

**NATIONAL HEALTH INSURANCE:
PRIMARY HEALTH CARE SERVICES CONTRACT**

This contract is entered into between the

INTERIM NATIONAL HEALTH INSURANCE FUND ADMINISTRATOR
“NHI Administrator”

Duly appointed on behalf of the National Department of Health

AND

NAME OF CONTRACTED PROVIDER
“Contracted Provider”

This Agreement commences on _____
(Commencement Date)

Compiled by the National Department of Health

Version 1.2

Date 12th April 2019

1. INTRODUCTION

- 1.1. The South African Government aims to re-engineer primary health care (PHC) services through National Health Insurance (NHI).
- 1.2. NHI will be implemented by the government through the National Health Insurance Act and regulations.
- 1.3. In preparation for the commencement of the NHI Act and the establishment of the NHI Fund, the National Department of Health has appointed NHI Administrator/s in the interim to accredit, contract and manage Contracted Providers for the purpose of contracting for PHC services.
- 1.4. The NHI Administrator wishes to contract with certified and accredited Contracted Providers, comprising of any public service entity, private organization or private health care practitioner legally constituted to deliver PHC services as Contracted Providers to Enrolled Users.
- 1.5. The Contracted Provider wishes to contract with the NHI Administrator for the delivery of PHC services to Enrolled Users in a Community Practice as set out in this Agreement.

2. INTERPRETATION

- 2.1. In this Agreement, unless the context otherwise indicates:
 - 2.1.1. "Accountable Doctor" means a medical practitioner who is certified with the Health Professionals Council of South Africa (HPCSA) and who will individually and directly be held accountable to the NHI Administrator for the clinical governance of the Enrolled User population per Community Practice;
 - 2.1.2. "Accreditation" means the process of accreditation adopted by the NHI Administrator as set out in clause 8;
 - 2.1.3. "Agreement" means this National Health Insurance Primary Health Care Contract and all the Annexures thereto;
 - 2.1.4. "Chronic Care Medicine Dispensing and Distribution" or "CCMDD" means a National Department of Health programme for chronic patients which delivers a range of chronic medicines at various pickup points including doctors' rooms
 - 2.1.5. "Commencement Date" means the date appearing as the commencement date as indicated on the first page of this Agreement;
 - 2.1.6. "Community Practice" means a panel of Enrolled Users as a basic unit of primary health care, in which a team of primary health care professionals provides integrated patient-, person- and people-centred primary health care services;

- 2.1.7. “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);
- 2.1.8. “DHMO” means the District Health Management Office, as defined by the National Health Insurance Bill 2018 and the final National Health Insurance Act;
- 2.1.9. “Enrolled Users” means a User who has been registered by a Contracted Provider to their Community Practice as prescribed in clause 7.7;
- 2.1.10. “Health Patient Registry System” or “HPRS” means the universal registry system for all Enrolled Users in the South African population envisaged in terms of the National Health Insurance Bill 2018 and the final National Health Insurance Act;
- 2.1.11. “National Health Insurance” or “NHI” means the universal health coverage framework envisaged in terms of the National Health Insurance Bill 2018 and the final National Health Insurance Act;
- 2.1.12. “NHI PHC Contracting Committee” means the committee consisting of representatives of the National Department of Health, National Treasury and Contracted Providers as set out in clause 5.3;
- 2.1.13. “NHI Administrator” means an administrator as defined in the Medical Schemes Act, 1998 (Act No. 131 of 1998) and engaged by the National Department of Health to administer NHI funds before the NHI Fund is established;
- 2.1.14. “NHIRDS” means National Health Information Repository and Data System, as defined by the National Health Insurance Bill 2018 and the final National Health Insurance Act;
- 2.1.15. “Office of the Health Ombud” means the independent body established in terms of the National Health Amendment Act of 2013 and located within the Office of Health Standards Compliance (OHSC).
- 2.1.16. “Party/Parties” means the Parties to this Agreement, namely the Contracted Provider and the NHI Administrator;
- 2.1.17. “Primary Health Care (PHC) Services” means services that include health promotion, disease prevention, curative, rehabilitative and palliative services as defined by the National Health Insurance Bill 2018 and the final National Health Insurance Act;

2.1.18. "Basic Primary Health Care (PHC) Services" means those benefits which a Contracted Provider will be expected to provide an Enrolled User, as prescribed in clause 7.8;

2.1.19. "Termination date" means the date on which this Agreement is terminated;

2.1.20. "User" means any person who is eligible to become a beneficiary of the NHI Fund and defined as a User by the National Health Insurance Bill 2018 and the final National Health Insurance Act.

2.2. All definitions in this contract must conform to the National Health Insurance Bill 2018 and final National Health Insurance Act that will be enacted by Parliament.

2.3. Words importing the singular must include the plural and vice versa, and words importing the masculine gender must include females and words importing persons must include partnerships and bodies corporate.

2.4. The head notes to the paragraphs to this Agreement are inserted for reference purposes only and must not affect the interpretation of any of the provisions to which they relate.

2.5. If any provision in the Introduction to this Agreement and/or if any provision in clause 2 is a substantive provision conferring rights or imposing obligations on any party, then notwithstanding that such provision is contained in the Introduction and/or clause 2, effect must be given thereto as if such provision were a substantive provision in the body of the Agreement.

2.6. This Agreement must be subject to all the terms, conditions and provisions of all the Service Agreements, as amended from time to time and provided to the Contracted Provider(s) from time to time, all of which terms, conditions and provisions must be deemed to be incorporated into this Agreement. Should there be any conflict between the provisions of this Agreement and those of the Services Agreements, the provisions of this Agreement must prevail.

3. COMMENCEMENT AND DURATION

3.1. This Agreement commences on the Commencement Date and will subsist for a period of five (5) years terminating on _____. This Agreement may be automatically renewed for further periods of five (5) years if there is agreement by representatives of the Parties in the NHI PHC Contracting Committee.

3.2. Should the Parties or their representatives in the NHI PHC Contracting Committee not reach agreement on the terms and conditions of an extended agreement for a further period, the Agreement must terminate on the Termination Date.

