

AGREEMENT

MADE AND ENTERED INTO BY AND BETWEEN

[INSERT]

(Registration number: **INSERT**)

herein represented by **[INSERT]** in his/her capacity as **[INSERT]** and being duly authorised thereto

(herein after referred to as “**the Service Provider**”)

and

THE DEPARTMENT OF HEALTH

EASTERN CAPE PROVINCIAL GOVERNMENT

herein represented by **[INSERT]** in his/her capacity as

[INSERT] and being duly authorised thereto

(herein after referred to as “**ECDOH**”)

and

[INSERT]

herein represented by **[INSERT]** his/her capacity as **[INSERT]** and being duly authorised thereto

(herein referred to as “**the Administrator Intermediary**”)

(collectively referred to as “**the Parties**”)

PREAMBLE

WHEREAS the Eastern Cape Department of Health (ECDOH) has identified the need to access additional available bed capacity in the private sector for Covid-19 Patients given the expected surge in infections;

AND WHEREAS the Service Provider has been requested to assist in the preparation by making beds of various treatment levels available to the ECDOH for purposes of admission and treatment of Covid-19 Patients to the extent that the Service Provider is able and willing to do so, and subject to bed capacity, as well as availability of treating doctors to receive Patients, availability of nursing staff and availability of personal protective equipment, medications, ventilators if required, and other consumables;

AND WHEREAS the Parties agree to collaborate in order to make beds available to the ECDOH for the treatment of state Covid-19 Patients where capacity is available at the time when the relevant referral of the Patients concerned is sought in accordance with the process outlined in **Annexure A**, and the Parties wish to establish an arrangement to govern the relationship between them "*inter partes*" on the terms and conditions contained herein below.

AND WHEREAS the PFMA requires that such an arrangement be *fair, equitable, transparent, competitive and cost-effective*. The ECDOH warrants that the agreement complies with the requirements for public procurement as provided for, *inter alia*, in section 217 of the Constitution and the Public Finance Management Act 1 of 1999, as read together with the National Treasury Regulations and all relevant National Treasury Instructions. It is further recorded that this agreement constitutes an urgent emergency procurement necessitated by the Covid-19 pandemic in South Africa and the national state of disaster declared by the Minister of Co-Operative Governance and Traditional Affairs in response thereto.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

In this Agreement, unless the context otherwise indicates:-

- 1.1. the headings to clauses of this Agreement are inserted for reference purposes only and shall in no way govern or affect the interpretation thereof;
- 1.2. unless the context clearly indicates a contrary intention, words importing the singular shall include the plural and vice versa;
- 1.3. reference to any one gender shall include the other gender and any reference to a natural person shall include a legal persona and *vice versa*; and
- 1.4. where the day on or by which anything is to be done is not a business day, it shall be done on or by the first business day thereafter.

2. DEFINITIONS

- 2.1. In this Agreement, unless clearly inconsistent with or otherwise indicated by the context:
 1. **'Administrator Intermediary'** means the entity appointed by the Service Provider via which all administration processes will flow and billing be collated and presented to the ECDOH and who will apply reasonable oversight that transactions are in accordance with the set criteria and who will assist to allocate and process the ensuing amount of fees and payments to the Service Provider;
 2. **'Administration Services'** means the Services referred to in paragraph 2.1.12 of this Agreement;

3. **'Agreement'** means the Agreement between the Parties captured in this document, together with all the Annexures incorporated herein by reference;
4. **'Catering Services'** means the catering services normally provided to patients in the Service Provider's hospitals;
5. **'Consumables'** means all ethical and surgical items including personal protective equipment, and ethical pharmaceutical items;
6. **'Hospital'** in the context of this Agreement, unless specified otherwise, means the healthcare facilities of the Service Provider listed in **Annexure B**;
7. **'Operations Centre'** means the Service Provider's internal operations centre;
8. **'Patient'** means a patient who presents at a facility of the ECDOH and who is referred by the ECDOH to the Service Provider for treatment of Covid-19;
9. **'Project'** means the admission and treatment of Covid-19 Patients as set out in this Agreement. The Patients will be selected and referred by ECDOH facilities;
10. **'Private Medical Practitioners'** means any independent or private physicians, surgeons, anesthesiologists and/or any other medical practitioner/s who is/are not employed either by the ECDOH or the Service Provider and who is registered as a "medical practitioner" in terms of the Health Professions Act No. 56 of 1974;
11. **'Quality of Care Evaluations'** means morbidity and mortality assessments of cases by the ECDOH's on a regular basis;
12. **'Services'** in relation to the Service Provider means the provision of hospitalisation services as contracted per Patient by the ECDOH, and in relation to the Administrator Intermediary, means the

provision of Administration Services including the processing of the Service Provider's and Private Medical Practitioners' invoices and accounts; and

