

**SPECIAL CONDITIONS OF CONTRACT  
SERVICE LEVEL AGREEMENT**

Entered into by and between

**PROVINCIAL DEPARTMENT OF HEALTH**

herein represented by in his capacity as Head of Health and duly authorised hereto

(Hereinafter referred to as "**the Department**")

and

**Independent Healthcare Practitioner**

HPCSA Number:	
Identity Number:	
Nominated Society / Prof. body	
<b>Name:</b>	
<b>Surname:</b>	
Hospital Facility:	
Hospital Group:	
Partnership/Group Practice Number (if applicable):	
Individual Practice Numbers of all participating Clinicians:	
VAT number:	
Accounts submitted using: Individual / Partnership/Group Practice Number:	
Category of related I. H. P. (2,3,4,5):	
Physical address:	
Street:	
Suburb:	
Town:	
Postal code:	
Postal address	
Business phone number:	
District:	
Cell phone number:	
E-mail:	

(Collectively hereinafter referred to as "**the Parties**")

## PREAMBLE

- A. The Department requires health services from private service providers which include *inter alia* palliatives, general, high care and ICU beds, pathology services, radiology services, blood services and independent healthcare practitioners, to treat patients who are infected with the COVID-19 virus. The Department wishes to refer certain of its patients to private facilities. The Department therefore entered into a contract with licensed a private health facility (hereinafter called "**the Private Provider**") which are able to admit patients in specific categories of beds, and with the facilitation and assistance of Administrator Intermediaries intends to contract with practising independent healthcare practitioners of various disciplines (hereinafter called "**Independent Healthcare Practitioner**") who operate in the normal course of events at the facility of the Private Provider and who would be able to provide health care services to the Department's patients. The contract with the Private Provider is attached hereto as Schedule 1.
- B. Pursuant to a Call for Service with the Private Provider Hospitals the Independent Healthcare Practitioner has been appointed by the Department to provide health services when required as specified in this contract to the state patients. As a consequence, the Independent Healthcare Practitioner and the Department wish to enter into a service level agreement prescribing the terms and conditions under which the Independent Healthcare Practitioner will render the services.
- C. The Independent Healthcare Practitioner and the Department agree to the appointment of the Administrator Intermediary which has been selected by the Private Provider, to coordinate, facilitate and administer the relationship and related activities between the Department, Independent Healthcare Practitioner and the Private Provider.

## NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

### 1. INTERPRETATION AND DEFINITIONS

- 1.1. In this Agreement unless the context indicates a contrary intention, a word or expression which denotes -
- 1.1.1 any one gender includes the other gender;
- 1.1.2 a natural person includes a juristic person and vice versa; and

1.1.3 the singular includes the plural and vice versa.

1.2. Clause headings are for convenience only and are not to be used in the interpretation of this contract.

1.3. This contract incorporates its annexures which annexures shall have the same force and effect as if set out in the body of this Agreement.

1.4. The terms and conditions contained in the Schedule 1 and respective Annexures, are incorporated and referenced into this contract, and such terms and conditions will only apply to the Independent Healthcare Practitioner and the Department as far as possible, with the necessary changes, unless such terms and conditions are specifically altered for purposes of this Agreement.

1.5. The Independent Healthcare Practitioner may raise any matters via their nominated society for resolution, to the Joint Operating Committee or directly to the Department.

1.6. If the Independent Healthcare Practitioner is concerned about the Administration Intermediary costs or the apportionment of such these need to be resolved between the respective Private Providers hospital groups and the Independent Healthcare Practitioners

1.7. All expressions and terms used in this Agreement shall have the same meanings as ascribed to them in Schedule 1, unless otherwise stated. In this contract "**Services**" means the services set out in Appendix 2 and "**Agreement**" shall mean this contract, together with the bid documents relevant to this contract, and any other annexures.

