



**AFFINITY
HEALTH**

MEMORANDUM OF AGREEMENT

Between

AFFINITY HEALTH (PTY) LTD

And

DESIGNATED SERVICE PROVIDER

(Registered with HPCSA)

PLEASE TICK APPROPRIATE BOX:

Dispensing Provider

Scripting Provider

Doctors Name

Practice Number

Discipline

SECTION A

: INDIVIDUAL PRACTICE REGISTRATION

SECTION B

: GROUP PRACTICE REGISTRATION

PLEASE FORWARD SIGNED AGREEMENT TO:

(Sign on last page with Banking Details)

gpnetwork@affinityhealth.co.za

or fax to:

086 226 5568

1 | PREAMBLE

- 1.1 Affinity Health (Pty) Ltd is desirous of concluding an Agreement with the DSP in respect of Primary Health Care services and referral services for contracted Medical Funds/Insurance.
- 1.2 The DSP is willing to render these services to the Affinity Health (Pty) Ltd members in terms of the conditions set out below and according to the Affinity Health (Pty) Ltd Operations Manual.

2 | DEFINITIONS AND INTERPRETATION

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

2.1 Words Importing:

- 2.1.1 any one gender includes the other gender and any other gender identity;
- 2.1.2 the singular includes the plural and vice versa; and
- 2.1.3 natural persons include created entities (corporate or unincorporated) and the state and vice versa;
- 2.1.4 any reference to Affinity Health (Pty) Ltd or the DSP (as the case may be) shall include such Parties Associate/s.

2.2 The following terms shall have the meaning assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

- 2.2.1 **"Affinity Health (Pty) Ltd"** means Affinity Health (Pty) Limited, with registration number 2011/101096/07;
- 2.2.2 **"Agreement"** means this written instrument entered into between the Parties including any annexures, schedules or addendums appended hereto from time to time, specifically Confirmation of Banking Details, PCNS form including ID document, BHF/PCNS registration form;
- 2.2.3 **"Applicable Law/s"** means all relevant legislation, regulation and/or notices applicable in respect of the Services provided by the DSP including any legislation that would generally be considered applicable in the specific field of the Services provided;
- 2.2.4 **"Associate/s"** means, in relation to either Party, any related company, holding company or subsidiary company and any other associated juristic entity of any such holding company or subsidiary and any director, officer, employee, DSP, contractor, representative, agent, client, customer or adviser of Affinity Health (Pty) Ltd or the DSP or any such entity or person;
- 2.2.5 **"Confidential Information"** shall mean information or materials in any form disclosed (whether verbally or in writing) made available by Affinity Health (Pty) Ltd to the DSP that the DSP knows or has reason to know (either because such information is marked or otherwise identified by the Affinity Health (Pty) Ltd as confidential or proprietary, or information that the DSP should reasonably be aware that it is of a confidential nature, has commercial value, or because it is not generally known in the relevant trade or industry), and shall include, but is not limited to:
 - (a) The current, future and proposed structure and services of Affinity Health (Pty) Ltd as well as any financial, technical, research, operational, staff, sales, know-how, products, potential products and marketing information related thereto;
 - (b) Intellectual Property, trademarks, inventions, data, software and technical information;
 - (c) Trade secrets, business operations, business plans, business forecasts, strategies, intentions, budgets, prices and costs, financial affairs, statements, research, sales information, distribution arrangements and the identity or arrangements with its Associate/s;
 - (d) Any information and documentation relating to any Associate;
 - (e) Discussions held at all meetings by representatives (whether before or after the Effective Date) of the Parties and the contents of this Agreement;
 - (f) Any information as mentioned in items (a), (b), (c), (d) and (e) above disclosed by Affinity Health (Pty) Ltd to the DSP prior to the Effective Date.