13. 'Covid 19' means the clinical manifestations of infection caused by SARS Cov 19.

3. COMMENCEMENT AND DURATION

1. This Agreement will commence upon signature of the Agreement and shall continue to remain in effect until the Covid-19 outbreak has abated or until terminated by either Party (such termination to be of immediate effect and to be given in writing), or until the available budget of the ECDOH for the Project has been depleted.
2. In the event that the Agreement is terminated, Patients that have already been admitted pursuant to the terms of this Agreement will continue to be dealt with in keeping with the provisions of this Agreement.
3. In the event that after completion of the Project the Parties wish to continue with similar projects, a new Agreement will be entered into between the Parties.
4. For the avoidance of doubt, this Agreement is confined to the admission and treatment of Patients as defined.

4. RELATIONSHIP BETWEEN THE PARTIES

- 4.1. The relationship between the Parties shall be that of independent contractors and none of the Parties shall be responsible for any obligation, expense, action or omission of any of the other Parties or any employee or representative of the other Parties, except as expressly set forth herein.

- 4.2. No agency, employment, partnership, distributorship or joint venture shall be deemed to exist between the Parties.
- 4.3. The Parties recognise that the Private Medical Practitioners are independent practitioners.
- 4.4. The Parties recognise that the ECDOH is responsible and accountable for the acts and omissions of the doctors employed by the ECDOH.

5. OBLIGATIONS OF THE SERVICE PROVIDER

- 5.1. The Service Provider shall have the following duties and obligations:
 - 5.1.1. Accept Patients in accordance with the Patient Referral Pathway set out in **Annexure A**, subject to the availability of beds, as well as Private Medical Practitioners, nursing staff, personal protective equipment, ventilators, appropriate medication and other consumables. (For the avoidance of doubt, there is no obligation to ensure the accessibility of beds outside of what is agreed in terms of this Agreement.)
 - 5.1.2. Facilitate and arrange admission and treatment of the Patients of the ECDOH at identified hospital facilities of the Service Provider. Although the Service Provider will not perform the clinical care itself, the Service Provider will use its best endeavours to facilitate and co-ordinate arrangements with Private Medical Practitioners from admission to the outcome (discharge or death) of the Patient.
 - 5.1.3. Subject to availability, provide facilities, including full ward facilities, equipment and consumables for the treatment of the Patients.
 - 5.1.4. Provide and perform nursing tasks, duties and interventions during the admission of the Patients at the Hospitals.

- 5.1.5. Provide standard catering services to Patients throughout the hospital admission of the Patient. Standard catering services do not include the provision of enteral feeds and total parenteral nutrition which is separately charged to the Patient and will be for the account of the ECDOH.
- 5.1.6. Ensure that all ECDOH Patient records provided to the Service Provider and the Private Medical Practitioners are returned to ECDOH after the discharge of the Patients.
- 5.1.7. The Service Provider will be responsible for all costs related to the nursing personnel involved in the management of the Patient while the Patient is in its care.
- 5.1.8. The Service Provider will dispense the take home medication to the Patients before discharge from the facility of the Service Provider which will be charged to the ECDOH on the hospital account.
- 5.1.9. The Service Provider shall appoint an Administrator Intermediary to manage and administer administrative matters as set out in this Agreement. It being noted that, in the event that an Administrator Intermediary raises a fee in relation to the Services provided by the Administrator Intermediary, the Administrator Intermediary fees will be deducted from the global *per diem* fees on a pro rata basis.
- 5.1.10. The Service Provider will bill the ECDOH the relevant fees via its chosen Administrator Intermediary for Patients referred to the Service Provider by the ECDOH.

