

## South African Society of Anaesthesiologists

### SASA - Facilities Group Agreement

**Between**

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**The South African Society of Anaesthesiologists**

AND

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**Company registration number**

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**Registered name of Facilities Group (FG)**

**As a Company owning/ managing or having a controlling interest in a group of healthcare facilities**

AND APPLICABLE TO

**SASA members engaged in SASA CSP – Facilities Group Agreements concluded with the Facilities Group**

Agreement ID (SASA/Reference Number of Agreement type/ Month/Year):

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**Initiation Date of Agreement**

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**Termination date of Agreement**

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## 1. Definitions

In this Agreement, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings:

- 1.1. **Agreement** means the agreement contained in this document, including all annexures hereto.
- 1.2. **Anaesthetist** means a healthcare practitioner that participates in, or delivers anaesthesia and medical care in a facility governed by this agreement.
- 1.3. **CMS** means the Council for Medical Schemes, a statutory body established by the Medical Schemes Act.
- 1.4. **CSP** means Clinical Service Provider as an individual independent practitioner, named herein as signatory and with indicated registration number for independent practice with the Health Professions Council of South Africa. In terms of this contract CSP may be used interchangeably with Anaesthetist.
- 1.5. **CSP FG Agreement** means the Agreement between the Clinical Service Provider and Facilities Group.
- 1.6. **Electronic signature** denotes any means of auditable electronic response from the SASA to the FG and/ or vice-versa that provides for the ability to accept, reject or raise specific points in respect of a proposed term of the Agreement.
- 1.7. **Facility** means any facility that is owned, operated by or controlled by the FG.
- 1.8. **FG** means \_\_\_\_\_, registration number \_\_\_\_\_, and refers to the controlling entity over facilities or an affiliate in which the CSP works and therefore the facility/ies in which this Agreement will have force and effect. The affiliates refer to the other divisions in the \_\_\_\_\_ Group e.g. \_\_\_\_\_.
- 1.9. **HPCSA** means the Health Professions Council of South Africa, a statutory body established in terms of the Health Professions Act, No. 56 of 1974.
- 1.10. **Locum** means "Locum tenens" as understood in terms of the Health Professions Council of South Africa Ethical Rules and includes a healthcare provider who works in the place of the regular healthcare provider in a particular referenced circumstance.
- 1.11. **Medical Schemes Act** means the Medical Schemes Act, No. 131 of 1998.

- 1.12. **Parties** means the parties to this Agreement.
- 1.13. **Peer Review** means peer review conducted in collaboration with SASA as per the SASA Peer Review Policy, as amended from time to time. The FG will be updated on the amendments with CSP access to updates on the SASA website.
- 1.14. **Practicing Privileges** means permission granted by the FG to the CSP to provide medical and related patient care services in its facilities within a specific scope of practice, based on the individual's education, professional license, experience, competence, ability, health, and judgment.
- 1.15. PPBU denotes Private Practice Business Unit unless otherwise specified.
- 1.16. Quality means "healthcare quality" as put forward by the institute of medicine which includes the following six aims defined:
- 1.16.1. **Safe:** Avoiding harm to patients from the care that is intended to help them.
- 1.16.2. **Effective:** Providing services based on scientific knowledge to all who could benefit and refraining from providing services to those not likely to benefit (avoiding underuse and misuse, respectively).
- 1.16.3. **Patient-centred:** Providing care that is respectful of and responsive to individual patient preferences, needs, and values and ensuring that patient values guide all clinical decisions.
- 1.16.4. **Timely:** Reducing waits and sometimes harmful delays for both those who receive and those who give care.
- 1.16.5. **Efficient:** Avoiding waste, including waste of equipment, supplies, ideas, and energy.
- 1.16.6. **Equitable:** Providing care that does not vary in quality because of personal characteristics such as gender, age, race, ethnicity, geographic location, and socioeconomic status.
- 1.17. **SASA** means the South African Society of Anaesthesiologists.
- 1.18. **SASA Peer Review Policy** means the policy established and adopted by SASA that enables a robust and objective mechanism to evaluate and adjudicate on a SASA member's conduct and practice with the intention to educate, improve and advance the practice of anaesthesia in the profession.
- 1.19. **SASA FG Agreement** means the Agreement between the Facilities Group and SASA as set out in this Agreement.
- 1.20. **Signature** means physical or electronic signature.