- 2.2.6** “Duration” means the period of time that the DSP shall offer its Services to Affinity Health (Pty) Ltd which shall be for a period as set out in clause 3, unless otherwise agreed in writing by the Parties or until terminated in accordance with the provisions of this Agreement;
- 2.2.7** “DSP” means the Designated Service Provider registered with the Health Professions Council of South Africa, being with registration number and described as such on the cover page of this Agreement.
- 2.2.8** “Effective Date” means the date upon which this Agreement comes into full force and effect on its terms, which shall be _____ notwithstanding the Signature Date of this Agreement and shall remain in force for the Duration;
- 2.2.9** “Intellectual Property” shall mean all material, rights, title and interest in and to any and all ideas, discoveries, inventions or creations, and know-how including, without limitation, patents, trade-marks, service marks, designs, integrated circuit topographies, copyrights, including applications for any of the foregoing, as well as design rights, confidential information, trade secrets and any other similar intellectual property rights protected by South African law and by any other foreign or international law held by Affinity Health (Pty) Ltd or its Associate;
- 2.2.10** “Patient or member” means any person or dependant covered in terms of the Affinity Health (Pty) Ltd policies.
- 2.2.11** “Practice” means the place of business from which the DSP operates and carries out the services.
- 2.2.12** “Remuneration” means the remuneration payable to the DSP on the basis set out in **clause 10**;
- 2.2.13** “Services” means the Services set out in **clause 6** as well as any associated or ancillary service or otherwise agreed between the Parties in writing;
- 2.2.14** “Signature Date” means the date of final signature of this Agreement by the last Party signing.
- 2.2.15** “Supporting Documentation” means all relevant forms, annexures and schedules signed by both Parties, and returned to gpsnetwork@affinityhealth.co.za including:
- (a) Confirmation of Banking Details
 - (b) PCNS form including ID document
 - (c) BHF/PCNS registration form
 - (d) Dispensing License (applicable to dispensing Providers)

3| DURATION

- 3.1** The Agreement shall commence from the Effective Date and remain in effect until terminated in accordance with the provisions of this Agreement.
- 3.2** Notwithstanding anything to the contrary contained in this Agreement, Affinity Health (Pty) Ltd’s appointment of the DSP is not exclusive and Affinity Health (Pty) Ltd may engage the services of other DSPs operating in business of the same or similar nature as the DSP.
- 3.3** Providers will be activated within 5 – 7 working days of receipt of the completed agreement and Supporting Documents.

4| BREACH TERMINATION AND CANCELLATION

- 4.1** Should any Party commit a material breach of this Agreement and fail to remedy such breach within 7 (seven) calendar days of written notice requiring the breach to be remedied, then the party giving the notice shall be entitled, in addition to its other remedies in law, either cancel this Agreement and/or claim specific performance of all the defaulting Party's obligations, together with damages, if any, whether or not such obligations have fallen due for performance.
- 4.2** Either Party is entitled to terminate this Agreement by providing 1 (one) calendar months’ written notice to the other Party.

5| TERMS OF THIS AGREEMENT

- 5.1** The DSP shall provide the Services in respect of this Agreement as an independent contractor at the Practice for the Duration awarded to the DSP, subject to any exclusion as agreed to in writing between the Parties.
- 5.2** The Parties agree that Affinity Health (Pty) Ltd shall have the right to carry out a background check on the DSP in order to satisfy its due diligence enabling it to identify any potential risks and safeguarding itself.

6| SERVICES

- 6.1** Services shall be rendered by the DSP on the basis set forth herein:
- 6.1.1** The Designated DSP shall render the Services as such at the Practice for the specified dates and times as advised by DSP from time to time and shall furthermore comply with any specific reasonable requests pertaining to the Services, within professional boundaries. The DSP shall attend diligently to the medical patients of the Practice as expected by the professional standards as set out by the Health Professions Council of South Africa ("HPCSA") and the South African Nursing Council ("SANC") and the Practice’s subjective expectations.
- 6.1.2** If DSP has agreed in writing to render the services herein, and is subsequently not able to render the Services (for whatever reason), the DSP shall be required to advise Affinity Health (Pty) Ltd of same at least 48 (Forty-Eight) hours prior to the commencement of such period during which performance is impossible to enable Affinity Health (Pty) Ltd to source a replacement. Failure to notify Affinity Health (Pty) Ltd within the 48 (forty-eight), will entitle Affinity Health (Pty) Ltd to claim damages from the DSP for loss of income.