6. DUTIES OF THE ADMINISTRATOR INTERMEDIARIES

- 6.1. The Administrator Intermediary has been appointed by the Service Provider. In the event that the Administrator Intermediary raises a fee in

respect of the Services performed by the Administrator Intermediary, then such fees will be deducted from the global *per diem* fees on a pro rata basis.

6.2. The Administrator Intermediary agrees to do the following in performing the Administration Services:

6.2.1. ascertain and confirm that all Private Medical Practitioners providing services related to this Agreement are registered with the relevant bodies such as the Statutory Bodies, The College of Medicine and the Health Professions Council of South Africa if such is required and have been contracted by the ECDOH for purposes of providing services related to this Agreement;

6.2.2. assist the ECDOH in ensuring that the Private Medical Practitioners have concluded contractual arrangements with the ECDOH;

6.2.3. ensure through their reasonable endeavours that there is no duplication or over billing of Services by the Services Providers and the Private Medical Practitioners;

6.2.4. generate and process statements and manage accounts of the Service Providers and the Private Medical Practitioners, to be submitted to the ECDOH and related services agreed to between the Service Provider and the Administrator Intermediary. (The Administrator Intermediary is not expected or required to interact directly with Patients);

- 6.2.5. manage the allocation and disbursement of accounts of the Service Providers and Private Medical Practitioners submitted against the single day tariff as per **annexure C1**;
- 6.2.6. process the electronic billing and / or records of the Service Provider and the Private Medical Practitioners to the ECDOH;
- 6.2.7. identify Patients and assist to get approval for those whose accounts must be settled by other entities, funds and medical aid schemes; and
- 6.2.8. use their best endeavours to ensure that the Service Providers and the Private Medical Practitioners are paid by the ECDOH for the Services and perform all administration services related thereto.

7. OBLIGATIONS OF THE ECDOH

- 7.1. The ECDOH shall have the following duties and obligations:
 - 7.1.1. The ECDOH shall at its own expense provide transport to Patients that require it to and from the Hospital of the Service Provider as identified in **Annexure B** on the day of admission and the day of discharge.
 - 7.1.2. The ECDOH confirms that pre-admission screening and testing of Patients has been done at ECDOH hospitals by practitioners in the employ of the ECDOH.
 - 7.1.3. The ECDOH will provide the Service Provider and the Administrator Intermediary with a list of Patients authorised for admission through

the Patient Referral Pathway set out in **Annexure A**, who are to be admitted to the facilities of the Service Provider.

- 7.1.4. The ECDOH will, in addition to the list detailed in Clause 7.1.3, provide the Service Provider with duly completed pre-admission hospital forms, and the ECDOH Patient files before the admission.
- 7.1.5. The ECDOH will arrange for the Patients identified on the list to be transported, at the ECDOH's cost, and received by the Service Provider safely.
- 7.1.6. The ECDOH will use its best endeavours to distribute Patients evenly across the various Service Providers with which it has concluded SLAs and which have critical beds available for admission of Patients.
- 7.1.7. The ECDOH will perform a post-outcome quality of care evaluation on each Patient after each outcome.
- 7.1.8. Pay the Service Provider and Private Medical Practitioners in line with the NDOH agreement through suitable assistance of the Administrator Intermediary.
- 7.1.9. The ECDOH will pay for the Services provided to the Patients by the Service Provider in line with the tariffs as agreed by the ECDOH or by the NDOH as set out in **Annexure C1**, within 30 days of receipt of an electronic account from the Service Administrator Intermediary. The ECDOH will be responsible for the payment of the Private Medical Practitioners providing services to the Patients according to the fees agreed with the Private Medical Practitioners.
- 7.1.10. The ECDOH will provide the Service Provider and the Administrator Intermediary with timeous access to information reasonably required by them to perform their duties under this Agreement.
- 7.1.11. The ECDOH will ensure that the Service Provider and the Administrator Intermediary are provided with any necessary

assistance and/or information which they reasonably require in order to provide the Services.