1.21. **Signature Date** means the date of signature of this Agreement by the Party last signing in time.

1.22. In this Agreement -

1.22.1. clause headings and the heading of the Agreement are for convenience only and are not to be used in its interpretation;

1.22.2. an expression which denotes -

1.22.2.1. any gender includes the other genders;

1.22.2.2. a natural person includes a juristic person and vice versa;

1.22.2.3. the singular includes the plural and vice versa;

1.22.2.4. a Party includes a reference to that Party's successors in title and assigns allowed at law; and

1.22.2.5. a reference to a consecutive series of two or more clauses is deemed to be inclusive of both the first and last mentioned clauses.

1.22.2.6. Any reference in this Agreement to –

1.22.2.7. "business hours" shall be construed as being the hours between 08h30 and 17h00 on any business day. Any reference to time shall be based upon South African Standard Time;

1.22.2.8. "days" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;

1.22.2.9. "laws" means all constitutions; statutes; regulations; by-laws; codes; ordinances; decrees; rules; judicial, arbitral, administrative, ministerial, departmental or regulatory judgements, orders, decisions, rulings, or awards; policies; voluntary restraints; guidelines; directives; compliance notices;

abatement notices; agreements with, requirements of, or instructions by any government body; and the common law, and "law" shall have a similar meaning and

1.22.2.10. "person" means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality.

1.22.2.11. The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.

1.22.2.12. Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in this clause or elsewhere in this Agreement, shall be given effect to as if it were a substantive provision in the body of the Agreement.

1.22.2.13. Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.

1.22.2.14. Unless otherwise provided, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.

1.22.2.15. A reference to any statutory enactment shall be construed as a reference to that enactment as at the Signature Date and as amended or substituted from time to time.

1.22.2.16. Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.

1.22.2.17. The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply.

1.22.2.18. No provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a Party to this Agreement.

1.22.2.19. The use of any expression in this Agreement covering a process available under South African law, such as winding-up, shall, if any of the Parties is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.

1.22.2.20. Any reference in this Agreement to "this Agreement" or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented from time to time.

1.22.2.21. In this Agreement the words "clause" or "clauses" and "annexure" or "annexures" refer to clauses of and annexures to this Agreement.

## **2. Objectives of the Agreement**

2.1. Promote and enable ethical and clinical protection for patients by ensuring SASA members are enabled and may be held accountable to practice that is:

- 2.1.1. in accordance with HPCSA ethical rules of practice.
- 2.1.2. in accordance with the laws of the Republic of South Africa.
- 2.1.3. in accordance with SASA and academic best practice guidelines.
- 2.1.4. subject to clinical outcomes, process and activity measures as agreed to by their nominated Society.
- 2.1.5. subject to objective Peer Review under the auspices of SASA.
- 2.1.6. facilitative of exposing patients to medical professionals who are best suited to deliver care in the professional's respective speciality/ domain.

2.2. Ensure patients are provided care that is:

- 2.2.1. in accordance with 2.1 above.
- 2.2.2. free from exposure to over-servicing or inefficiencies and perversely incentivised care as may be generally understood or defined.

2.2.3. free from exposure to under-servicing and perversely incentivised care as may be generally understood or defined.

2.3. Ensure the CSP can conduct practice:

- 2.3.1. with clinical autonomy (having regard to 2.1.3., 2.4.1 and 2.4.2 respectively).
- 2.3.2. Free from perverse incentives that drive underservicing or over-servicing.
- 2.3.3. with empowerment to engage with the FG or local facility within which they work within a working agreement that governs their professional – facility relationship in which the parties conduct business.

2.4. Ensure that this agreement:

- 2.4.1. enables the design and implementation of ethically and legally compliant team-based care systems that incentivise best value care to all participating parties in keeping with the principles of these objectives.
- 2.4.2. enables the participation of facilities, clinicians and SASA in monitoring and reporting on Quality measures that will allow for facility review, SASA member peer review and improvement of care where identified deficiencies exist.
- 2.4.3. is subject to periodic update and annual review by SASA and the named FG participating in the Agreement.
- 2.4.4. recognises the benefits of the anaesthesiologist - facility relationship in achieving cost effective, sustainable Quality patient care and outcomes.
- 2.4.5. enables mitigation of legal exposure to all parties including reputational harm through collaborative engagement and promotion of the precepts in 2.1 and 2.2.