3.3. Notwithstanding anything to the contrary contained in this Agreement, either Party may cancel this Agreement at any time after the Commencement Date by giving the other Party twelve (12) months written notice to this effect.

4. NATURE OF RELATIONSHIP

4.1. The Contracted Provider is an independent contractor and nothing in this Agreement must be construed as constituting an employment relationship between the Contracted Provider and the NHI Administrator or any other legal entity, department, facility or institution. The Contracted Provider acknowledges that this Agreement is not subject to any employment law or regulations.

4.2. The Contracted Provider is a service provider for purposes of this Agreement only and this Agreement does not constitute and must not be deemed to create a principal / agent relationship, joint venture or partnership between the NHI Administrator, the Contracted Provider or any other legal entity, department, facility or institution. The Contracted Provider acknowledges that it has no legal authority to act on behalf of the NHI Administrator or National Department of Health in any matter.

5. GENERAL UNDERTAKINGS, OBLIGATIONS AND RESPONSIBILITIES OF THE PARTIES

5.1. The Parties generally undertake to:

5.1.1. co-operate with each other in all respects and to act in good faith to give effect to the intent and purpose of this Agreement;

5.1.2. provide each other with all such information as may be necessary for the implementation of this Agreement; and

5.1.3. inform the other Party of any change of its legal status.

5.2. The Parties specifically agree to:

5.2.1. at all times act responsibly and in a manner that underpins the principles of accountability and liability;

5.2.2. act in accordance with the Constitution and the law;

5.2.3. adopt a whole system approach;

5.2.4. support clinical leadership and clinically-led service development;

5.2.5. conduct themselves with honesty and integrity and develop a high level of trust;

5.2.6. promote an environment of high quality, performance, and low bureaucracy;

5.2.7. work together to resolve any issues, disputes and disagreements in a manner that reflects a cooperative and collaborative relationship;

- 5.2.8. participate in negotiations and the decision-making process as part of the NHI PHC Contracting Committee;
 - 5.2.9. make best use of finite resources to achieve optimal health outcomes for Enrolled Users;
 - 5.2.10. adopt an open and transparent approach to sharing information, respect and maintain User confidentiality;
 - 5.2.11. remain flexible and responsive to support the evolving health environment;
 - 5.2.12. develop, encourage and reward innovation; and
 - 5.2.13. continually challenge services to achieve high quality outcomes, actively support and build on the successes of both Parties.
- 5.3. The details of the agreement process of the NHI PHC Contracting Committee are set out in the **NHI PHC CONTRACT REGULATIONS: NHI PHC CONTRACTING COMMITTEE**, attached to this Agreement as Annexure 1 and must be reviewed annually.

6. SPECIFIC UNDERTAKINGS, OBLIGATIONS AND RESPONSIBILITIES OF THE NHI ADMINISTRATOR

- 6.1. The NHI Administrator must accredit, contract and manage the Contracted Provider in accordance with this contract.
- 6.2. The NHI Administrator agrees to adhere to all financial and governance regulatory controls stipulated in the relevant legislation, including the Public Finance Management Act and the Municipal Finance Management Act where relevant, in respect of control of funds and must ensure that funds are managed proactively to reduce cashflow problems and ensure timeous payment of Contracted Providers.
- 6.3. The NHI Administrator undertakes to process all applications submitted by the Contracted Provider in terms of this Agreement within twenty (20) business days, and not unreasonably withhold any decision pertaining to an application. Should the NHI Administrator refuse any application, the NHI Administrator must provide the Contracted Provider with written reasons for the decision.

7. SPECIFIC UNDERTAKINGS, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTED PROVIDER

- 7.1. The Contracted Provider undertakes to:
 - 7.1.1. provide services with reasonable care and skill;
 - 7.1.2. provide services to any person entitled to the services if they are or believe themselves to be ill;

- 7.1.3. facilitate and promote service development, coordination, continuous improvement and integration;
- 7.1.4. ensure accountability for the delivery of the service;
- 7.1.5. provide infrastructure, administrative and support services in respect of services; and
- 7.1.6. ensure outcomes of optimum health, clinical and financial sustainability, quality coordinated care delivered by multidisciplinary teams that is accessible; and
- 7.1.7. reduce disparities in health.
- 7.2. **The Contracted Provider must not sub-contract any services** unless it is reasonably required and the person rendering the service is qualified, competent and accredited to provide services. Any sub-contracting of services is subject to application to and approval by the NHI Administrator.
- 7.3. The Contracted Provider must not accept any incentives and inducements from a referred service provider.
- 7.4. The Contracted Provider must keep **a register of all gifts** with the name of donor, nature of gift, value of gift and name of person receiving the gift.
- 7.5. The Contracted Provider must notify the NHI Administrator and DHMO of a **death** on the premises as soon as reasonably possible but no later than five (5) Business Days.
- 7.6. The Contracted Provider must always have in force, in relation to itself, an **indemnity arrangement** with a reputable insurer or carrier of indemnity cover which provides appropriate strict service liability, professional and public indemnity cover.
- 7.7. Community Practice Panel
 - 7.7.1. The Contracted Provider agrees to service a panel of Enrolled Users of up to a maximum of 10 000 people per Community Practice.
 - 7.7.2. The Contracted Provider must:
 - 7.7.2.1. appoint an Accountable Doctor who will individually and directly be held accountable to the NHI Administrator for the clinical governance of the Enrolled User population per Community Practice.
 - 7.7.2.2. inform the NHI Administrator of any changes in the status of the Accountable Doctor within twenty (20) business days of such change
 - 7.7.3. The Contracted Provider must complete the form attached to this Agreement as Details of Community Practice/s, and provide the following information in respect of each Community Practice to the NHI Administrator:
 - 7.7.3.1. choice of panel size per Community Practice; and
 - 7.7.3.2. details of the Accountable Doctor per Community Practice.
 - 7.7.4. The Contracted Provider must place the following notices visible to the public:

- 7.7.4.1. a notice provided by the NHI Administrator of the approved panel size and Accountable Doctor; and
- 7.7.4.2. a notice of the status of panel enrolment in the Community Practice.
- 7.7.5. Should the Contracted Provider wish to increase or decrease panel sizes and/or prematurely close enrolment of Users, the Contracted Provider must apply to the NHI Administrator in writing indicating the change requested and the reasons for the change. The Contracted Provider may only increase or decrease a panel size and/or prematurely close the enrolment once it is formally authorised by the NHI Administrator.
- 7.7.6. An application by registered mail for closures of enrolment by the Contracted Provider must be assumed to be accepted if there is no response by the NHI Administrator within twenty (20) business days of mailing.
- 7.7.7. The details regarding Accountable Doctor presence, panel size changes and enrolment closure are set out in the **NHI PHC CONTRACT REGULATIONS: ENROLMENT** attached to this Agreement as Annexure 2 and must be reviewed annually
- 7.8. Basic Primary Health Care Services for Capitation Payment
 - 7.8.1. The Contracted Provider agrees to render basic primary health care services in accordance with the Basic Primary Health Care Service Package.
 - 7.8.2. The Basic Primary Health Care Service package for a Community Practice must cover ambulatory care commonly and easily available in clinics / practices.
 - 7.8.3. The Enrolled User must be entitled to as many visits as needed by him or her.
 - 7.8.4. The Basic Primary Health Care (PHC) Services must cover diagnosis, management, prevention and health promotion across facility and community for any health complaint by an Enrolled User, including:
 - 7.8.4.1. Acute care and minor ailments
 - 7.8.4.2. Communicable diseases
 - 7.8.4.3. Non-communicable diseases
 - 7.8.4.4. Maternal and child health
 - 7.8.4.5. Mental health for primary care
 - 7.8.4.6. Palliative care for primary care
 - 7.8.5. The Basic Primary Health Care (PHC) Services must include a short list of office tests and procedures as part of the capitation payment
 - 7.8.6. The Contracted Provider must provide a Comprehensive Health Check for every Enrolled User every five (5) years.

7.8.7. The details of the Basic Primary Health Care Services are set out in the **NHI PHC CONTRACT REGULATIONS: SERVICE PACKAGE**, attached to this Agreement as Annexure 3 and must be reviewed annually.

7.9. Opening Hours

7.9.1. The Contracted Provider must provide all services included in the Service Package for a minimum of forty (40) hours per week, during such hours determined after consultation with Enrolled Users and the NHI Administrator.

7.9.2. The Contracted Provider must place a notice that it is visible to the public indicating the actual opening hours.

7.9.3. The details of the Opening Hours are set out in the **NHI PHC CONTRACT REGULATIONS: SERVICE PACKAGE**, attached to this Agreement as Annexure 3 and must be reviewed annually.

7.10. After-Hour Services

7.10.1. The Contracted Provider must provide After-Hour Services locally for their Community Practice's enrolled population as part of the capitated service package.

7.10.2. The Contracted Provider must provide After-Hour Services that cover all services provided during hours of opening and to same extent and quality.

7.10.3. The Contracted Provider must ensure that Enrolled Users' clinical information is shared between office-hour and After-Hour Services for continuity of care.

7.10.4. The Contracted Provider may provide After-Hour Services as a group of Community Practices and/or subcontract the service to other Community Practices or support public After-Hour Service, where these are not possible.

7.10.5. The Contracted Provider must place a notice that it is visible to the public indicating the location and times of After-Hour Services in relation to the Enrolled Users' Community Practice.

7.10.6. The location, radius and times of After-Hour Services in relation to the Community Practice are subject to negotiation by the NHI PHC Contracting Committee and must be reviewed annually.

7.10.7. The details of the After-Hour Services and arrangements possible are set out in the **NHI PHC CONTRACT RULES: SERVICE PACKAGE**, attached to this Agreement as Annexure 3 and must be reviewed annually.

7.11. Capitation Payment

7.11.1. The Contracted Provider agrees to provide Basic Primary Health Care Services on a capitation payment basis.

7.11.2. The details of the Capitation Payment for Basic Primary Health Care Services in clause 7.8 are set out in the **NHI PHC CONTRACT REGULATIONS:**

PAYMENTS, attached to this Agreement as Annexure 4 and must be reviewed annually.

7.12. Additional Services: Preventive Services

7.12.1. The Contracted Provider must provide a list of preventive services to be paid for separately on a fee-for-service basis.

7.12.2. The details regarding Preventive Services are set out in the **NHI PHC CONTRACT REGULATIONS: PAYMENTS**, attached to this Agreement as Annexure 4 and must be reviewed annually.

7.13. Additional Services: Procedures

7.13.1. The Contracted Provider may provide a list of primary care office-based minor procedures, on a fee-for-service basis.

7.13.2. The details regarding these Procedures, including prices, are set out in the **NHI PHC CONTRACT REGULATIONS: OFFICE PROCEDURES** attached to this Agreement as Annexures 5 and must be reviewed annually.

7.14. Additional Services: Public Clinic Referrals

7.14.1. The Contracted Provider must support referrals from non-accredited public clinics using fee-for-service payment, based on pre-authorisation obtained by the clinic from the NHI Administrator.

7.14.2. The details regarding these Public Clinic Referrals are set out in the **NHI PHC CONTRACT REGULATIONS: PAYMENTS**, attached to this Agreement as Annexure 4 and must be reviewed annually.

7.15. Additional Services: Medicines

7.15.1. The Contracted Provider may prescribe Medicines as per a prescribed medicines formulary.

7.15.2. The details regarding these Medicines, including the medicine formulary, are set out in the **NHI PHC CONTRACT REGULATIONS: MEDICINES** attached to this Agreement as Annexure 6 and must be reviewed annually.

7.16. Additional Services: Laboratory Investigations

7.16.1. The Contracted Provider may perform a prescribed list of laboratory investigations or request these from contracted laboratories. The Contracted Provider or contracted laboratories will invoice the NHI Administrator for laboratory services rendered.