7.1.12. The ECDOH will ensure and confirm that sufficient funds exist to cover the cost of treatment of each Patient referred to the Service Provider. In this regard, the ECDOH undertakes to provide to the Service Provider, details of the budget allocated for the treatment of Patients at the facilities of the Service Provider and other service providers and to provide regular (weekly) updates to the Service Provider in relation to the fees already paid as against the remaining funds available in the ECDOH's budget. In the event that the budget is depleted, the ECDOH will immediately advise the Service Provider that this is the case. Furthermore, in the event of the budget being depleted, the ECDOH warrants that it will cover the continuing costs of Patients already admitted to the Service Provider's facilities pursuant to the terms of this Agreement.

7.1.13. The ECDOH will provide, arrange and extend appropriate indemnity cover, at no cost to the Service Provider, to the specialists, general practitioners and allied health workers who work at the Service Provider's facilities for all Patients referred in terms of this Agreement.

8. INVOICING AND PAYMENTS

8.1. The ECDOH will pay the Service Provider in arrears in accordance with the tariffs contained in **Annexure C1**, within 30 (thirty) calendar days of receipt of an electronically submitted account (by the Administrator Intermediary), inclusive of VAT.

- 8.2. In the event that a Covid-19 Patient admitted to one of the Service Provider's facilities pursuant to the procedure contemplated in **Annexure A** hereto, 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 shall be referred to the ECDOH for pre-authorisation (subject to available funding) and, if authorised, the ECDOH will pay the Service Provider for such treatment in accordance with the tariff set out in **Annexure C2**.
- 8.3. In the event that a Covid-19 Patient admitted to one of the Service Provider's facilities 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 ECDOH, then the ECDOH will pay the Service Provider for such treatment in accordance with the tariffs set out in **Annexure C2**, provided that the ECDOH has been informed about the nature of the treatment involved.
- 8.4. In the event that the ECDOH requires private emergency medical services (ambulance services), to provide inter-facility transfers which are not covered by any contractual arrangements which the ECDOH has concluded with third party service providers, then the ECDOH will be responsible for any such costs incurred.
- 8.5. In the event that a public sector patient who tests positive for Covid-19 presents at the Service Provider's emergency facilities for emergency treatment outside of the normal Patient Referral Pathway contemplated in **Annexure A**, then if the patient requires emergency treatment the Service

Provider will stabilise the patient and liaise with the ECDOH in order to make arrangements to transfer the patient to a public facility. In the event that the ECDOH accepts the transfer of the patient, then it undertakes to ensure that the necessary arrangements are made to have the relevant patient transported to an appropriate public facility. If, however, the ECDOH is unable to arrange transport for the patient to a public facility and requires the transport to be arranged by the Service Provider, then the ECDOH shall be responsible for the costs of such transport. In the event that the Department does not arrange for transfer of the patient within 12 hours of receipt of such a request, then the Department will be responsible for the costs associated with the ongoing treatment of the patient in keeping with the tariffs set out in **Annexures C1 and C2** hereto.

- 8.6. If the ECDOH is unable to accept transfer of the patient referred to in clause 8.5 above, to a public facility due to capacity constraints or for any other reason and the patient requires ongoing treatment, then authorisation shall be provided by the ECDOH to the Service Provider to admit the patient to the Service Provider's facility and such patient shall then be dealt with in terms of the relevant provisions of this Agreement. In the event that the relevant authorisation is not provided by the ECDOH within 12 hours of receipt of such request, then the ECDOH shall be liable for the ongoing costs associated with treatment of the patient in keeping with **Annexure C1** hereto.
- 8.7. Furthermore, in the event that public sector non-Covid-19 patients who do not have private insurance cover require emergency treatment at any of the Service Provider's facilities, because of the fact that the ECDOH cannot accommodate them at one of the ECDOH's facilities due to an unavailability of beds as a result of the Covid-19 pandemic, then the costs associated therewith will be discussed and agreed between the Parties. In

the event that agreement cannot be reached and no authorisation is forthcoming for the treatment of such patients by the Service Provider, then the ECDOH shall make the necessary arrangements to transfer those patients to a public facility. In the event that the ECDOH does not timeously (within 12 hours of such request being made), transfer the patient to a public facility, then the ECDOH shall be responsible for the costs of treatment of such patient in accordance with the tariff set out in **Annexure C3**.