## **2. APPOINTMENT & COMMENCEMENT**

2.1 The Department hereby appoints the Independent Healthcare Practitioner to render the Services. The Independent Healthcare Practitioner accepts such appointment. The appointment of the Independent Healthcare Practitioner is subject to relevant laws and prescripts that govern procurement of services of organs of state, and the Independent Healthcare Practitioner has to comply with such laws and prescripts applicable to suppliers of services to the Department.

- 2.2 The referral of Patients to the Independent Healthcare Practitioner is solely in the discretion of the Department and the Private Provider, and the Independent Healthcare Practitioner cannot insist or compel the Department to refer to refer a specific number of Patients to him or her.
- 2.3 The referral of Patients to the Independent Healthcare Practitioner shall be subject to the Private Provider being able and willing to provide beds, including whether there are sufficient nursing staff, personal protective equipment, and appropriate medication and other consumables available, at the time when the relevant referral of the Patient concerned is sought in accordance with the process outlined in the patient referral pathway set out in **Annexure J**, as well as supporting related contracted Independent Healthcare Practitioners being available at the relevant time to treat the Patient concerned.
- 2.4 The Independent Healthcare Practitioner accepts such appointment.
- 2.5 This Agreement shall commence on the Signature Date and will remain in force until 30 September 2020, unless terminated earlier in terms of this Agreement. At least 7 days (seven) Calendar Days prior to the expiry of the Agreement, the Department and Independent Healthcare Practitioner may renew it for 90 (ninety) Calendar Days on such terms and conditions which they agree upon in writing, subject to compliance with the law and prescripts applicable to procurement of service by the Department.
- 2.6 Notwithstanding the provisions of this Agreement, this Agreement may be terminated on 7 (seven) Calendar Days' written notice by either the Department or the Independent Healthcare Practitioner. In the event that the Agreement is terminated, the Independent Healthcare Practitioner will continue treating the Patient under his or her care until the Patient is discharged or until the Department has agreed in writing that another Independent Healthcare Practitioner or its own healthcare practitioners assume responsibility for the healthcare services provided to the Patient.
- 2.7 Notwithstanding the provisions of this Agreement, in the event that the Agreement as per Schedule 1 with a particular Hospital and Private Provider is cancelled, this Agreement will also terminate, subject to the provisions of this Agreement. The Department will inform the Independent Healthcare Practitioner timeously of such an event and make suitable

### **3. DUTIES OF THE DEPARTMENT**

3.1 The Department hereby grants all such powers and duties to the Independent Healthcare Practitioner as are required to enable him or her to lawfully perform their duties effectively and competently in terms of this Agreement.

3.2 The Department shall:

3.2.1 provide the Private Provider and the Administrator Intermediary with timeous access to information reasonably required by the Parties to perform its duties under this Agreement; and

3.2.2 monitor and manage the implementation of this Agreement and the performance of the Parties.

#### **4. DUTIES AND UNDERTAKINGS OF THE INDEPENDENT HEALTHCARE PRACTITIONER**

4.1 The Independent Healthcare Practitioner undertakes to:

4.1.1 provide the Services in accordance with the provisions of this Agreement and **Schedule 2**;

4.1.2 perform the Services according to best practices and with the requisite skills, expertise and knowledge;

4.1.3 comply with all the administrative requirements imposed by law and the Department such as tax compliance

4.1.4 where possible and practical manage in collaboration with the clinical teams, any provided Stock, inventory, consumables, donated items, personal protective equipment, if applicable, in accordance with the guidelines as set out in **Annexure E of Schedule 1**;

4.1.5 adhere to the critical care guidelines, on the understanding that the Independent Healthcare Practitioner can exercise his or her independent judgment as to which critical care guidelines to follow and the appropriate treatment regime to adopt in respect of each particular Patient;

- 4.1.6 record and share with the Department and Administrator Intermediary, the details of the Patient, as well as any other information reasonably required by the Department and Administrator Intermediary which is within the possession and control of the Independent Healthcare Practitioner;
- 4.1.7 use its best endeavours to assist, as reasonably required and practically possible, to complete relevant clinical details that the Independent Healthcare Provider has domain over in the submission of Patient reports to [insert] as per the template in **Annexure H**; and
- 4.1.8 to assist in, adhere to, participate in and co-operate in terms of the processes developed for referral of Patients, and systems, time and record keeping and communications practices in place to his or her availability and capacity to treat such referred Patients.
- 4.1.9 Nominate a representative to the Joint Operations Committee, which must be a representative of the professional society or body of which the Independent Healthcare Practitioner is a member.