### **3. Time Restriction**

3.1 This Agreement shall commence on \_\_\_\_\_ ("the Effective Date") notwithstanding the Signature Date.

3.2 The Parties agree to review the duration of this Agreement and the terms thereof on or before \_\_\_\_\_ (three months) prior to the expiry and in perpetuity after signature of this agreement. This agreement will be for an initial period of 3 calendar years (the year of signature and 2 (two) calendar years thereafter). Any extended period may not exceed 3 (three) years.



- 3.3 Notwithstanding the review contemplated in 3.2, the Parties agree to review the terms and their ongoing relevance to this Agreement and the Facilities CSP Agreement annually (every year) in perpetuity, should there be a mutual desire to continue the arrangement. The review process must commence before \_\_\_\_\_ (three months prior to expiry) and must conclude on or before \_\_\_\_\_ (two months prior to expiry) in each year of the Agreement's existence.
- 3.4 If the Parties are unable to reach consensus on the reviewed terms before the relevant \_\_\_\_\_ deadline, this Agreement shall terminate at the end of the existing agreement period. Any extension and amended terms (which for the avoidance of doubt, may entail an amendment to this Agreement, including any annexure) shall be agreed to and recorded in writing.
- 3.5 In the event this Agreement is terminated, the parties agree that the working relationship of CSPs will revert to the relationship in place at the time of signing this Agreement. A "runoff" period of 3 (three) months may be requested and will not be unreasonably withheld by either Party in the interests of continuity of patient care and access to professional services. Any extension and/ or amended terms (which for the avoidance of doubt, may entail an amendment to this Agreement, including any annexure) shall be agreed to and recorded in writing.

#### **4 Early Termination**

- 4.1 Notwithstanding clauses 3 and 7, this agreement shall be terminated forthwith in the event that the HPCSA or any other regulatory or statutory body formally and validly determines that the team principles and arrangements pursuant to which this agreement was concluded and/or that the terms of this agreement contravene the ethical rules of the HPCSA or such other regulatory or statutory body.
- 4.2 Notwithstanding the commencement of this agreement any party may, on its own accord or if requested by the HPCSA or any other regulatory and/or statutory body, engage with such body regarding the merits of the team principles and arrangements pursuant to which this agreement was concluded and/or the terms of this agreement provided that –

- 4.2.1 prior notice of such engagement is provided to the other; and
- 4.2.2 the parties explore opportunities to co-operate with each other to address any matter of mutual interest viz-a-viz the HPCSA or such other regulatory body.
- 4.2.3 In the event this Agreement is terminated, the parties agree that the working relationship of CSPs will revert to the relationship in place at the time of signing this Agreement.

**5 The Facilities Group agrees to/ that:**

- 5.1 Provide a comprehensive list timeously that may be requested from time to time, of CSPs participant to the CSP-FG Agreement, to SASA where the CSP has nominated SASA, to ensure SASA and the FG are able to assess any required investigation or intervention (inclusive of peer review) should the need arise. These lists will only be used for this purpose in patients' best interests, in service of this Agreement and in accordance with the requirements of the Protection of Personal Information Act.
- 5.2 Information related to peer review, outcomes measures and any other quality monitoring or intervention undertakings contemplated in this Agreement and other information as it relates to achieving the principles of this Agreement will be shared with SASA on a per patient and aggregate basis and will facilitate this through necessary enabling agreements with patients and participating clinicians:
  - 5.2.1 The data shared is in compliance with relevant legislation governing same.
  - 5.2.2 The information shared relates to peer review, monitoring and quality of care assessment, and any collaborative processes or initiatives to achieve improvement in the provision of quality healthcare.
  - 5.2.3 The data to be shared has been collected and able to be reasonably be accessed, processed and provided without unreasonable or particularly onerous financial or human resource interventions.
  - 5.2.4 Relevant confidentiality, non-disclosure agreements or other documentation required to be signed by SASA and/or its representatives are attended to as and when necessary, prior to any data being shared with SASA and/or its representatives.
  - 5.2.5 Wherever possible, data to be analysed will be proactively discussed and agreed to in service of achieving transparency and measurement of outcomes rather than a retrospective request for additional or particular data sets. For the sake of clarity this means that every

effort will be made to ensure that data sets shared proactively between the parties are comprehensive in order to avoid any undue delay in evaluating and /or implementing any proposed actions through additional data requests.

- 5.3 At least annual formal engagement with SASA and final agreement between SASA and the FG on the content, changes and annexures that will constitute the Agreement for the following calendar year.
- 5.4 Annual formal engagement with SASA in order to discuss and agree the content, changes and all annexures of the CSP-FG for the following calendar year.
- 5.5 The FG will conclude the CSP-FG Agreement with individual CSPs and keep the CSP-FG Agreement, including all annexures thereto, in safe data storage.
- 5.6 The FG will provide the CSP with direct confidential access to a signed copy of the CSP-FG Agreement, including all annexures thereto.
- 5.7 The FG will provide direct confidential access to a signed copy of each CSP-FG Agreement that it concludes with CSPs to SASA within 10 days of concluding the relevant CSP-FG Agreement.
- 5.8 The FG undertakes to ensure that any amendments made to the default provided CSP-FG Agreement by either the CSP or FG will be highlighted to SASA per CSP Agreement concluded. This clause is to ensure transparency, collaboration and provide oversight that ensures the absence of the ability of either the CSP or the FG to exploit the other party or introduce amendments that may not be compliant in law, ethical or other relevant regulations.
- 5.9 The FG agrees that no financial arrangements between the FG (or its facilities) and the CSP will be governed by the SASA-FG or the CSP-FG Agreements. Any financial arrangements that the FG would like to be covered by this Agreement can only be considered through an Annexure to this Agreement and would have to be concluded in line with relevant regulation and legislation, including but not limited to the Medical Schemes Act, the Health Professions Act, the Health Act and the Competitions Act.

- 5.10 Where requested and in accordance with 5.2:
- 5.10.1 Enable parallel submission and collection of quality data to SASA (for all Practitioners participating in CSP-FG SASA Agreement(s) data collection database in the interests of ensuring data integrity and transparency in data collection and analysis. This in respect of all data that may be used in quality measures and required for peer review.
- 5.10.2 Enable access by SASA to data submitted by CSPs enabling audit and peer review on an ad hoc basis as reasonable as may be required and in accordance with 5.2 in order to enable audit, peer review and the stated objectives of this agreement.
- 5.11 Investigate and act upon on any evidence-based reports by SASA where concerns exist in terms of over or underservicing and inefficiencies that are alleged for any of the entities controlled by the FG that affect the reasonable delivery of quality healthcare to patients. To ensure validity and avoid spurious reports or complaints, all responsibilities pertaining to this clause only relate to reports made by SASA to the FG. SASA will exercise reasonable care to ensure these reports merit invoking this clause. Investigation and follow up by the FG should take place timeously with feedback provided to SASA, including action to be taken by the FG.
- 5.12 Ensure relevant administration fees are paid within 30 days of societal invoice submitted to the FG for Agreement administration, outcomes measures development and peer review. The intention is that these fees will cover the costs of societal participation and enhancement of care.
- 5.13 Undertake to ensure that the Agreement and associated annexures are and remain compliant with the laws, rules and regulations of the HPCSA, Health Act, HASA, DHASA, CMS and in accordance with relevant legislation of the Republic of South Africa as it pertains to healthcare facilities and administration thereto.

**6 The South African Society of Anaesthesiologists agrees to:**

- 6.1 Notify its membership of the availability and existence of this Agreement for voluntary participation by its membership.
- 6.2 Ensure the FG is enabled to include non SASA members in procuring a CSP-FG agreement should the CSP wish to do so and to effect the collaborative objectives of this Agreement. To an extent

that SASA is required to undertake a peer review relating to a non-SASA member, the FG undertakes to reimburse SASA for any expenses actually incurred relating to such review at a market related rate.