- 8.8. The Service Provider and the Private Medical Practitioners shall invoice the ECDOH via the Administrator Intermediary.
- 8.9. Should a Patient be a member or beneficiary of a medical aid scheme or funded body, payment for the Services will be sought by the Administrator Intermediary from such medical aid scheme or funded body on behalf of the Service Provider and the related Independent Healthcare Practitioner, and in such case the ECDOH will not be liable for the fees. In the event that such medical aid scheme or funded body deny liability or fail to pay in full or in part the fees or the fees cannot be recovered for any reason, the ECDOH will be liable for the fees in terms of the tariffs in **Annexure C1**.
- 8.10. The ECDOH shall make weekly payment runs of all submitted electronic accounts and shall pay any amounts which are owing for the provision of the Services within 30 (thirty) calendar days of receipt of a detailed electronic account. In the event that payments are not made timeously within at least 30 calendar days after receipt of the relevant electronic account by the ECDOH, then interest will be levied on the outstanding amount at the prime rate of interest. The ECDOH retains its prerogative to question any accounts submitted to it by the Administrator Intermediary

which it believes are either incorrect or duplicated or do not accurately reflect the services rendered.

8.11. 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 Service Provider and the Private Medical Practitioners.

8.12. The ECDOH commits to ensure that sufficient funds are available to it to satisfy any accounts which are rendered by the Service Provider for the treatment of Patients which are admitted to the Service Providers facilities and will, in the interests of transparency, provide the Service Provider upfront with an indicative budget of what funds are available for treating Patients in terms of this Agreement and to provide regular updates on the balance available in the budget (on a weekly basis) as and when funds are utilised and depleted.

9. REPRESENTATIVES

9.1. The Parties appoint the following persons as their representatives for the duration of the project.

9.1.1. **For Eastern Cape Department of Health:**

[INSERT]

9.1.2. **For the Service Provider:**

[INSERT]

9.1.3. **For the Administrator Intermediary:**

[INSERT]

The representatives will have the following duties:

9.1.4. Act as the liaison and address any problems between the Parties;

9.1.5. Manage, facilitate, plan and arrange the Project on behalf of the respective Parties;

9.1.6. Assist in the coordination and attainment of Project deliverables.

10. CONFIDENTIALITY

10.1. The Parties shall ensure that all confidential information, especially information relating to Patients, received from the other is kept secure and confidential and that only the employees, agents and authorised representatives of a Party are allowed access to such confidential information.

10.2. The Parties acknowledge and agree that this agreement will be governed by and construed in accordance with the law of the Republic of South Africa and in particular, to comply with the provisions of the National Health Act No 61 of 2003, which includes issues related to Patient confidentiality which will be suitably relaxed to allow compliance with regulations governing communicable diseases and to allow services to be delivered in terms of a pandemic.

10.3. The provisions of this Clause 10 shall survive termination of this Agreement.

11. PUBLICATION AND PUBLICITY

- 11.1. The Parties will release a joint external media statement at an agreed date and may agree to release further subsequent external media statements regarding the project.
- 11.2. The Parties agree that each Party may at its own discretion publish or release articles regarding the Project for internal and statutory reports.

12. FORCE MAJEURE

- 12.1. In the event that a Party is unable to perform any of its obligations under this Agreement and such non-performance is caused by acts of God, rained out facilities, riots, civil insurrection, acts of a public enemy, accidents, acts of a civil or military authority, floods, earthquakes or winds, or similar situations beyond the reasonable control of the Party concerned, such failure to perform shall not constitute a breach of this Agreement.
- 12.2. The Party incapable of performing in terms of Clause 12.1 shall immediately notify the representative of the other Party in writing of the reason or reasons and cause for its inability to perform and shall submit an estimated duration of such inability to perform.
- 12.3. The Party incapable of performing shall, at no cost to the other Parties, exercise due diligence to shorten the duration and to avoid the cause of the inability to perform and shall keep the other Parties informed of all steps taken to enable performance under this Agreement.
- 12.4. During such period of non-performance in terms of Clauses 12.1 to 12.3, the relevant terms of this Agreement will be suspended.

13. BREACH AND TERMINATION

- 13.1. Should a Party fail to fulfil any of the obligations undertaken by it in terms of this Agreement and fail to remedy the breach within a period of 14 (Fourteen) days after receiving written notification from the other Party demanding that the breach be rectified, the non-transgressing Party shall be entitled, to cancel the agreement, without prejudice to any claim which a non-transgressing Party might have for damages, breach of contract or otherwise.
- 13.2. Upon termination of this Agreement, all rights and obligations of the Parties shall cease, except such rights and obligations which by their nature will survive termination and any right which a Party may have under the governing law.