- 6.1.3** The DSP shall adhere to the standards, procedures and policies as set out by the HPCSA and/or SANC from time to time and shall fulfill any and all obligations with respect to the Services in terms of this Agreement.
- 6.1.4** The DSP agrees to use the utmost good faith and with the due professional care and skill that can reasonably be expected from a DSP in relation to the Services provided in terms of this Agreement.
- 6.1.5** The DSP shall not do or permit to be done, any act which is contrary to the interest of Affinity Health (Pty) Ltd, and the DSP shall at all times seek to act in the best interest of Affinity Health (Pty) Ltd.
- 6.1.6** There shall be no employment relationship in terms of the Labour Relations Act 66 of 1995 or the Basic Conditions of Employment Act 75 of 1997 between the Parties hereto.
- 6.1.7** Any monies owed to the DSP by Affinity Health (Pty) Ltd resultant from the relationship between the Parties in terms of this Agreement may be offset against any monies owed by Affinity Health (Pty) Ltd to DSP at the sole discretion of the Affinity Health (Pty) Ltd.

7| SWITCHING OF CLAIMS

The DSP agrees in principle to switch claims via electronic means to Affinity Health (Pty) Ltd. The EDI Code for submission is available on the General Practitioner Operations Manual.

8| OPERATING HOURS

The DSP agrees to deliver services to Affinity Health (Pty) Ltd members to a maximum of their current advertised operating hours.

9| CO-PAYMENTS AND ADMINISTRATION FEES

- 9.1** For services that form part of the Affinity Health (Pty) Ltd formulary or protocol, as displayed in the Operations Manual, the DSP agrees to not charge any additional co-payment or administration fee. In the event that such a fee is claimed, Affinity Health (Pty) Ltd will reject that portion of the claim and the DSP will not attempt to claim this from the member.
- 9.2** Services or medication provided by the DSP that fall outside of the Member's benefit and does not form part of the formulary or protocol needs to be claimed in cash or on account directly from the patient. A patient must sign a "consent for payment" form (see Affinity Health Operations Manual) in recognition that they are aware of the fact that they are responsible for this portion of the service being rendered.

10| FEES AND REMUNERATION

- 10.1** The DSP shall only seek remuneration from Affinity Health (Pty) Ltd for items covered in the day-to-day formulary or protocol and not hold the member liable for monies outstanding by Affinity Health (Pty) Ltd.
- 10.2** The DSP is aware that Affinity Health (Pty) Ltd has a 120 day stale claim policy, whereby if the DSP fails to submit a valid claim to Affinity Health (Pty) Ltd within 120 days from date of service, the claim will be rejected as a stale claim. The DSP shall have no recourse regarding this claim and as such cannot hold Affinity Health (Pty) Ltd or the member liable for the amount due on the stale claim.
- 10.3** Affinity Health (Pty) Ltd shall oversee facilitation of payments to the DSP within 30 days of receipt of a valid electronically submitted claim.

11| PROTECTION OF PERSONAL INFORMATION ACT 4 OF 2013 ("POPI")

- 11.1** The Parties acknowledge that in performing their obligations under this Agreement, they may have access to and come into possession of 'personal information' as defined in POPI and therefore undertake to secure the integrity and confidentiality of personal information in compliance with POPI and Promotion of Access to Information Act 2 of 2000 ("PAIA").
- 11.2** The Parties shall be required to only disclose and provide such personal information which necessitates the engagement between the Parties. The Parties must ensure that all such personal information and related details supplied, are complete, accurate and up to date.
- 11.3** The Parties shall take all reasonable measures that any personal information provided to the other Party shall be done in compliance with POPI.
- 11.4** The Parties shall indemnify and keep one another indemnified against all possible claims brought by an individual/entity with respect to the treatment/handling of personal information provided to the other.