## **5. INVOICING AND PAYMENTS**

- 5.1 The Department will pay the Independent Healthcare Practitioner per Patient, in arrears as per the tariffs contained in **Schedule 3**, within 30 (thirty) Calendar Days of receipt of a detailed invoice for the Services inclusive of VAT. Where the Independent Health Practitioner treats the Patient together with other Independent Healthcare Practitioners in a multidisciplinary team, the members of such a multidisciplinary team have agreed that they will amongst themselves agree to a fair apportionment of the fee per Patient, and the Department will have no further obligation to pay any further fees in respect of individual clinicians on the multidisciplinary team for treatment of the Patient.
- 5.2 The Independent Healthcare Practitioners shall invoice the Department via the Administrator Intermediary. Should the Patient be a member or beneficiary of medical aid scheme or funded body, payment for the Services must then be sought from such medical aid scheme or funded body.
- 5.3 The Department shall make weekly payment runs of all submitted invoices and shall pay any amounts which are still owing for the provision of Services within 30 (thirty) Calendar Days of

receipt of a detailed tax invoice. No payment shall be made in respect of Services that have been rendered that do not comply with the requirements included in this Agreement.

5.4 The Department will rely on the work performed by the Administrator Intermediary but reserves the right to verify the correctness of a tax invoice and notify the Service Provider of any possible discrepancies within 10 (ten) days of receipt of the tax invoice. Provided that the tax invoice is correct the amount due shall be payable within 30 (thirty) days from receipt of the tax invoice. If the Department identifies any material discrepancies, the tax invoice will be referred back to the Service Provider, and the amount due will be payable within 30 (thirty) days from receipt of a corrected tax invoice.

5.5 In the event that a Patient requires additional treatment, other than as envisaged in the ordinary course in treating COVID-19 patients, such as (but not limited to) surgery and/or dialysis treatment, then a request to provide additional treatment by the Independent Healthcare Practitioners shall be referred to the Joint Operations Committee for pre-authorisation (subject to available funding) and, if authorised, the Department will pay the Private Provider and the Independent Healthcare Practitioner for such treatment in accordance with the tariff set out in **Schedule 3**.

5.6 In the event that a Patient requires urgent emergency treatment (other than as envisaged in the ordinary course in treating COVID-19 patients), such as (but not limited to) emergency surgery or treatment for a cardiac event, in circumstances where there is insufficient time to obtain pre-authorisation from the Joint Operating Committee, then the Department will pay the Independent Healthcare Practitioner for such treatment provided that the Department has been informed about the nature of the treatment involved and in accordance with the tariffs set out in **Schedule 3**.

5.7 All payments shall be made in South African Rands into the bank account of the nominated Administrator Intermediary (located in the Republic of South Africa), details of which will be specified in the relevant bills and tax invoices. The payments will be made by way of an electronic banking transfer. The Administrator Intermediary will be responsible for the ensuing transfer of funds to the Private Provider and the related independent Healthcare practitioners.

## **6. INDEMNITY**

6.1 Subject to clause 6.2, the Department will indemnify the Independent Healthcare Practitioner against all and any claims, including claims for consequential damages, which might arise from



personal injury, death, loss or damage to property or person, or any other claim of whatsoever nature, arising from negligence, gross negligence or any other cause howsoever, which any person may have or institute against the Independent Healthcare Practitioner and where the cause of such claim can be directly or indirectly attributed to the rendering of the Services by the Independent Healthcare Practitioner, to the extent that he or she is not indemnified by his or her own insurance company or statute or other means.

6.2 In the event that a claim is instituted in terms of clause 6.1, the choice of legal representative and the fees of such legal representative for acting for the Independent Healthcare Practitioner must be approved by the Department in writing, and the litigation will be managed in conjunction with the Department as the institution that is, in terms of the indemnity, exposed to the liability arising from successful claims.

## **7. INDEPENDENT CONTRACTOR**

7.1 The Independent Healthcare Practitioner in furnishing the Services in terms of this Agreement, are acting as an independent contractor and not as employees of the Department, and at all times relevant during the currency of this Agreement, no employer-employee relationship shall exist between the Parties.

7.2 Nothing contained in this Agreement shall be construed as creating a company, close corporation, joint venture, partnership or association of any kind, between any of the Parties; nor is anything contained in this Agreement to be construed as creating or requiring any continuing relationship or commitment on a Party's or its affiliates' behalf with regard to the other Parties and their affiliates other than as specifically set out herein.

7.3 Neither Party is an agent of the other or has any authority to represent the other as to any matters, except as expressly authorised in this Agreement.

7.4 Unless expressly authorised by this Agreement, neither of the Parties (nor their respective agents) shall have the authority or right, nor shall any Party hold itself out as having the authority or right, to assume, create or undertake any obligation of any kind whatsoever, express or implied, on behalf of or in the name of the other Party.

## **8. ENTIRE AGREEMENT AND VARIATION**

- 8.1 This Agreement replaces any other previous verbal or written agreement entered into between the Parties in connection with this agreement.
- 8.2 This Agreement constitutes the entire agreement between the Parties and no amendment, alteration, addition or variation of any right, term or condition of this Agreement will be of any force or effect unless reduced to writing and signed by the Parties to this Agreement.
- 8.3 The Parties agree that there are no conditions, variations or representations, whether oral or written and whether expressed or implied or otherwise, other than those contained in this Agreement.
- 8.4 Notwithstanding any provision to the contrary in the Agreement, the primary responsibility for supplying the Services vests with the Independent Healthcare Practitioner which incorporates the role of the Administrator Intermediary and it may not subcontract, assign, cede, delegate or transfer, in whole or in part, any of its obligations to perform under this Agreement to any other person, without the prior written consent of the Department.
- 8.5 Notwithstanding the provisions of clause 8.4 the Department expressly grants permission that the Independent Healthcare Practitioner may contract with a substitute clinician (locum) to execute duties in terms of this Agreement if he or she is temporarily not available, provided that the substitute has the same level of qualifications and experience and he or she agrees in writing that it will render the Services subject to the provisions of this Agreement.

## **9. WAIVER**

- 9.1 No waiver of any of the terms and conditions of this Agreement shall be binding unless expressed in writing and signed by the Party giving the same, and any such waiver shall be effected only in the specific instance and for the purpose given.
- 9.2 No failure or delay on the part of either Party in exercising any right, power or privilege precludes any other or further exercising thereof or the exercising of any other right, power or privilege.
- 9.3 No indulgence, leniency or extension of time which any Party ("*the Grantor*") may grant or show the other Party, shall in any way prejudice the Grantor or preclude the Grantor from exercising any of its rights in terms of this Agreement.

## **10. SEVERABILITY**

In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms, which will continue to be valid and enforceable to the extent practically possible.

## **11. BREACH**

Should the Department or Independent Healthcare Practitioner breach any of the terms and conditions of this Agreement and remain in such breach for 7 (seven) Calendar Days after receipt of a written notice from the other Party calling upon it to remedy such breach, then the Party who served such notice shall be entitled, in addition to any remedy which it may have in law, to cancel this Agreement.

## **12. CONFIDENTIAL INFORMATION**

12.1 The Independent Healthcare Practitioner and the Department shall not, during the currency of this Agreement, or at any time thereafter, utilise or cause to be utilised, and/or directly or indirectly publish or cause to be published or otherwise disclose or cause to be disclosed to any third Party, any of the Confidential Information of the other Parties or Patients of the Department.

12.2 For the purposes of this Agreement "Confidential Information" shall mean-

12.2.1 any information of any Party which is disclosed, revealed or exchanged pursuant to the provision of the Services in terms of this Agreement which pertains to, but is not limited to, all intellectual property rights, all trade secrets, or information pertaining to Patients of the Department or technical, operational or financial aspects of any of the Parties, obtained during execution of this Agreement.; and;

12.2.2 any dispute between the Parties resulting from this Agreement.

12.3 The Independent Healthcare Practitioner shall-

12.3.1 use the Confidential Information only for purposes of discharging its obligations under this Agreement;

12.3.2 treat and safeguard the Confidential Information as private and confidential; and

12.3.3 ensure proper and secure storage of all Confidential Information.

12.4 Any documents or records (including written instructions, notes or memoranda) relating to the Services which are to be provided to the Independent Healthcare Practitioner by the Department or which come into the Independent Healthcare Practitioner's possession during the currency of this Agreement, are deemed to be the property of the Department respectively and shall be surrendered to the Department on demand, and in the event of the expiry or termination of this Agreement, the Independent Healthcare Practitioner may not retain any copies thereof or extracts therefrom without obtaining the prior written permission of the Department respectively. Notwithstanding this the Independent Healthcare Practitioner may retain copies of records and documents such as clinical notes that he or she deems necessary for purposes of further treatment of the Patient or possible litigation process

12.5 The Independent Healthcare Practitioner undertakes to comply with applicable laws and regulations on the protection of personal data relating to Patients and other persons to which it may have access in the performance of its obligations. To this end the Independent Healthcare Practitioner will implement technical and organisational measures to address risks of alteration, loss and unauthorised access or processing of such personal data where these are in the control of the Independent Healthcare Practitioner.

12.6 The Independent Healthcare Practitioner and their employees undertakes to keep such personal data confidential. Such data will be used for the sole purpose of rendering the Services. Only the Private Provider's and Administrator Intermediary's employees, its suppliers, agents or its affiliates, involved in the performance of the obligations under this Agreement, may have access to such personal data on a need to know basis and in compliance with this confidentiality undertaking.

12.7 To assist with this obligation, the Department shall make all reasonable endeavours to ensure that any data/images that it may provide to, or permit access to, the Independent Healthcare Practitioner and the Administrator Intermediary are suitably anonymized, where necessary and appropriate, with the aim of ensuring that such data/images do not constitute 'personal data' as defined under applicable law including the Protection of Personal Information Act, 2013.

12.8 In case of termination of this Agreement, the Independent Healthcare Practitioner will at its cost, destroy such personal data or return to the Department any copies thereof, unless the Parties are authorised by the Department to keep such information for specific purposes or unless the Parties are prevented from doing so, for instance by law, in which event the data will be kept confidential and will not be processed for any purpose other than those necessary to comply with legal obligations.

**13. NOTICES AND DOMICILIUM**

13.1 The Parties choose as their *domicilium citandi et executandi* for the purposes of legal proceedings and for the purpose of giving or sending any notice provided for or necessary in terms of this Agreement, the following addresses:

**The Department:**

**Independent Healthcare Practitioner:**

.....  
.....  
.....  
.....

13.2 All notices to be given in terms of this Agreement shall be given in writing and be delivered or sent by prepaid registered post to the Party's chosen *domicilium citandi et executandi*.

13.3 If delivered by hand, a notice shall be presumed to have been received on the date of delivery, or, if sent by prepaid registered post, be presumed to have been received 7 (seven) Business Days after the date of posting.

13.4 A written notice of communication actually received by a Party shall be deemed to be adequate notice notwithstanding that it was not delivered or sent to its chosen *domicilium* address.

**DATED AND SIGNED AT ..... ON THIS THE..... DAY OF ..... 2020.**

\_\_\_\_\_

**on behalf of the Department**

**WITNESS:**

SIGNATURE: \_\_\_\_\_

FULL NAMES: \_\_\_\_\_

**DATED AND SIGNED AT ..... ON THIS THE.....DAY OF.....2020.**

\_\_\_\_\_

....., on behalf of the Independent Healthcare Practitioner and duly authorised  
thereto

**WITNESS:**

SIGNATURE: \_\_\_\_\_

FULL NAMES: \_\_\_\_\_

**Schedule 1**

Private Provider agreement to be inserted

**Schedule 2**

**Description of the Services:**

**Schedule 3**

**GENERAL PRICING SCHEDULE FOR TREATMENT OF COVID-19 per diem inclusive of VAT**

		<b>Palliative Care</b>	<b>General</b>	<b>High Care and ICU</b>
	Description of Service	R	R	R
	Facility Fees/Private Hospitals	990	2972	11749
	Specialist Physician/Team	151	476	2493
	Pathology/Laboratory		588	588
	Radiology/Imaging Fee		632	632
	Allied Care			694

" Carve out procedures "

These fees have as yet not been determined by the National Department of Health. The general principles around these fees follows:

In the event that a Patient requires additional treatment, other than as envisaged in the ordinary course in treating COVID-19 patients, such as (but not limited to) surgery and/or dialysis treatment, then a request to provide additional treatment by the Independent Healthcare Practitioners shall be referred to the Western Cape Joint Operations Committee for pre-authorisation (subject to available funding) and, if authorised, the Department will pay the Private Provider and independent healthcare practitioners for such treatment in accordance with the tariff approved by the NDOH or in the absence of such fees agreed to by the JOC. The proposed fees for such should be commensurate to the compensation paid to state employees for such services.

**The Most Common General Surgical Procedures in COVID-19 Patients  
Description and South African Medical Association Codes**

**(1) Acute Arterial Occlusion**

- |         |                          |
|---------|--------------------------|
| a. 1393 | Fogarty embolectomy      |
| b. 3559 | Aortic angiogram         |
| c. 3560 | Femoral angiogram        |
| d. 3562 | Tibial angiogram         |
| e. 0011 | Emergency code           |
| f. 0008 | Specialist Assistant Fee |

**(2) Gastroscopy and control of GI bleeding**

- |         |                     |
|---------|---------------------|
| a. 1587 | Gastroscopy         |
| b. 1589 | Control of bleeding |
| c. 0011 | Emergency code      |

**(3) Colonoscopy and control of bleeding**

- |         |                     |
|---------|---------------------|
| a. 1653 | Colonoscopy         |
| b. 1589 | Control of bleeding |
| c. 0011 | Emergency code      |

- |   |  |
|---|--|
| <p><b>(4) Laparotomy: perforated ulcer</b></p> <ul style="list-style-type: none"> <li>a. 1615</li> <li>b. 0011</li> </ul>   | <p>Suture of perforation or bleeding<br/>Emergency code</p>  |
| <p><b>(5) Laparotomy for Perforated intestine</b></p> <ul style="list-style-type: none"> <li>a. 1639</li> <li>b. 1657</li> <li>c. 1665</li> <li>d. 0011</li> <li>e. 0008</li> </ul> | <p>Small bowel resection<br/>Partial colectomy<br/>Colostomy<br/>Emergency code<br/>Specialist Assistant Fee</p> |
| <p><b>(6) Laparotomy for abdominal sepsis</b></p> <ul style="list-style-type: none"> <li>a. 1815</li> <li>b. 1807</li> <li>c. 0011</li> <li>d. 0008</li> </ul>                      | <p>Intra-abdominal abscess<br/>Laparoscopy<br/>Emergency code<br/>Specialist Assistant Fee</p>                   |
| <p><b>(7) Vascular access for dialysis</b></p> <ul style="list-style-type: none"> <li>a. 1408</li> <li>b. 0011</li> </ul>   | <p>Permcath for dialysis<br/>Emergency code</p>  |
| <p><b>(8) Cholecystectomy for acalculous cholecystitis</b></p> <ul style="list-style-type: none"> <li>a. 1761</li> <li>b. 0011</li> <li>c. 0008</li> </ul>                          | <p>Cholecystectomy<br/>Emergency code<br/>Specialist Assistant Fee</p>   |