14. DOMICILIA AND NOTICES

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

14.1.1. The ECDOH:

Physical Address: [INSERT]

Email: [INSERT]

Attention: [INSERT]

14.1.2. Service Provider:

Physical Address: [INSERT]

Email: [INSERT]

Attention: [INSERT]

14.1.3. Administrator Intermediary

Physical Address: [INSERT]

Email: [INSERT]

Attention: [INSERT]

- 14.2. Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing.
- 14.3. A Party may by notice to the other Party, change its *domicilium citandi et executandi* to another physical address in the Republic of South Africa, provided that the change shall become effective on the seventh day after the latest receipt of the notice.
- 14.4. Any notice to a Party contained in a correctly addressed envelope and:
- 14.4.1. sent by prepaid registered post to it at its *domicilium citandi et executandi* shall be deemed to have been received on the fourth business day after posting (unless the contrary is proved); or
 - 14.4.2. delivered by hand to a responsible person during ordinary business hours at its *domicilium citandi et executandi* shall be deemed to have been received at the time of delivery (unless the contrary is proved).
- 14.5. Any notice given by telefax shall be deemed to have been received by the addressee, in the absence of proof to the contrary, immediately upon issuance, by the transmitting telefax machine, of a report confirming correct transmission of all the pages of the document containing the notice, or upon receipt by the transmitting telefax machine, at the end of the notice being transmitted, of the automatic answer - back of the receiving telefax machine.
- 14.6. Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a participant shall be an adequate

written notice or communication to it, notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

15. **GENERAL**

- 15.1. The Parties acknowledge that effective execution of this Project might entail changes to this Agreement, and each Party agrees to re-negotiate any relevant terms in good faith on the request of the other Party and to record any mutually agreed changes in writing.
- 15.2. This Agreement contains the entire Agreement between the Parties and no Party shall be bound by any undertaking, representation or warranty not recorded herein or added hereto as provided herein.
- 15.3. No alteration, variation, addition, agreed cancellation or waiver of any term or condition of this Agreement shall be of any force or effect unless reduced to writing as an addendum to this Agreement and signed by the Parties or their duly authorized signatories.
- 15.4. No failure or delay on the part of any Party in exercising any right in terms of this Agreement shall be viewed as a waiver of its rights. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies, which the Parties would otherwise have.
- 15.5. No indulgence, leniency or extension of time which any Party ('the grantor') may grant or show to the other/s shall in any way prejudice the grantor or preclude the grantor from exercising any of its rights in the future.
- 15.6. If any clause or term of this Agreement should be invalid, unenforceable or illegal, then the remaining terms and provisions of this Agreement shall be deemed to be severable therefrom and shall continue in full force and

effect unless such invalidity, unenforceability or illegality goes to the root of this Agreement.

16. INDEMNITY

- 16.1. The ECDOH and hospital facilities of the ECDOH undertake/s to indemnify, defend and hold harmless the Service Provider and its employees from any and all liabilities, claims, or actions with the exception of liabilities, claims or actions resulting from negligence or wrongful acts or omissions of the Service Provider related to the Services performed in terms of this agreement.
- 16.2. The ECDOH and hospital facilities of the ECDOH undertake to indemnify, defend and hold harmless the Service Provider and its employees from any and all liabilities, claims, actions or suits arising out of acts or omissions relating to the transport of Patients to and from the healthcare facilities of the Service Provider.
- 16.3. Furthermore, the ECDOH will indemnify the Private Medical Practitioners contracted by the ECDOH, who are clinicians, such as specialists, general practitioners and allied health care workers, 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 such clinician or the ECDOH and where the cause of such claim can be directly or indirectly attributed to the rendering of services by the clinician, to the extent that they are not indemnified by their own insurance company or statute or other means.

17. SETTLEMENT OF DISPUTES

17.1. Without detracting from a Party's right to institute action or motion proceedings in the High Court or other Court of competent jurisdiction in respect of any dispute that may arise out of or in connection with this Agreement, the Parties may, by mutual consent, follow the mediation and/or arbitration procedure as set out in clauses 17.2 and 17.3.