7.16.2. The details regarding these Laboratory Investigations are set out in the **NHI PHC CONTRACT REGULATIONS: LABORATORY INVESTIGATIONS** attached to this Agreement as Annexure 7 and must be reviewed annually.

7.17. Additional Services: Radiological Investigations

7.17.1. The Contracted Provider may perform a prescribed list of radiological investigations at Community Practices or request that these investigations from local contracted radiology practices, community health centres and/or hospitals. The Contracted Provider, contracted radiology practices, community health centres and/or hospitals will invoice the NHI Administrator for radiological investigations performed.

7.17.2. The details regarding these Radiological Investigations are set out in the **NHI PHC CONTRACT REGULATIONS: PROCEDURES** attached to this Agreement as Annexure 5 and must be reviewed annually.

7.18. Additional Support

7.18.1. The Contracted Provider must deliver services in their own facilities, unless the NHI Administrator has authorised that services may be rendered at another facility.

7.18.2. The Contracted Providers may be entitled to additional support measures for newly qualified Accountable Doctors, use of public clinics and engagement with seconded staff from the Department of Health.

7.18.3. The details regarding these Additional Support measures are set out in the **NHI PHC CONTRACT REGULATIONS: PAYMENTS** attached to this Agreement as Annexure 4 and must be reviewed annually.

7.19. Service Standards

7.19.1. The Contracted Provider must not separate Enrolled Users from other patients or discriminate against them in any way, except within the limits of the NHI PHC Service Package.

7.19.2. The Contracted Provider is not allowed to charge out-of-pocket costs or impose split-billing on the User for services contained within the PHC Service Package.

7.19.3. The Contracted Provider must establish and operate a complaints procedure for Enrolled Users as prescribed by the NHI Administrator.

7.19.4. The Contracted Provider must have an appointment system with easy telephone access for Enrolled Users to the Community Practice.

7.19.5. Notwithstanding the provisions of clause 7.18.4, the Contracted Provider must ensure that any User attending without an appointment is attended to by an appropriate health care professional from the Community Practice.

7.19.6. The Contracted Provider must ensure that the length of waiting times for booked appointments and walk-in consultations adhere to stipulated time standards.

7.19.7. The Contracted Providers must ensure that the User experience of care adheres to Batho Pele Principles.

7.19.8. The Contracted Provider must ensure that all records management and signing of documents follow the prescripts of the Health Professions Council of South Africa.

7.19.9. The details regarding Service Standards are set out in the **NHI PHC CONTRACT RULES: SERVICE PACKAGE**, attached to this Agreement as Annexure 3 and must be reviewed annually.

8. OPERATIONAL PARAMETERS

8.1. Accreditation

8.1.1. The Contracted Provider must ensure that the premises, equipment and staffing arrangements are suitable for the services being provided.

8.1.2. The details regarding Accreditation are set out in the **NHI PHC CONTRACT REGULATIONS: ACCREDITATION** attached to this Agreement as Annexure 8 and must be reviewed annually.

8.2. Enrolment

8.2.1. The NHI Administrator must inform all Users in a health district of the list of accredited Contracted Providers to enable Users to choose their own Contracted Provider within the health district.

8.2.2. The details regarding Enrolment are set out in the **NHI PHC CONTRACT REGULATIONS: ENROLMENT** attached to this Agreement as Annexure 2 and must be reviewed annually

8.3. Interaction with District Health Services

8.3.1. The Contracted Provider and/or specific Community Practice must liaise with the District Health Management Office (DHMO) to ensure coordination and integration of all service providers.

8.3.2. The Contracted Provider and/or specific Community Practice must participate in the development and agreement of the DHMOs annual plans;

8.3.3. The details regarding Interaction with the DHMO are set out in the **NHI PHC CONTRACT REGULATIONS: DHMO COORDINATION** attached to this Agreement as Annexure 9 and must be reviewed annually.

8.4. Clinical Teamwork and Personnel Standards

8.4.1. The Contracted Provider must ensure task-shifting and skills management to optimize human resources in health and to be cost-effective

8.4.2. The Contracted Provider and NHI Administrator must ensure that all professional personnel in each Community Practice are registered with the NHI Administrator and are explicitly named in all claims, encounters and payments to enable review.

8.4.3. The Contracted Provider has a duty regarding the education and training of all personnel.

8.4.4. The details regarding Clinical Teamwork and Personnel Standards are set out in the **NHI PHC CONTRACT REGULATIONS: PERSONNEL STANDARDS**, attached to this Agreement as Annexure 10 and must be reviewed annually.

8.5. Community-Orientation

8.5.1. The Contracted Provider must actively manage their practice population with Community-Oriented Primary Care (COPC) and PHC re-engineering principles, according to national guidelines, policies and/or best practice in South Africa.

8.5.2. The Contracted Provider must obtain a socio-demographic and morbidity profile of every Enrolled User, engage strongly with community stakeholders, especially from their panel of Enrolled Users, re-orientate their practice to their panel of Enrolled Users and create targeted health promotion for and in partnership with their panel of Enrolled Users.

8.5.3. The details regarding Community Orientation are set out in the **NHI PHC CONTRACT REGULATIONS: COPC**, attached to this Agreement as Annexure 11 and must be reviewed annually.

8.6. Service Innovation (for additional services in the future)

8.6.1. The Contracted Provider and/or specific Community Practice, must serve as the basis for further health services to be contracted in an innovative, cost-effective and accountable manner under National Health Insurance, including alternative re-imbusement models.

8.6.2. The Contracted Provider must contract for their Community Practice population to provide for or subcontract additional services in further layers of contracting for their Enrolled Users, unless written permission to opt-out under special circumstances, has been obtained from the NHI Administrator. These services include:

8.6.2.1. 24-hours Emergency Care

8.6.2.2. Maternity Obstetric Unit (MOU) services

8.6.2.3. Dentistry

8.6.2.4. Optometry

8.6.2.5. Allied Health Care

8.6.2.6. Specialist Care

8.6.2.7. Hospital Referral Saving

8.6.2.8. Gap Contracts

8.7. Data Management

8.7.1. The Contracted Provider must have an information management system that has access to the Health Patient Registry System (HPRS), is accredited for interoperability (with minimum standard variables and interoperability of information technology) and is consistent with the development of the National Health Information and Data System (NHIRDS).

8.7.2. The details regarding Data Management are set out in the **NHI PHC CONTRACT REGULATIONS: DATA MANAGEMENT** attached to this Agreement as Annexure 12 and must be reviewed annually.

8.8. Referrals

8.8.1. The Contracted Provider must refer all their Enrolled Users for specialist, hospital and allied health care to a designated NHI Referral Network.

8.8.2. The NHI Administrator must ensure that all health care practitioners in Community Practices are able to consult with specialists and allied health profession via the NHI Referral Network, with the knowledge and consent of the Accountable Doctor, and receive feedback for consultations and admissions in accordance with the National Health Act.

8.8.3. The details regarding Referrals are set out in the **NHI PHC CONTRACT REGULATIONS: REFERRAL MANAGEMENT** attached to this Agreement as Annexure 13 and must be reviewed annually.

8.9. Clinical Governance

8.9.1. The Contracted Provider must ensure that all health care practitioners are part of a local, accredited and supervised peer review group in the NHI Referral Network.

8.9.2. The Contracted Provider must ensure that medical practitioners with less than 15 years' experience post-qualification complete and obtain the Diploma in Family Medicine.

8.9.3. The NHI Administrator must refund the Contracted Provider for the fees of their Accountable Doctors who complete the Diploma of Family Medicine within three (3) years.

8.9.4. Completion of the Diploma in Family Medicine (or possession of Fellowship or Masters in Family Medicine) by the Accountable Doctor must constitute at least ten percent (10%) of the Performance Payment of a Community Practice for performance to induce completion and strengthen the career path for Accountable Doctors.

8.9.5. The details regarding Clinical Governance are set out in the **NHI PHC CONTRACT REGULATIONS: PERFORMANCE MANAGEMENT**, attached to this Agreement as Annexure 14 and must be reviewed annually.

9. PAYMENT AND REMUNERATION

9.1. General

- 9.1.1. Payment for primary healthcare services under NHI must be simple enough to be implemented, sophisticated enough to initially account for selected differences in cost structures between public and private providers, and able to evolve in time to drive harmonisation of cost structures and scope of services across public and private providers.
- 9.1.2. This Agreement is premised on a mixed capitation and value-based payment system, with capitation at its core, fee-for-service for specific situations and performance underlining its value-based approach.
- 9.1.3. The payment structure is divided into a Capitation Payment (with Risk Adjustment), Performance Payment and Additional Payments
- 9.1.4. The details regarding Payment Structure are set out in the **NHI PHC CONTRACT REGULATIONS: PAYMENT** attached to this Agreement as Annexure 4 and must be reviewed annually.

9.2. Capitation Payment with Risk Adjustment

- 9.2.1. The Capitation Payment must be calculated using a triangulation of costs from private sector scheme, public sector (adjusted for fair playing field comparisons), historical and normative practice costs.
- 9.2.2. The Risk Adjustment must progressively account for age, gender, rurality, marginalisation-deprivation, morbidity and rurality
- 9.2.3. The NHI Administrator must pay a risk-adjusted Capitation Payment monthly in advance to Contracted Providers.

9.3. Performance Payment

- 9.3.1. The Performance Payment must be up to 20% in addition to the Capitation Payment
- 9.3.2. The metrics for performance must involve administrative, cost, quality (both clinical and patient) and referral data
- 9.3.3. The Contracted Provider is entitled to a Performance Payment based on appropriate reporting as required by the NHI Administrator.
- 9.3.4. The Performance Payment system and payment will operate on a fixed basis of four quarters in the financial year of the NHI Fund.
- 9.3.5. The Performance Payment system and payment will start from the beginning of year two of the contract.
- 9.3.6. The details regarding Performance Payment are set out in the **NHI PHC CONTRACT REGULATIONS: PERFORMANCE MANAGEMENT** attached to this Agreement as Annexure 14 and must be reviewed annually.

9.4. Additional Payments

- 9.4.1. The Contracted Provider must be entitled to Additional Payments on an item-basis for medicines, procedures and investigations done.
- 9.4.2. The NHI Administrator must pay Additional Payments on a selective fee-for-service basis to cover special services that need to be promoted for utilisation.
- 9.4.3. The NHI Administrator can pay the Additional Payments on a fixed-basis to incentivise supply-side restructuring, service delivery in underserved areas and necessary investment in infrastructure and data systems.

9.5. Payment Process

- 9.5.1. The NHI Administrator must pay the capitation fees to the Contracted Provider monthly in advance on the 1st of every month.
- 9.5.2. The Contracted Provider must invoice the NHI Administrator for medicines dispensed and other fees-for-service using data management systems as prescribed by the NHI Administrator
- 9.5.3. The NHI Administrator must pay the Additional Payments within ten (10) business days after the Contracted Provider submits an invoice.
- 9.5.4. The NHI Administrator must pay Performance Payments retrospectively on a quarterly basis within one (1) month of the beginning of the next quarter based on the Performance Payment system agreed to between the Parties.
- 9.5.5. Payment must be paid into the following bank account of the Contracted Provider:
Account Name _____
Account Number _____
Bank _____
Branch Name _____
Branch Code _____
- 9.5.6. The details regarding the Payment are set out in the **NHI PHC CONTRACT REGULATIONS: PAYMENT** attached to this Agreement as Annexures 4 and must be reviewed annually.