- 6.3 Enable peer review processes for non-SASA members aligned to the SASA Peer Review Policy.
- 6.4 Meet with the FG on a bi-annual basis to assess member conduct in aggregate over the preceding period to enable discussion and amendments of the CSP-FG Agreement.
- 6.5 Participate in developing quality measures and patient reported outcomes measures that will enhance patient care and member quality of care delivery.
- 6.6 Ensure confidentiality agreements exist for access to the FG data collection platform for all societal representatives who are afforded such access. Access to quality and relevant event data will be provided timeously and in good faith to designated SASA representatives, and in accordance with legislative and contractual FG requirements that may exist. Data access is understood to be provided in service of achieving the objectives of this Agreement and the CSP-FG Agreement.
- 6.7 When operational, ensure developer availability to allow for parallel data collection of raw data by a societal data collection platform integrated with the FG data collection platform on collaborative agreed-to initiatives.
- 6.8 Ensure Peer review mechanisms are developed and actioned where such peer review is deemed appropriate as informed by the development of quality measures.
- 6.9 Conduct an annual survey of CSPs to identify variables that impact on patient quality of care including but not limited to facility and staff performance and identified inefficiencies.
- 6.10 Ensure that this Agreement and associated annexures are compliant with all relevant legislation of the Republic of South Africa, and the rules and guidelines of the HPCSA.

## **7 Dispute Resolution**

- 7.1 During any dispute, including a dispute as to the validity of the Agreement, it is mutually agreed that the matter will be referred to a mediator by the authorised representatives of all Parties. To this end, each of the Parties shall appoint a representative to meet (or virtually through via video-conference) in order to resolve the matter in dispute. The meeting will be conducted in such manner and with the object to promote a consensual resolution of the dispute in question at the discretion of the Parties.
- 7.2 All disputes arising out of or relating to this Agreement including disputes as to the meaning

or interpretation of any provision of this Agreement, shall first be resolved or attempted to be resolved by the Parties through bona fide discussion within 30 (thirty) days of such dispute having been declared by any of the Parties.

7.3 Nothing will, however, prevent a party from obtaining relief on an urgent basis from a court of competent jurisdiction within the 30 (thirty) days during which the Parties will endeavour to settle a dispute on an amicable basis.

7.4 Should the Parties be unable to resolve the dispute in accordance with clause 7.1 either Party may approach the appropriate court for the appropriate relief.

## **8 Termination**

8.1 This Agreement will terminate by effluxion of time, except in the event of breach as contemplated in clause 9.

## **9 Breach**

9.1 The following will constitute a breach of the terms of this Agreement:

9.1.1 A failure of a Party to participate and deliver on their responsibilities as set out in this Agreement.

9.1.2 A Party acts outside of the laws of the Republic of South Africa or incentivises, exposes or entices CSP's/FGs (or facilities) to act against the rules and guidelines of the HPCSA or any other relevant legislation.

9.2 In the event of breach, the following remedy is agreed to be pursued:

9.2.1 A Party may notify the other Party in writing (includes electronic mail) that they consider the Agreement to have been breached by that Party.

9.2.2 The notified Party will have 5 business days to formally respond to the breach notification.

9.2.3 The notified party will have 20 business days to address and remedy the breach. A satisfactory remedy of the breach will be confirmed by the Parties in writing.

9.2.4 Upon notification of breach in terms of clause 9.2.1, either of the Parties may immediately suspend services in terms of the Agreement until satisfactory resolution of the alleged breach is reached.

9.3 In the event no remedy is achieved, the Parties may either:

9.3.1 Agree to attempt mediation through with the assistance of an alternative accredited dispute

resolution agency as may be agreed to by the parties,

- 9.3.2 Claim specific performance in terms of this Agreement; or
- 9.3.3 Termination of the Agreement with immediate effect post the 20 business day period, where the defaulting party has failed to remedy the breach within the 20 business day period.
- 9.3.4 If terminated, the FG and SASA agree to ensure all participating CSPs are immediately notified of such termination and all CSP-FG Agreements concluded with CSPs will terminate with immediate effect.

## **10 Data Protection**

- 10.1 Each Party is responsible for complying with its respective obligations under applicable privacy and data protection laws governing the collecting, processing, and sharing of personal information.
- 10.2 Each Party remains solely responsible for determining the purposes and means of processing of personal information under this Agreement, including that such processing will not place the other party in breach of any applicable privacy and data protection laws or stated requirements.
- 10.3 Each Party undertakes to implement measures to detect and/or prevent unauthorised access to its information technology systems and particularly in respect of protecting the integrity of and preventing unauthorised access to any Confidential Information belonging to the Disclosing Party that it has in its possession or under its control.
- 10.4 The Parties each acknowledge that either of them may, on reasonable notice, investigate the steps the other party is taking to comply with any applicable privacy and data protection laws.
- 10.5 Each Party hereby indemnifies and holds harmless the other Party, its Affiliates and their respective staff, successors, cessionaries and assignees, from any and all losses, costs, expenses and damage, including consequential losses and damage as well as penalties and fines arising from the Party's non-compliance with the provisions of this clause and any relevant data protection legislation.
- 10.6 The obligations contained in this clause shall endure, even after the termination of this Agreement for whatever reason.