17.2. Mediation –

17.2.1. Subject to the provisions of clause 17.1, any dispute arising out of or in connection with this agreement may be referred by the Parties without legal representation to a Mediator.

17.2.2. The dispute shall be heard by the Mediator at a place and time to be determined by him or her in consultation with the Parties.

17.2.3. The Mediator shall be selected by agreement between the Parties.

17.2.4. If an agreement cannot be reached upon a particular Mediator within 3 (three) Business Days after the Parties have agreed to refer the matter to mediation, then the President of the Legal Practice Council shall nominate the Mediator within 7 (seven) Business Days after the Parties have failed to agree.

17.2.5. The Mediator shall at his or her sole discretion determine whether the reference to him or her shall be made in the form of written or verbal representations, provided that in making this determination he or she shall consult with the Parties and may be guided by their common reasonable desire in relation to the form in which the said representations are to be made.

17.2.6. The Parties shall have 7 (seven) Business Days within which to finalise their representations. The Mediator shall within 7 (seven) Business Days of the receipt of the representations express in writing an opinion on the matter and furnish the Parties each with a copy thereof by hand or by registered post.

17.2.7. In the event that mediation is unsuccessful, either Party may institute legal proceedings in a court of competent jurisdiction, unless the Parties agree to refer the dispute to arbitration in accordance with clause 17.3.

17.2.8. The cost of mediation shall be borne by the Parties to the mediation in equal shares.

17.3. Arbitration –

17.3.1. Subject to the provisions of clause 17.2, the Parties may agree to refer any dispute arising out of or in connection with this Agreement, to arbitration.

17.3.2. The arbitration shall be held in Gauteng in accordance with the provisions of the Arbitration Act 42 of 1965, it being intended that, if possible, it shall be held and concluded within 10 (ten) Business Days.

17.3.3. Save as otherwise specifically provided herein, the Arbitrator shall be if the matter in dispute is –

17.3.3.1. primarily a legal matter, a practising Senior Advocate of the Johannesburg Bar; or

17.3.3.2. any other matter, an independent and suitably qualified person as may be agreed upon between the Parties to the dispute.

17.3.4. If agreement cannot be reached on whether the question in dispute falls under 17.3.3.1 or 17.3.3.2 and/or upon a particular Arbitrator within 3 (three) Business Days after the Parties have agreed to refer the dispute to arbitration, then the Chairperson for the time being of the Johannesburg Bar Council shall –

17.3.4.1. determine whether the question in dispute falls under 17.3.3.1 or 17.3.3.2; and/or

17.3.4.2. nominate the Arbitrator within 7 (seven) Business Days after the Parties have failed to agree.

17.3.5. The Arbitrator shall give his or her decision within 5 (five) Business Days after the completion of the arbitration. The Arbitrator may determine that the costs of the arbitration are to be paid either by one or the other or by both of the Parties.

17.3.6. The decision of the Arbitrator shall be final and binding and may be made an order of the Gauteng High Court upon the application by any Party to the arbitration.

17.4. Disputes between the Parties shall be governed exclusively by, and settled in terms of, clauses 17.1 to 17.3 of this Agreement.

Signed at _____ this the _____ day of June 2020.

AS WITNESSES

1.

2.

.....

ECDOH (Duly authorised)

Signed at this the _____ day of June 2020.

AS WITNESSES

1.

2.

.....

Service Provider

(Duly authorised)

Signed at this the _____ day of June 2020.

AS WITNESSES

1.

2.

.....

Administrator Intermediary

(Duly authorised)

ANNEXURE A : PATIENT REFERRAL PATHWAY

The following steps must be followed by the ECDOH and the Service Provider in relation to the admission of Patients into the Service Provider's facilities:

Planned admissions of suspected or confirmed Covid-19 Patients

1. State facility/ECDOH identifies the need for admission of a state Covid-19 Patient and enquires from the Service Provider as to the availability of beds;
2. The ECDOH authorised representative calls the Service Provider's Operations Centre to confirm that a bed is available. The requirement for enquiries to be made with the Service Provider's Operations Centres is that the digital platform will be updated daily and subsequent admissions could have taken place. The assessment by the Service Provider's Operation's Centre will also include availability and confirmation of a receiving doctor, relevant staff, oxygen, PPE and that other operational requirements are met.