10. CONFIDENTIALITY

- 10.1. Each Party agrees that information (including, but not limited to business, technical, and financial information) that is designated in writing as Confidential Information or which the receiving Party must reasonably know is Confidential Information that it obtains from the other Party under this Agreement, is Confidential

Information of the disclosing Party ("Discloser"). The receiving Party ("Recipient") agrees:

- 10.1.1. to keep the Discloser's Confidential Information confidential;
 - 10.1.2. to use the Discloser's Confidential Information only for the purposes of fulfilling its obligations under this Agreement;
 - 10.1.3. to use at least the same degree of care in keeping the Discloser's Confidential Information confidential as its uses for its own confidential information of a similar nature (and, in no event, less than a reasonable degree of care); and
 - 10.1.4. not to disclose the Discloser's Confidential Information to any person.
- 10.2. The obligations under Section 10.1 must not extend to any information that the Recipient can document -
- 10.2.1. was in the public domain at the time it was disclosed or becomes part of the public domain after disclosure through no fault of the Recipient or its employees or agents;
 - 10.2.2. was known to the Recipient at the time of its disclosure or becomes known to it without breach of this Agreement, as evidenced by contemporaneous written records;
 - 10.2.3. is independently developed by the Recipient, as evidenced by contemporaneous written records, without use of the Discloser's Confidential Information;
 - 10.2.4. is disclosed by the Discloser to a third party without restriction on such third party's rights to disclose or use the same; or
 - 10.2.5. is approved for release upon the Discloser's prior written consent. It must not be a breach of this clause for the Recipient to disclose Confidential Information to the extent such Confidential Information is disclosed by Recipient pursuant to judicial order, a requirement of a governmental agency or by operation of law, provided that the Recipient gives the Discloser prompt written notice of any such requirement prior to the disclosure.
- 10.3. Neither Party must make any public statements in relation to this Agreement without discussing it or using reasonable endeavours to discuss it with the other Party. This does not prevent discussing it with any Party relevant to the Agreement or commenting publicly on public policy matters.

11. INTELLECTUAL PROPERTY

- 11.1. Neither Party must 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, must always remain the sole property of that Party.

- 11.2. Unless specifically authorized in this Agreement or in writing by a Party and then only to the extent so authorized, the other Party must have no right to use the first mentioned Party's Intellectual Property in any manner.

12. GENERAL INDEMNITY BY CONTRACTED PROVIDER

- 12.1. The Contracted Provider hereby indemnifies and holds the NHI Administrator, the National Department of Health, its officers, directors, committee members, employees, agents and/or contracted suppliers ("the Indemnified Parties"), harmless against any claim, loss, liability, damage or expense which the Indemnified Parties may suffer or incur, due to any action or omission by the Contracted Provider, his employee or a person contracted to him in respect of or relating to the Services rendered/to be rendered to a User or any obligation that must be performed in terms of this Agreement by the Contracted Provider.
- 12.2. In the event of any claim being instituted or anticipated against any one of the Indemnified Parties, in respect of any matter in respect of which it is indemnified as envisaged in clause 12.1, the NHI Administrator must notify the Contracted Provider of such claim to enable Contracted Provider to, as soon as possible, take appropriate and necessary steps to defend or settle such claim, which steps the Contracted Provider must then be obliged to take as soon as possible.
- 12.3. The provisions of clause 12.1 must not preclude the Indemnified Parties, in their sole and absolute discretion, from defending or settling the claim in their own names. In such an event the Indemnified Parties must notify the Contracted Provider in writing of their intention to defend or settle the claim in their own name, after which the Contracted Provider must render any assistance required by the Indemnified Parties.

13. PROTECTION OF PERSONAL INFORMATION

- 13.1. The Parties undertake that they must always comply with the provisions of any relevant South African legislation in force in relation to the protection of Personal Information, including the Protection of Personal Information Act 4 of 2013, as amended from time to time.
- 13.2. The Contracted Provider hereby gives its consent for the processing of its Personal Information by NHI Administrator for the duration of this Agreement, and but without limitation any processing for the purposes of NHI Administrator's business.

14. BREACH

14.1. This Agreement may be terminated by either Party if the other Party breaches any provision of this Agreement.

14.2. Breach by the Contracted Provider

14.2.1. The NHI Administrator will be entitled to terminate this Agreement by giving one (1) months prior Notice to that effect to the Contracted Provider, if the Contracted Provider:

14.2.2. commits any breach of this Agreement and fails to remedy that breach within ten (10) Business Days of the date of written request from the NHI Administrator to do so;

14.2.3. becomes insolvent;

14.2.4. ceases to carry on business in the Republic;

14.2.5. commits fraud;

14.2.6. is having a medical practitioner as Accountable Doctor, who is found by the relevant professional council to be unfit to practice as a health care practitioner;

14.2.7. is having a medical practitioner as Accountable Doctor, who is removed from the register and/or role of any professional regulator;

14.2.8. fails to remedy any inspection findings or demands for compliance of accreditation standards within three (3) calendar months.

14.2.9. jeopardises or poses a risk to User safety;

14.2.10. there is a risk of material financial loss to the Parties;

14.2.11. provides false information in any way;

14.2.12. unlawfully sub-contracts any services under this Agreement;

14.2.13. has breached any Law applying to this Agreement at the time;

14.2.14. wrongfully and knowingly uses or discloses the terminating Party's Confidential Information to any third party.

14.3. Breach by NHI Administrator

14.3.1. The Contracted Provider will be entitled to terminate this Agreement Agent by giving one (1) months prior Notice to that effect to the NHI Administrator, if:

14.3.1.1. The NHI Administrator fails to make any payment due by it to the Contracted Provider within ten (10) business days of being requested by the Contracted Provider in writing to make such payment;

14.3.1.2. The NHI Administrator commits any breach of this Agreement and fails to remedy that breach within ten (10) business days of the date of written request from the Contracted Provider to do so;

- 14.4. Notwithstanding anything elsewhere contained in this Agreement, and without giving any Notice under this clause, either Party may terminate this Agreement immediately by giving Notice to the other Party if the recipient Party of such Notice –
- 14.4.1. Is convicted of a crime;
 - 14.4.2. does or omits to do any act that could cause the terminating Party to be in breach of any Law applicable to this Agreement; and/or
- 14.5. Either Party has the right of appeal within three (3) calendar months of the termination to the Office of the Health Ombud to mediate in the event of termination
- 14.6. Upon termination of this Agreement for any cause whatsoever the Parties shall immediately:
- 14.6.1. refrain from acting in such a way that will induce third parties reasonably to believe in the continuance of a contractual relationship between the Parties;
 - 14.6.2. notify any other person or entity of such termination of the relationship between the Parties as they deem appropriate.
- 14.7. Notwithstanding termination of this Agreement, all provisions will continue to be binding on the Parties and fully enforceable in respect to the rights and obligations of each Party relating to:
- 14.7.1. the payment of any sum;
 - 14.7.2. any continuing obligations to any Enrolled Users;
 - 14.7.3. Confidential information;
 - 14.7.4. obligations in this clause and otherwise in this Agreement that are expressly intended to apply after termination.

15. ARBITRATION

- 15.1. Save in respect of those provisions of the agreement which provide for their own remedies which would be incompatible with arbitration, a dispute which arises regarding:
- 15.1.1. The interpretation of; or
 - 15.1.2. The carrying into effect of; or
 - 15.1.3. Any of the Parties' rights and obligations arising from; or
 - 15.1.4. The termination or purported termination of or arising from the termination of; or
 - 15.1.5. The rectification or proposed rectification of this Agreement, or out of or pursuant to this Agreement or on any matter which in terms of this Agreement requires agreement by the Parties, must be submitted to and decided by arbitration.
- 15.2. Each arbitration must be held:
- 15.2.1. At a place agreed to by both parties;

- 15.2.2. In an informal and summary manner without legal representation, without any pleadings or discovery of documents and without it being necessary to observe the strict regulations of evidence or the usual formalities or procedure; and in the absence of agreement between the Parties the procedure to be followed must be that laid down by the Arbitrator;
- 15.2.3. As soon as possible with a view to it being completed within one (1) calendar month from the date on which the dispute is referred to the Arbitrator. Referral in turn must take place within one (1) calendar month of the date upon which it is demanded.
- 15.3. The Arbitrator must be, if the matter in dispute is:
- 15.3.1. primarily an accounting matter, an independent practicing chartered accountant of not less than ten (10) years' standing agreed upon by the Parties and failing agreement, appointed by the President of the Pretoria Society of Chartered Accountants;
- 15.3.2. any other matter, a practising Counsel of not less than ten (10) years' standing as such agreed upon by the Parties, and failing agreement, appointed by the President of the Bar Council at a place agreed to by both parties.
- 15.4. If agreement cannot be reached within fourteen (14) days after the arbitration has been demanded as to whether the issue falls under clause 15.3.1 or 15.3.2, then a practising Counsel of not less than ten (10) years standing as such, appointed by the President of the Bar Council at a place agreed to by both parties must determine within fourteen (14) days after his appointment and on the basis of the written statements of facts as submitted to him on behalf of the Parties (and if any party to the arbitration fails to give him such written statements of facts, on the statements of facts given to him by the other Parties), whether the question in issue falls under 15.3.1 or 15.3.2, so that an Arbitrator can be appointed in terms of clause 15.3 and the arbitration can be held and concluded, if possible, within the prescribed one (1) calendar month.
- 15.5. The Arbitrator must not be bound to follow strict principles of law, but he may decide the matter submitted to him according to what he considers just and equitable in the circumstances and, therefore, the strict regulations of law need not be observed or taken into account by him in arriving at his decision. The Parties desire that such decision be arrived at as expeditiously and as informally as possible.
- 15.6. Without in any way limiting, or derogating from, the generality of his powers, the Arbitrator must in addition, be entitled:
- 15.6.1. to investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with the dispute, and for that

purpose he must have the widest powers of investigating all the books and records of the Parties, including the right of inspection thereof and the right to take copies thereof or extracts therefrom, and the right to have the same produced and/or delivered at any reasonable place required by him;

15.6.2. To make such award, including an award for specific performance damages or a penalty or otherwise as he in his discretion may deem fit and appropriate up to a maximum amount of six times the monthly capitation fee payable in terms of this Agreement;

15.6.3. To award his fees as Arbitrator in such manner as he may deem fit.

15.7. The Parties irrevocably agree that the decision of the Arbitrator on any matter in dispute must be final and binding upon all of them, and may be made an Order of any competent Court. Notwithstanding the reference in this clause 15 to an "Arbitrator" any such Arbitrator must act as an expert and must therefore not be bound by the provisions of any arbitration laws for the time being in force.

15.8. The provisions of this clause 15 must not preclude any party from access to an appropriate court of law for:

15.8.1. Interim relief in the form of an interdict, mandamus or order for specific performance pending the outcome of an arbitration in terms hereof or in respect of such arbitration or expert determination, as the case may be;

15.8.2. any other form of relief based on facts which are not disputed, provided that if a dispute in good faith arises during such proceedings it must be stayed, pending an arbitration of the dispute in terms hereof; or

15.8.3. An order for the payment of a liquidated amount of money on the basis of facts which are not in dispute at the commencement of such proceedings.

16. JURISDICTION

16.1. The provisions of this Agreement must be governed by and construed in accordance with the laws of the Republic of South Africa.

16.2. The Parties consent to the exclusive Jurisdiction of the Magistrates Court if any legal proceedings are instituted in respect of the Agreement.

16.3. The Parties agree that any legal costs awarded must be on an attorney and own client scale.

17. NOTICES AND ADDRESSES OF SERVICE

17.1. The Parties hereto choose their address for service and delivery of documents for all purposes under this Agreement at their respective addresses at:

THE CONTRACTED PROVIDER

Physical address: _____
_____ Postal Code _____
Postal address: _____
_____ Postal Code _____
Fax no: _____
E-mail: _____

THE CONTRACT MANAGER FOR THE CONTRACTED PROVIDER:

Name: _____
Surname: _____
Capacity/Position: _____
Mobile no: _____
Telephone no: _____
E-mail: _____

NHI ADMINISTRATOR

Physical address: _____
Postal address: _____
Fax no: _____
E-mail: _____

- 17.2. Any change of address by either party must be in writing on ten (10) Business Days' notice.
- 17.3. Any notices to any party must be addressed to it at its address for service and delivery of documents aforesaid and either sent by pre-paid registered post, delivered by hand or communicated by telex, fax, or registered e-mail. In the case of:
- 17.4. Any notice sent by pre-paid registered post, it must be deemed to have been received, unless the contrary is proved, on the tenth (10th) business day after posting;
- 17.5. Any notice delivered by hand, it must be deemed to have been received unless the contrary is proved, on the date of delivery, provided such date is a business day or otherwise on the next following business day;
- 17.6. Any communication by telex, telefax, or registered e-mail, it must be deemed to have been received, unless the contrary is proved, twenty-four (24) hours after the time of transmission, provided the day of transmission is a business day or otherwise on the next following business day.

18. GENERAL PROVISIONS

- 18.1. No alteration, cancellation, variation of, or addition hereto must be of any force or effect unless by the operation of any legal provision or otherwise reduced to writing and signed by all Parties to this Agreement or their duly authorised representatives. The NHI Administrator may vary the contract without the Contracted Provider's consent if it is reasonably satisfied that the variation is necessary to comply with any law. The NHI Administrator must give reasonable notice in writing to the Contracted Provider of the wording of the proposed variation and the date on which that variation is to take effect. Variation may also take place, with due notice, if the Contracted Provider wishes to change its legal status.
- 18.2. This Agreement represents the entire agreement between the Parties relating to the subject matter of the Agreement and supersedes all prior agreements, understandings, representations and warranties relating to the subject matter of this Agreement. No Party has relied on or been induced by any representations or promises made to it prior to entering into this agreement or in reaching its decision to enter into this Agreement on these terms.
- 18.3. The Parties may waive a specific right by reasonable notice. Failure to act on any condition of this Agreement must not constitute or be deemed as a waiver of such condition or term.
- 18.4. Neither party must be liable for any failure or delay in performing its obligations under this Agreement if and to the extent that such failure or delay is caused by a Force Majeure event. A Force Majeure event means, in relation to either Party, any event or circumstance beyond the reasonable control of that party including act of God, fire, explosion, flood, epidemic, power failure, governmental actions, war or threat of war, acts of terrorism, national emergency, riot, civil disturbance, sabotage, labour disputes and strikes (other than in respect of the workforce of the party affected). A party affected by the Force Majeure (the "Affected Party") must immediately notify the other party ("Non-Affected Party") in writing of the event, giving enough details thereof and the likely duration of the delay. The Affected Party must use all commercially reasonable efforts to recommence performance of its obligations under this Agreement as soon as reasonably possible.
- 18.5. No indulgence, leniency or extension of time which any party ("the Grantor") may grant or show to any other party, must in any way prejudice the Grantor or preclude the Grantor from exercising any of its rights in the future. No relaxation or indulgence which any Party (the "first party") may grant to the other Party (the "second

party”) in regard to any of the second party’s obligations in terms hereof must constitute a waiver of or prejudice any of the first party’s rights in terms hereof.

- 18.6. No party must have the right to cede, assign or otherwise transfer its interests in this Agreement without the prior written consent of the other Parties hereto, which consent must not be unreasonably withheld.
- 18.7. If any clause of this Agreement is invalid under any applicable Law, the clause must be limited, narrowed, construed or altered as necessary to render it valid, but only to the extent necessary to achieve such validity and without derogating from the intention of the Parties at the end of this Agreement. If necessary, the invalid clause must be deleted from the Agreement and the remaining clauses must remain in full force and effect.
- 18.8. The signatories to this Agreement warrant that they are duly authorised to sign this Agreement on behalf of the Parties hereto.
- 18.9. The Parties hereto undertake that they must do all things reasonably within their power and which are always necessary or desirable to give effect to the spirit and intent of this Agreement and to be just and true to the other Party to act in good faith.
- 18.10. Each Party acknowledges and represents to each other that it has had the opportunity to seek and obtain separate and independent legal advice before entering into this Agreement. If either Party has entered this Agreement without first taking legal advice it has done so at its sole and absolute discretion and it must not be entitled to rely on the absence of legal advice as a defence to any breach of any of the clauses of this Agreement.
- 18.11. The Parties further acknowledge that they have the capacity to enter into this Agreement and have satisfied themselves as to the contents of this Agreement and understand same at the time that they signed this Agreement.
- 18.12. Termination of this Agreement for any cause must not release any of the Parties from any liability which at the time of termination has already accrued to such Party or which thereafter may accrue in respect of any act or omission prior to such termination.
- 18.13. This Agreement must be governed by South African law.

DATED AT _____ ON THIS THE _____ DAY OF _____ 2018.

AS WITNESSES:

1. _____ 2. _____

for and on behalf of

CONTRACTED PROVIDER

this signatory confirming that he/she is duly authorized thereto

DATED AT _____ ON THIS THE _____ DAY OF _____ 2018.

AS WITNESSES:

1. _____ 2. _____

for and on behalf of

NHI ADMINISTRATOR

this signatory confirming that he/she is duly authorized thereto

DETAILS OF COMMUNITY PRACTICE (No.)

A copy of this is to be filled in for each Community Practice that is to be contracted and then attached, with initials, to the signed Agreement.

The Community Practice details are:

Contracted Provider Reference No. _____

Community Practice Name: _____

Physical Address: _____

_____ Postal Code _____

Contact details of Community Practice:

Telephone no: _____

Email address: _____

The Panel Size applied for: _____

Office Hours: _____

After-Hours: _____

After Hours Location: _____

_____ **Postal Code** _____

The Accountable Doctor for this Community Practice is:

Name: _____

Surname: _____

Gender: M ___ / F ___ Date of Birth ___ / ___ / ___

ID/Passport No: _____

Qualifications: _____

HPCSA MP No.: _____

Any pending or outstanding judgement with HPCSA? Yes / No

Details: _____

BHF/Reference No.: _____

The Contact details of Accountable Doctor are:

Mobile no: _____

Telephone no: _____

Email address: _____