## **11 Anti-Bribery and Anti-Corruption**

- 11.1 The Parties warrant that for the duration of this Agreement, they will comply with all laws and regulations applicable in South Africa relating to the prevention and combating of bribery, corruption and money laundering ("**Anti-Corruption Laws**"). In particular, the Parties undertake not to:
- 11.2 pay, promise to pay or offer to pay, any commission, success fee, bribe, pay off or kickback related to the Agreement that violates any Anti-Corruption Regulations or enter into any agreement pursuant to which any such commission, success fee, bribe, pay off or kickback may, or will at any time, be paid; or
- 11.3 offer, promise or give any undue pecuniary or other advantage, whether directly or indirectly to any public official, with the intent of influencing the actions or decisions of such official in performance of his/her official duties, with the purpose of obtaining or retaining business or other improper benefit or advantage.
- 11.4 Any breach by either Party of the provisions of this clause will be a material breach of this Agreement and shall entitle either Party to cancel this Agreement immediately on notice to other Party.

## **12 General**

### **12.1 Whole Agreement**

- 12.1.1 This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on any of the Parties.
- 12.1.2 This Agreement supersedes and replaces any and all agreements between the Parties (and other persons, as may be applicable) and undertakings given to or on behalf of the Parties (and other persons, as may be applicable) in relation to the subject matter hereof.

### **12.2 Variations to be in Writing**

No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.



### **12.3 No Indulgences**

No latitude, extension of time or other indulgence which may be given or allowed by a Party in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of a Party arising from this Agreement and no single or partial exercise of any right by any Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by that Party or operate as a waiver or a novation of or otherwise affect any of its rights in terms of or arising from this Agreement or estop or preclude it from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof. Failure or delay on the part of any Party in exercising any right, power or privilege under this Agreement will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

### **12.4 No Waiver or Suspension of Rights**

No waiver, suspension or postponement by any Party of any right arising out of or in connection with this Agreement shall be of any force or effect unless in writing and signed by such Party. Any such waiver, suspension or postponement will be effective only in the specific instance and for the purpose given.

### **12.5 Compliance with Applicable Laws**

The Parties shall in respect of all matters arising from this Agreement comply with all Laws and requirements of their respective local or other authorities that are applicable to provisions of this Agreement, including obtaining and maintaining valid and applicable licences, permits and authorisations.

### **12.6 Provisions Severable**

All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as pro non scripto and the remaining provisions and clauses of

this Agreement shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

## **12.7 Relationship between the parties and independence of the parties**

12.7.1 Save as otherwise provided herein neither Party shall be entitled to bind the other Party to any obligation of any nature whatsoever or to incur any liability on behalf of the other Party, whether in contract or otherwise.

12.7.2 Both Parties agree to co-operate with each other in good faith towards achieving the objectives of this Agreement and will take all reasonable action to ensure that the terms and conditions of this Agreement are effectively executed, to enable both Parties to derive full benefit of this Agreement.

12.7.3 Nothing in this Agreement shall give either Party any exclusivity over the other Party.

## **12.8 Confidentiality**

12.8.1 Notwithstanding the cancellation or termination of this Agreement, neither Party ("**Receiving Party**") shall, at any time after the conclusion of this Agreement, disclose to any person or use in any manner whatever the other Party's Confidential Information; provided that the Receiving Party may disclose the other Party's Confidential Information and the existence and contents of this Agreement -

12.8.1.1 to the extent required by law (other than in terms of a contractual obligation of the Receiving Party);

12.8.1.2 to, and permit the use thereof by, its employees, representatives and professional advisers to the extent strictly necessary for the purpose of implementing or enforcing this Agreement or obtaining professional advice or conducting its business, it being specifically agreed that any disclosure or use by any such employee, representative or adviser of such confidential or other information for any other purpose shall constitute a breach of this clause by the Receiving Party; and

12.8.1.3 the provisions of this clause shall cease to apply to any Confidential Information of a Party which –

12.8.1.4 is or becomes generally available to the public other than as a result of a breach by the Receiving Party of its obligations in terms of this clause;

12.8.1.5 is also received by the Receiving Party from a third party who did not

acquire such Confidential Information subject to any duty of confidentiality in favour of the other Party; or

12.8.1.6 was known to the Receiving Party prior to receiving it from the other Party.

## **12.9 Continuing Effectiveness of Certain Provisions**

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.

## **12.10 No Assignment**

Neither this Agreement nor any part, share or interest herein nor any rights or obligations hereunder may be ceded, delegated or assigned by any Party without the prior signed written consent of the other Parties, save as otherwise provided herein.

## **12.11 Limitation of Liability**

12.11.1 The Parties hereby indemnify each other and hold each other harmless against all claims, damages, losses, costs and other liabilities howsoever directly or indirectly arising from or in connection with any breach of the provisions of this Agreement, unless caused as a result of any negligence, gross negligence, or wilful misconduct by the respective Party.

12.11.2 The Parties hereby warrant that the performance of the obligations in terms of this Agreement will not infringe the rights of any third party (including any copyright or other Intellectual Property right) and the Parties hereby indemnify each other and hold each other harmless against all losses, damages, actions, proceedings, liabilities and/or claims of any nature whatsoever and howsoever arising which may be suffered or incurred by or be made against the respective Party by reason of any breach of this warranty.

12.11.3 This clause shall survive the termination of this Agreement.

## **12.12 Exclusion of Electronic Signature**

The reference in clauses 12.2, 12.4 and 12.10 to writing signed by a Party shall,

notwithstanding anything to the contrary in this Agreement, be read and construed as excluding any form of electronic signature.

### 12.13 COSTS

Except as otherwise specifically provided herein, each Party will bear and pay its own legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Agreement.

### 13 Signature

- 13.1 This Agreement is signed by the Parties on the dates and at the places indicated below.
- 13.2 This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.
- 13.3 The persons signing this Agreement in a representative capacity warrant their authority to do so.
- 13.4 The Parties record that it is not required for this Agreement to be valid and enforceable that a Party shall have its signature of this Agreement verified by a witness.

### 14 Notices

- 14.1 The Parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement the following physical addresses and in respect of notices or other documents or communications of whatsoever nature, the following addresses:

#### FG

Physical Address: \_\_\_\_\_

E-mail address: \_\_\_\_\_

Tel: \_\_\_\_\_

#### SASA

Physical Address: \_\_\_\_\_

E-mail address: \_\_\_\_\_

Tel: \_\_\_\_\_

- 14.2 Either Party shall be entitled from time to time, by giving written notice to the other, to vary its domicilium to any other address within the Republic of South Africa which is not a post office or *poste restante*.

- 14.3 Any notice given by either Party to the other ("**addressee**") which is delivered by hand between the hours of 09:00 and 17:00 on any Business Day to the addressee's physical *domicilium* for the time being shall be deemed to have been received by the addressee at the time of delivery.
- 14.4 Any notice given by either Party to the other which is successfully transmitted by electronic mail to the addressee's e-mail *domicilium* for the time being shall be deemed (unless the contrary is proved by the addressee) to have been received by the addressee on the day immediately succeeding the date of successful transmission thereof.
- 14.5 This clause shall not operate so as to invalidate the giving or receipt of any written notice which is actually received by the addressee other than by a method referred to in this clause.
- 14.6 Any notice in terms of or in connection with this Agreement shall be valid and effective only if in writing and if received or deemed to be received by the addressee.
- 14.7 This Agreement will in all respects be governed by and construed in accordance with the laws of the RSA.
- 14.8 The Parties consent and submit to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg and all appeal courts therefrom in any dispute arising from or in connection with this Agreement.

**Declaration**

We the undersigned, accept all terms and conditions as stipulated in this Agreement including all annexures to this document, as evidenced by our signatures on each page of this Agreement and at the end of each annexure.

Signed on \_\_\_\_\_ in \_\_\_\_\_

\_\_\_\_\_

**On behalf of SASA**

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

Designation: \_\_\_\_\_

\_\_\_\_\_

**On behalf of** \_\_\_\_\_

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

Designation: \_\_\_\_\_