Service Provider's Operations Centre:

Line 1 [INSERT]

Line 2 [INSERT]

Line 3 [INSERT]

Line 4 [INSERT]

3. The ECDOH will then issue an authorisation number for admission to the particular Service Provider's facility, which will be referred to in all future correspondence and claims. If bed availability is confirmed, the Service Provider's Operations Centre will contact the identified facility to inform them of the acceptance of the patient.
4. A doctor to doctor call for discussion of clinical information and hand over must follow.

5. An ambulance service provider to be paid for by the ECDOH, will be contacted to effect the inter-facility transfer as coordinated by the ECDOH where necessary.

Emergency admissions of suspected or confirmed Covid-19 Patients

1. In the event of an emergency (either by self-referral or because of possible divert by the nearest public hospital due to capacity limits reached) where a suspected or confirmed Covid-19 patient has to access care via a private facility, a process will need to be considered to manage this. The relevant Service Provider Operations Centre will engage with the ECDOH Covid-19 operations command structure to agree to either a transfer back to a defined state hospital or the issuance of an authorisation number for the private facility to accept the patient in keeping with the process set out above.
2. At all times emergency lifesaving care must be rendered after which a transfer of the patient to state will be arranged, provided the patient is stable enough to be transferred.
3. If a transfer to a state facility can be accommodated (by clinical presentation and/or capacity), the ambulance provider will be contacted to effect the inter-facility transfer as coordinated by the relevant ECDOH command structure.
4. If the patient is too unstable a request will be made of the ECDOH to allow for admission into the private facility and an authorisation number will be issued.
5. Given the fact that the Private Medical Practitioners are not employed by the Service Providers, the ECDOH will be responsible for the reimbursement for the emergency professionals in the Emergency Unit.

ANNEXURE B : LIST OF THE SERVICE PROVIDER'S FACILITIES

ANNEXURE C1 : GENERAL PRICING SCHEDULE FOR TREATMENT OF COVID-19 PATIENTS

Service Provider

Administrator
Intermediary

Period applicable:

Code	Description of Service	Palliative Care beds	General Beds	High Care Beds	ICU Beds	Unit of charge
		R	R	R	R	

Facility Fees / Private hospitals (part 1)

Per day

	Accommodation (includes Catering, Cleaning etc..)						R11 749
	Hospital employed and appropriate HR (primarily nursing)	Nursing					
		Others (Specify)					
	Medicines	Medical					
		Surgical					
	Pharmaceuticals						
	Consumables						

	- Oxygen, gasses						
	- PPE						
	- Other						
	All fees related to arrangements made for transfers of Patients by the Service Provider where this is not covered by arrangements between the ECDOH and third-party service providers which it has contracted.						Service Provider to insert.

Professional Fees (part 2)

Per day

	Private Medical Practitioners / Specialist Physician Team	Doctor					
		Specialist					
		Anaesthetist					
		Other					R2 493

	Pathology/ Laboratory (part 3)	R588
	Radiology / Imaging fee (part 4)	R632

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**Allied Care
(part 5)**

R694

Total

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*inclusive of gasses, pharmaceuticals,
consumables, other services

ANNEXURE C2: EMERGENCY AND ANCILLARY SERVICES TARIFFS FOR STATE COVID PATIENTS THAT COMPLICATE

Billing Structure for admissions and complications not covered by the *per diem* tariffs set out in Annexure C1

Hospital Tariffs (Ward, Theatre and Equipment, this includes Cardiac Cath Labs)

[INSERT]

Drugs and Surgicals will be billed at Single Exit Price and net Acquisition Price on an itemised basis.

[INSERT]

Renal Dialysis

[INSERT]

Ambulance services

[INSERT]

ANNEXURE C3: EMERGENCY AND ANCILLARY SERVICES TARIFFS FOR STATE PATIENTS (NON-COVID-19)

Hospital Tariffs (Ward, Theatre and Equipment, this includes Cardiac Cath Labs)

[INSERT]

Drugs and Surgicals will be billed at Single Exit Price and net Acquisition Price on an itemised basis.

[INSERT]