12| CONFIDENTIAL INFORMATION

- 12.1** The Parties possess proprietary Information, technical knowledge, experience, client lists, trade secrets and data of a secret and Confidential nature relating to their business, all of which are regarded by them as valuable commercial assets of a highly Confidential nature ("the Information").
- 12.2** Confidential Information shall not include Information that: (a) was in the public domain at the time it was disclosed or entered the public domain subsequent to such time through no fault of the Recipient; (b) was in the Recipient's possession free of any obligation of confidence at the time of disclosure by the Disclosing Party; or (c) was rightfully communicated to the Recipient free of any obligations of confidence subsequent to the time of disclosure by the Disclosing Party;

13| OWNERSHIP OF CONFIDENTIAL INFORMATION

- 13.1** Confidential Information disclosed under this Agreement shall at all times remain the property of the Disclosing Party. No license or other rights in or to the material disclosed, is granted by this Agreement or by any disclosure of Confidential Information under this

Agreement except as provided herein. All Confidential Information made available under this Agreement, including any copies thereof, shall be returned to the Disclosing Party (or, upon such Party's request or consent, destroyed) upon the first to occur of:

- 13.1.1 completion of the purpose(s) set forth in this Agreement; or
- 13.1.2 the reasonable request of the Disclosing Party; or
- 13.1.3 cancellation of this Agreement.

14 | INDEMNITY

- 14.1 The DSP indemnifies Affinity Health (Pty) Ltd, its agents, contractors and employees from and against any and all claims, liability, damage, loss or expense, including injury or death, to person/s or damages to property, both real and personal arising from its acts, omissions, negligence, wilful misconduct incompetence while acting as DSP in terms of this Agreement and agrees that no claim relevant to the above will attach to Affinity Health (Pty) Ltd.
- 14.2 The DSP shall be responsible to make good, any loss suffered as a result of its acts, omissions, negligence, wilful misconduct, incompetence or failure to perform adequately or at all in the fulfilment of the Services at no cost to Affinity Health (Pty) Ltd. Such an amount shall be payable to Affinity Health (Pty) Ltd on demand. Such an amount reflected on the Affinity Health (Pty) Ltd's letterhead signed by a duly authorised representative of Affinity Health (Pty) Ltd shall constitute prima facie proof of the existence thereof.
- 14.3 Any monies owed to the DSP by Affinity Health (Pty) Ltd resultant from the relationship between the Parties in terms of this Agreement may be offset against any monies owed by the DSP to Affinity Health (Pty) Ltd at the sole discretion of Affinity Health (Pty) Ltd.
- 14.4 The DSP indemnifies Affinity Health (Pty) Ltd from any liability as a result of needle stick injuries.

15 | OBLIGATIONS

- 15.1 Affinity Health (Pty) Ltd undertakes to:
 - 15.1.1 ensure that the DSP continuously updated with information regarding all relevant changes such as new contracted funds, fee schedules and changes that may impact on the DSP.
 - 15.1.2 provide the DSP with a verification number on confirmation of active fund members.
 - 15.1.3 advertise the DSP's contact details for members to be able to select a venue of their choice.
 - 15.1.4 reimburse the DSP according to the formulary or protocol contained in the Operations Manual and according to the fee schedule for the relevant year in which the service occurred.
 - 15.1.5 ensure that remittances are sent after every payment run.
 - 15.1.6 maintain a 48hr turnaround time on queries submitted by the DSP.
- 15.2 The Designated DSP Undertakes to:
 - 15.2.1 verify membership status via the Affinity Health (Pty) Ltd Call Centre.
 - 15.2.2 inform Affinity Health (Pty) Ltd of any changes to their contact details and/or any other practice information furnished herein.
 - 15.2.3 refer patients for secondary or tertiary care according to the Affinity Health (Pty) Ltd protocols which shall casuistically be made available on request.
 - 15.2.4 render quality healthcare services at the agreed fees as set out in the Operations Manual.
 - 15.2.5 keep patients informed of their treatment plan and should certain portions fall outside of the Affinity Health (Pty) Ltd parameters the DSP will use the Consent for Payment Form to inform members of their responsibility to pay the remainder of the account for services rendered outside of the protocol.
 - 15.2.6 clearly advertise their standard practice hours for each of their practice sites.
 - 15.2.7 ensure full registration with the Health Professionals Council of South Africa(HPCSA) and compliance with the related Acts.
 - 15.2.8 ensure that all locums under the employ of the DSP understand and comply with the terms specified herein.

