Agreement, each Party retains the perpetual right to use those innovations or inventions of each other which are embodied in the Scheme Contract and Regulations or are required for the National Department of Health to give effect to the Scheme Contract and Regulations, at the time of termination of this Agreement. This right is:

12.6.2.1. non-transferable and in-alienable; and

12.6.2.2. provided free of charge.

12.7. Notwithstanding clause 12.6, should the NHI Administrator be formally requested in writing by the National Department of Health to develop a specific new product or process (over which the National Department of Health seeks exclusive property rights) embodying a scope beyond ordinary enhancements which can reasonably be expected as part of the continuous improvement or of an integrated offering of Administration Services as contemplated in this Agreement, and should the NHI Administrator develop such new product or service in response to that request, then ownership of the intellectual property rights to such new product

or process shall exclusively belong to the National Department of Health (subject to the National Department of Health making any agreed payment to the NHI Administrator therefor).

12.8. Nothing contained in this Agreement shall restrict either Party from the use of generic ideas, concepts, know how, methods or techniques developed or learned by such Party in the course of the implementation of this Agreement, provided that in doing so such Party does not make a disclosure to a third party in breach of clause 11 (*Confidentiality*) or infringe the intellectual property rights of the other Party.

12.9. The provisions of this clause 12 (*Intellectual Property*) shall survive any termination of this Agreement even if the termination is for cause.

### 13. **PROHIBITION ON SOLICITATION OF EMPLOYEES**

The National Department of Health shall not during the duration of this Agreement and for a period of 6 (six) months after it terminates for any reason whatsoever, either for itself or on behalf of anyone else, directly or indirectly, persuade, induce, solicit, encourage or procure any employee of the NHI Administrator employed during the period of 12 (twelve) months prior and up to the termination date of this Agreement, to:

13.1.1. become employed by or interested in any manner whatsoever in anyone other than the NHI Administrator, nor shall the National Department of Health itself employ any such person in that period on either a full-time or part-time basis in any capacity whatsoever or engage the services of any such person as an independent contractor on either a full-time or part-time basis in that period; or

13.1.2. terminate his or her employment with the NHI Administrator.

13.2. The NHI Administrator shall not during the duration of this Agreement and for a period of 6 (six) months after it terminates for any reason whatsoever, either for itself or on behalf of anyone else, directly or indirectly, persuade, induce, solicit, encourage or procure any employee of the National Department of Health employed during the period of 12 (twelve) months prior and up to the termination date of this Agreement, to:

13.2.1. become employed by or interested in any manner whatsoever in anyone other than the National Department of Health, nor shall the NHI Administrator itself employ any such person in that period on either a full-time or part-time basis in any capacity whatsoever or engage the services of any such person as an independent contractor on either a full-time or part-time basis in that period; or

13.2.2. terminate his or her employment with the National Department of Health.

#### 14. **WARRANTIES AND LIMITATION OF LIABILITY**

14.1. Each Party warrants and undertakes to the other that:

14.1.1. it has the legal capacity and right to enter into this Agreement; and

14.1.2. it will at all times comply with all applicable laws relating to the conduct of its business and the implementation of this Agreement.

14.2. Neither Party shall be liable to the other, whether arising from breach of contract, delict or otherwise, for:

14.2.1. any indirect or consequential damages; or

14.2.2. loss of profit (including interest thereon) whether constituting direct or indirect losses, provided that nothing contained in this clause 14.2 shall restrict or limit or qualify or in any manner affect a claim or any recourse that either Party has against the other to the extent expressly provided for in this Agreement including but not limited to clause 11.11.

#### 15. **BREACH AND TERMINATION**

15.1. If either Party breaches a material term of this Agreement in a way which is not capable of being remedied, the aggrieved Party shall be entitled to cancel this Agreement with immediate effect on written notice, without prejudice to its other rights in law including its right to claim damages.

15.2. If:

15.2.1. a Party breaches a material term of this Agreement in a way which is capable of being remedied, it shall on its own accord or upon receipt of written notice from the non-defaulting Party, within 7 (seven) days of it becoming aware of the breach or within 7 (seven) days (or such longer period as may be specified in the notice) of receipt of written notice from the non-defaulting Party, as the case may be, submit a plan to remedy or sufficiently mitigate the effect of such material breach which meets the approval of the non-defaulting Party (which approval shall not be unreasonably withheld) ("**Remedy Plan**"). If the defaulting Party does not remedy such breach:

15.2.1.1. within 30 (thirty) days of submission of the Remedy Plan to the non-defaulting Party, or such longer or shorter period as may be stated in the Remedy Plan and agreed to and approved by the non-defaulting Party; and/or

15.2.1.2. within the service level parameters contemplated in the Remedy Plan; or

15.2.2. an Insolvency Event occurs in respect of a Party; or

15.2.3. a Party intentionally does anything which is calculated to injure the reputation of or the goodwill attaching to the other Party,

then the other Party shall be entitled to cancel this Agreement with immediate effect on written notice, without prejudice to its other rights in law including its right to claim damages.

15.3. For purposes of this clause 15 (*Breach*), but without limiting the generality of the concept of a material breach, a breach of a material term of this Agreement includes:

15.3.1. subject to clause 5.4, the non-adherence due to the conduct of the NHI Administrator to:

15.3.1.1. a specific Critical Service Level over a period of 3 (three) consecutive months; or

15.3.1.2. any combination of Critical Service Levels over a period of 3 (three) consecutive months, 2 (two) of which Critical Service Levels shall have not been adhered to for 2 (two) months in such 3 (three) month period; or

15.3.2. either Party having been proven to have committed any corrupt or fraudulent conduct in connection with the procurement process conducted by the National Department of Health in respect of this Agreement or any other third-party procurement process; or

15.3.3. either Party defaulting in the performance of any material obligations in terms of or arising from this Agreement; or

15.3.4. either Party failing to materially comply with applicable obligations or requirements provided for in the Act or any other statute, including but not limited to any licensing, registration or accreditation requirements.

15.4. For the avoidance of doubt, the Parties acknowledge and record that the breaches contemplated in:

15.4.1. clause 15.3.1, constitutes a material breach, capable of being remedied as contemplated in clause 15.2.1;



15.4.2. clause 15.3.2, constitutes a material breach which is not capable of being remedied as contemplated in clause 15.1; and

15.4.3. clauses 15.3.3 and 15.3.4, constitute material breaches which could, in appropriate circumstances, be capable of being remedied as contemplated in clause 15.2.1.

15.5. In the event that either party serves Notice on the other setting out its intention to terminate this Agreement, or failing which should either Party terminate this Agreement summarily (on a basis provided for either in law or in this Agreement), then such Notice or termination as the case may be shall empower either Party to terminate the Managed Care Agreement accordingly, whether on Notice or summarily (on a basis provided for in law or in said Managed Care Agreement). For the purposes of this clause 15.5, the term:

## 16. **TRANSITIONAL ARRANGEMENTS IN RESPECT OF TERMINATION**

16.1. Upon receipt of notice of termination of this Agreement, the Parties will within a period of not more than 60 (sixty) days from the date of the notice of termination, agree on the terms of a transition plan which will address the timing, format, and costs of transfer of the Scheme Data to the National Department of Health, as well as the provision of the Transitional Services by the NHI Administrator during the Transitional Services Period ("**Transition Plan**").

16.2. The NHI Administrator will make the Scheme Data available to the National Department of Health in time for any new Administrator of the Scheme to take on that Scheme Data in a way which enables it to commence its services to the Scheme when its administration agreement commences, but by no later than the date that the termination of the Agreement becomes effective, unless otherwise agreed by the Parties.

16.3. The Transition Plan must make provision for the Scheme Data to be transferred to the National Department of Health (or the Scheme's new Administrator, if so directed by the National Department of Health) in a format which can be loaded, read and processed on a computer and as agreed between the Parties. Failing agreement as to format, the Scheme Data shall be provided to the National Department of Health (or the Scheme's new Administrator if so directed by the National Department of Health) in a freely readable and usable electronic format, in line with South African medical scheme industry standards.

16.4. The Transition Plan will further provide for payment by the National Department of Health of the costs reasonably and actually incurred by the NHI Administrator for compiling, converting (if applicable) and transferring the Scheme Data to the National Department of Health, subject to the provision to the National Department of Health of reasonable proof thereof.

16.5. Upon termination of this Agreement:

- 16.5.1. the NHI Administrator shall furnish a report to the National Department of Health not later than 60 (sixty) days after the date of termination of this Agreement, confirming:
    - 16.5.1.1. that all documents of title relating to the assets of the National Department of Health, the assets register, minute books, User's records and other records and information pertaining to the Scheme have been delivered to the Committee or the new Administrator of the Scheme, as the case may be;
    - 16.5.1.2. the date and address of such delivery; and
    - 16.5.1.3. the name of the trustee of the person at the new Administrator's business to whom the documents referred to in clause 16.5.1.1 have been delivered.
  - 16.5.2. In the event that the NHI Administrator is for any reason unable to comply fully or partially with the provisions of clause 16.5.1, the report referred to in that clause shall contain full particulars regarding documentation which has not been delivered, the reasons therefor, as well as a plan with the dates on which compliance will take place, to enable the Registrar to approve such further period as may be determined by him.
  - 16.5.3. The Committee shall take steps to ensure the integrity of all documents, data and information transferred to the new Administrator in the circumstances contemplated in clause 16.5.1.
- 16.6. With regard to the Transitional Services:
- 16.6.1. The NHI Administrator shall provide the Transitional Services to the Scheme for the Transitional Services Period.
  - 16.6.2. The NHI Administrator shall cooperate, in good faith, with the National Department of Health and the Scheme's new Administrator for the purpose of the proper administration of the Scheme and will do all such things as may be reasonably necessary for the duration of the Transitional Services Period to enable the new Administrator to perform its duties as the Administrator of the Scheme.
  - 16.6.3. The National Department of Health shall from time to time during the Transitional Services Period, as and when reasonably required by the NHI Administrator, furnish the NHI Administrator with such information as the NHI Administrator may reasonably require for purposes of rendering the Transitional Services.

- 16.6.4. In consideration for the provision, *inter alia*, of the Transitional Services, the National Department of Health shall pay to the NHI Administrator the fees as set out in **Annexure C** (*Transitional Services Fees*) for the duration of the Transitional Services Period.
- 16.6.5. The fees for the Transitional Services shall be payable by the National Department of Health monthly in arrears. The NHI Administrator shall issue an invoice to the National Department of Health in respect of such fees each month during the Transitional Services Period.
- 16.6.6. Any Scheme Data generated by the NHI Administrator during the Transitional Services Period will be transferred to the National Department of Health (or the Scheme's new Administrator, if so directed by the National Department of Health) in a format which can be loaded, read and processed on a computer and as agreed between the Parties. Failing agreement as to format, the Scheme Data shall be provided to the Scheme (or the Scheme's new Administrator, if so directed by the Scheme) in a freely readable and usable electronic format, in line with South African medical scheme industry standards.
- 16.6.7. For the avoidance of doubt, the Parties shall continue to be bound by the following provisions of this Agreement, *mutatis mutandis*, during the Transitional Services Period: clause 1 (*Interpretation and Preliminary*), clause 2 (*Legal Nature of the Agreement*), clause 4 (*Administration Services*), clause 5 (*Service Levels and Reporting*), clause 6 (*Indemnity and Fidelity Insurance*), clause 9 (*Allocation of Costs*), clause 10 (*Scheme Data*), clause 11 (*Confidentiality*), clause 12 (*Intellectual Property*), clause 13 (*Prohibition on the Solicitation of Employees*), clause 14 (*Warranties and Limitation of Liability*), clause 15 (*Breach and Termination*), clause 16 (*Representation and Meetings*), clause 18 (*Informal Dispute Resolution*), clause 19 (*Arbitration*), clause 20 (*Domicilium Citandi et Executandi*), clause 22 (*Whole Agreement, No Amendment*), clause 23 (*Severability*), clause 24 (*Governing Law*), clause 26 (*Cession*) and clause 27 (*Legal Costs*).
- 16.7. Notwithstanding anything to the contrary in this Agreement or the Managed Health Care Agreement, the Parties agree that the fees as set out in **Annexure C** (*Transitional Services Fees*) shall include the fees payable by the Scheme to the NHI Administrator in respect of the provision of the Managed Health Care Transitional Services in terms of the Managed Health Care Agreement.

## 17. REPRESENTATION AND MEETINGS

- 17.1. Each Party will appoint a representative who will act as the contact person of that Party for purposes of communicating with the other Party pursuant to this Agreement (“**Party**

**Representative**”). Each Party shall inform the other Party of the identity and contact details of its Party Representative within ten (10) Business Days of the Signature Date or within such other period as the Parties may agree.

17.2. Should any Party wish to appoint a new person as its Party Representative, or should the contact details of its Party Representative change, that Party shall forthwith provide the other Party with written notice of such change.

17.3. Within thirty (30) days of the Signature Date, the NHI Administrator shall propose, for the Scheme’s review and approval, a schedule of monthly and other periodic meetings to be held between the Party Representatives, such meetings to be attended by the Party Representatives and/or their designees. Unless otherwise agreed in writing between the Parties, such schedule shall include the conduct of the following meetings:

17.3.1. periodic meetings as reasonably required to ensure that the Administration Services are performed effectively and to otherwise address, review, and discuss matters specific to the implementation of this Agreement;

17.3.2. a monthly meeting to discuss any matters that might adversely affect performance or the implementation of this Agreement and to review the NHI Administrator’s performance of the Administration Services during the prior month, as measured against the Service Levels. At such meeting, the Party Representatives shall identify the actions they propose to be taken to rectify any failures to perform the Administration Services in accordance with this Agreement, provided that any such actions shall be subject to review and prior approval by both Parties; and

17.3.3. a quarterly strategic planning meeting.

17.3.4. a quarterly NHI Contracting Committee meeting.

17.4. If deemed necessary by either Party, the NHI Administrator shall prepare and circulate an agenda sufficiently in advance of each meeting contemplated in clause 17.3 to give participants an opportunity to prepare for the meeting. The Scheme must be granted a reasonable opportunity to review and comment on the agenda prior to the meeting. The NHI Administrator shall prepare and circulate minutes promptly after each meeting.

## 18. **INFORMAL DISPUTE RESOLUTION**

18.1. Prior to the initiation of formal dispute resolution procedures, the Parties shall first attempt to resolve any dispute arising from this Agreement informally and in good faith.

18.2. Upon the written request of a Party, any dispute that arises between the Parties shall be referred to the Party Representatives. The Party Representatives shall meet as often as the

Parties reasonably determine is necessary in order to gather and furnish to the other all information with respect to the matter in issue which the Parties believe to be appropriate and germane in connection with its resolution. The Party Representatives shall discuss the problem and attempt to resolve the dispute without the necessity of any formal proceeding. During the course of discussion, all reasonable requests made by one Party to another for non-privileged information reasonably related to this Agreement shall be honoured in order that each of the Parties may be fully advised of the other's position. The specific format for the discussions shall be left to the discretion of the Party Representatives.

18.3. Formal proceedings for the resolution of a dispute shall not commence until the earlier of:

18.3.1. the Party Representatives concluding in good faith that amicable resolution through continued negotiation of the matter does not appear likely; or

18.3.2. Ten (10) Business Days after the matter has been referred to the Party Representatives pursuant to clause 18.2, which period shall be deemed to run notwithstanding any claim that the process described in this clause was not followed or completed.

## 19. **ARBITRATION**

19.1. If the Parties are unable to resolve any dispute in the manner contemplated in clause 18 (*Informal Dispute Resolution*), then such dispute may be submitted to arbitration in accordance with the provisions of this clause 19 (*Arbitration*), on written demand by either Party.

19.2. This clause 19 (*Arbitration*) 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.

19.3. The arbitration shall be held:

19.3.1. at Johannesburg;

19.3.2. with only the legal and other representatives of the Parties to the dispute present thereat; and

19.3.3. resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa ("AFSA").

19.4. Notwithstanding the provisions of clause 19.3.3, the arbitrator shall be entitled to dispense with such rules and formalities as he may believe appropriate in the circumstances, with a view to expediting the finalisation of the arbitration.

- 19.5. The arbitrator, if the matter in dispute is principally a legal matter, shall be a practising advocate or attorney of no less than ten (10) years' standing or, if the matter in dispute is principally an accounting matter, a practicing chartered accountant of at least ten (10) years' standing, or if the dispute be in relation to any other matter, any independent person, agreed upon by the Parties to the dispute.
- 19.6. Should the Parties fail to agree whether the dispute is principally a legal, accounting or other matter within seven (7) days after the arbitration was initiated, the matter shall be deemed to be a legal matter.
- 19.7. Should the Parties fail to agree on an arbitrator within fourteen (14) days after notice in terms of clause 19.1 has been given, the arbitrator shall be appointed at the request of either Party to the dispute by AFSA.
- 19.8. The decision of the arbitrator shall be final and binding on the Parties to the dispute and may be made an order of the Court at the instance of either Party to the dispute.
- 19.9. The Parties hereby consent to the jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg, for the purposes of clauses 19.2, 19.8 and 19.10.
- 19.10. The Parties agree to keep the arbitration, including the subject matter and evidence heard, confidential and shall not disclose same to any person except to the extent necessary for the purposes of making the decision of the arbitrator an order of Court.
- 19.11. The provisions of this clause 19 (*Arbitration*):
- 19.11.1. constitute an irrevocable consent by the Parties to any proceedings in terms hereof and no Party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions; and
- 19.11.2. are severable from the rest of this Agreement and shall remain in effect despite the termination or invalidity for any reason of the Agreement.

20. **DOMICILIUM CITANDI ET EXECUTANDI**

- 20.1. The Parties choose as their *domicilia citandi et executandi* their respective addresses set out in this clause for all purposes arising out of or in connection with this Agreement 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.
- 20.2. For purposes of this Agreement the Parties' respective addresses shall be:
- 20.2.1. the National Department of Health

XXXX

Address: XXXXX

E-mail: XXXXX

For the attention of: **Deputy Director General - National Health Insurance**

20.2.2. the NHI Administrator

Address: XXXXX

E-mail: XXXXX

For the attention of: **General Manager – NHI Administrator**

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

20.3.1. if delivered by hand be deemed to have been duly received by the addressee on the first Business Day following the day of delivery;

20.3.2. if successfully transmitted by e-mail be deemed to have been received by the addressee on the first Business Day following the day of dispatch.

20.4. Notwithstanding anything to the contrary contained in this clause 20 (*Domicilium Citandi et Executandi*), a written notice or communication actually received by one of the Parties from another including by way of facsimile transmission or e-mail shall be adequate written notice or communication to such Party.

## 21. **USERS' APPEALS PROCESS**

21.1. If a decision has been taken by the NHI Administrator in terms of this Agreement which may adversely affect any right or entitlement of a User, the User shall be entitled to appeal in writing to the NHI Administrator's appeal panel within thirty (30) Business Days of such decision coming to the attention of the User.

21.2. If, upon review, the NHI Administrator's appeal panel supports the decision made by the NHI Administrator, the User shall be entitled to appeal in writing to the Deputy Director General - National Department of Health

21.3. The NHI Administrator shall advise the User of the procedures and rights to appeal referred to in clause 21.1 and clause 21.2.

21.4. The NHI Administrator undertakes to ensure that structures are in place within the NHI Administrator's processes to ensure that appeals are dealt with at the most efficient level and that decisions are taken with due clinical and legal consideration within the relevant Scheme Contract and Regulations.

21.5. Nothing in this clause 21 (*User's Appeal Process*) shall preclude a User from invoking any procedure/process available to him/her in terms of the Act to vindicate a right or entitlement.

## 22. **WHOLE AGREEMENT, NO AMENDMENT**

22.1. This Agreement constitutes the whole agreement between the parties relating to the subject matter hereof.

22.2. No amendment or consensual cancellation of this Agreement or any provision or term hereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this Agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written addendum signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the party granting such extension, waiver or relaxation). Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.

22.3. No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against any party in respect of its rights under this Agreement, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with this Agreement.

22.4. To the extent permissible by law no party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

## 23. **SEVERABILITY**

Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated *pro non scripto* and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

## 24. **GOVERNING LAW**

This Agreement shall be governed by and interpreted in accordance with South African law.



25. **COUNTERPARTS**

This Agreement may be executed in more than one counterpart, each of which together shall constitute one and the same instrument.

26. **CESSION**

Subject to clause 4.8, neither Party may cede, delegate or assign any of its rights or obligations under this Agreement without the prior written consent of the other Party.

27. **LEGAL COSTS**

Each Party shall bear its own costs in respect of and incidental to the negotiation and drafting of this Agreement.

**For: THE NATIONAL DEPARTMENT OF HEALTH**

Signature: \_\_\_\_\_  
who warrants that he / she is duly authorised thereto

Full Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

**For: NHI ADMINSTRATOR**

Signature: \_\_\_\_\_  
who warrants that he / she is duly authorised thereto

Full Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

**Service Level Agreement**

Service Fees

<b>2018 Rate Table – Administration Fees</b>	<b>R</b>
Enrolled User servicing	
Supplier servicing	
Marketing	
IT Costs	
Governance, compliance, quality control and other	
<b>TOTAL ADMINISTRATION FEE (per Enrolled User per month)</b>	

**Transitional Services Fees**

1. For purposes of this **Annexure C** (*Transitional Service Fees*), the term “**Transitional Services Benchmark Fee**” means the total administration fee payable by the National Department of Health to the NHI Administrator in terms of this Agreement, during the month immediately preceding the date of termination or cancellation of this Agreement for any reason.
2. In consideration for the provision, *inter alia*, of the Transitional Services, the National Department of Health shall pay to the NHI Administrator the following fees for each month of the Transitional Services Period:
  - 2.1. month 1 – 80% (eighty percent) of the Transitional Services Benchmark Fee;
  - 2.2. month 2 – 60% (sixty percent) of the Transitional Services Benchmark Fee;
  - 2.3. month 3 – 30% (thirty percent) of the Transitional Services Benchmark Fee;
  - 2.4. month 4 – 10% (ten percent) of the Transitional Services Benchmark Fee; and
  - 2.5. month 5 – 10% (ten percent) of the Transitional Services Benchmark Fee.