16 | WARRANTIES

- 16.1 The DSP warrants that:
 - 16.1.1 There are no undisclosed circumstances or reasons which are known or ought to have been known to the DSP that would have materially influenced Affinity Health (Pty) Ltd's decision in entering into this Agreement;
 - 16.1.2 It has the competence and capabilities to attend to the Services;
 - 16.1.3 It has the operational capacity and is in a financial position to adequately attend to the Services;
 - 16.1.4 It will perform the Services and warrants that it shall maintain all qualifications, accreditations, licences and documentation in order for the Service Provider to do so, for the Duration;
 - 16.1.5 It is a duly registered, qualified and authorised to carry out the Services in terms of Applicable Laws and to enter into this Agreement.

17| NOTICES AND DOMICILIUM ADDRESSES:

17.1 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 whatsoever nature (including the exercise of any option), the following addresses:

17.2 if to: Affinity Health (Pty) Ltd:

Physical Address: 1 Dingler Street, Rynfield, Benoni, 1501

Postal Address: Postnet 124, Private Bag X101, Farrarmere, Benoni, 1518

Email: gpnetwork@affinityhealth.co.za

17.3 And if to the DSP:

Physical Address:

Postal Address:

Email:

17.4 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing, but it shall be competent to give notice by way of electronic mail.

17.5 Either Party may, with notice to the other Party, change the physical address chosen as its *domicilium citandi et executandi* to another physical address or its electronic mail address provided that the change shall become effective on the 7th business day from the deemed receipt of the notice by the other Party.

17.6 Any notice to a Party:

17.6.1 sent by prepaid registered post in a correctly addressed envelope to it at an address chosen as its *domicilium citandi et executandi* to which post is delivered shall be deemed to have been received on the 7th business day after posting (unless the contrary is proved);

17.6.2 delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or

17.6.3 If sent by electronic mail during business hours, it shall be presumed to have been received on the date of successful transmission of the electronic mail. Any Electronic mail sent after business hours or on a day which is not a business day will be presumed to have been received on the following business day;

17.6.4 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party 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*.

18| DISPUTE RESOLUTION

If a dispute of any nature arises between the Parties, each Party shall have the right to refer such dispute to a court of competent jurisdiction.

19| FORCE MAJEURE

Neither Party shall be liable for any default, delay or lapse occurring due to events beyond their control including riot, strike, theft, war, or acts of God and/or nature.

20| GOVERNING LAW

This Agreement, and any dispute or proceeding arising from the relationship between the Parties to this Agreement, shall be governed by the laws of the Republic of South Africa.

21| GENERAL

21.1 No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect, unless reduced to writing and signed by the Parties or their duly authorised representatives.

21.2 No waiver which either of the Parties may allow to the other, of any of their obligations arising out of or in terms of this Agreement, shall prevent the Party from relying upon strict compliance of all of the obligations of the other Party upon any other or subsequent occasion.

21.3 No variation of any of the provisions of this Agreement, nor consent to any departure by the Parties there from, shall be of any force or effect unless the same shall be confirmed in writing and signed by the Parties. Such variation, waiver or consent which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.

22| WHOLE AGREEMENT

This Agreement together with annexures, schedules or addendums appended hereto sets forth the entire understanding between the Parties with regard to the subject matter hereof and supersedes any prior discussions or representations between them with respect thereto. All amendments to this Agreement shall be in writing and signed by both Parties.

Software Vendor

EDI/Switch

GROUP PRACTICE PROVIDER BANKING DETAIL AND CONTRACT SIGNATURE

Name of Account Holder:			
Name of Bank:			
Branch Code:			
Account Number:			
Type of Account:	Cheque <input type="checkbox"/>	Savings <input type="checkbox"/>	

***** Documents to accompany this agreement *****

*Confirmation of Banking Details | PCNS form including ID document | BHF/PCNS registration form
Copy of Dispensing License (where applicable)*

Provider Signature

Name and Surname:

Date:

Signed on behalf of Affinity Health (Pty) Ltd

Name and Surname:
(Affinity Health Representative)

Date: