



REPUBLIC OF NAMIBIA

MINISTRY OF FINANCE

PSEMAS CONTRACT

(STANDARD TERMS AND CONDITIONS)

2017

FOR

THE PROVISION OF HEALTHCARE AND RELATED SERVICES

TO THE PUBLIC SERVICE EMPLOYEES MEDICAL AID SCHEME

(PSEMAS)

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1. DEFINITIONS

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

“Administrator” means any entity appointed by the Ministry of Finance from time to time responsible for the processing of all the claims, the provision of utilisation reports and any other relevant information required for the accurate and reliable processing of claims, auditing of claims and clinical investigations undertaken on behalf of the Ministry in respect of PSEMAS;

“Annexure A1 and Annexure A2”; means the application form, which serves as a binding contract to these Terms and Conditions, completed by the Healthcare Service Provider, as applicable, to apply to become a PSEMAS service provider;

“Annexure B” means the PSEMAS tariffs;

“Annexure C” means the PSEMAS Rules and Regulations;

“Application” means the completion of Annexure A1 or Annexure A2, as applicable, and the subsequent enforceability of the Terms and Conditions; and the handing in of these completed forms at the Ministry of Finance;

“claim documentation” means a document on which all details are indicated as required and in the form and manner required by the Ministry and/or the Administrator and as communicated to the Healthcare Service Providers from time to time;

“Council” means any council established in terms of:

- (a) the Social Work and Psychology Act, 2004 (Act No. 6 of 2004);

(b) the Allied Health Professions Act, 2004 (Act No. 7 of 2004);

(c) the Nursing Act, 2004 (Act No. 8 of 2004);

(d) the Pharmacy Act, 2004 (Act No.9 of 2004); or

(e) the Medical and Dental Act, 2004 (Act No. 10 of 2004);

“days” means calendar days;

“Healthcare Service Provider” means any person registered or enrolled, as the case may be, in terms of:

(a) the Social Work and Psychology Act, 2004 (Act No. 6 of 2004);

(b) the Allied Health Professions Act, 2004 (Act No. 7 of 2004);

(c) the Nursing Act, 2004 (Act No. 8 of 2004);

(d) the Pharmacy Act, 2004 (Act No.9 of 2004); or

(e) the Medical and Dental Act, 2004 (Act No. 10 of 2004);

and includes practitioners, private health facilities and hospitals, and any other person that provides an approved Healthcare Service to a PSEMAS member so licenced and authorised by the Ministry of Health and Social Services, in terms of the Hospitals and Health Facilities Act, 1994 (Act No. 36 of 1994) ;

“Healthcare Service” means any Healthcare Service Provider’s treatment of any PSEMAS member provided by an approved Healthcare Provider, which treatment has as its object-

(a) the physical or mental examination of that person;

(b) the diagnosis, treatment or prevention of any physical or mental defect, illness or deficiency;

(c) the giving of advice in relation to any such defect, illness or deficiency;

(d) the giving of advice in relations to, or treatment of, any condition arising out of pregnancy, including the termination thereof;

(e) the prescribing or supplying of any medicine, appliance or apparatus in relation to any such defect, illness of deficiency or a pregnancy, including the termination thereof;

(f) nursing and midwifery;

and includes an ambulance service, and the supply of accommodation where such accommodation is necessitated by any physical or mental defect, illness or deficiency or by a pregnancy;

“levy” means the prescribed co-payment required from a member as determined by the Minister from time to time in the PSEMAS Rules and Regulations;

“medicine” means any substance, intended for human use, defined as medicine in terms of the Medicines and Related Substances Control Act, 2003 (Act No. 13 of 2003);

“member” means any person who is the principle member or approved dependent, who is a member of PSEMAS, duly registered in terms of the

applicable provisions of the Public Service Staff Rules and the PSEMAS Rules and Regulations and to whom membership has been issued;

“Ministry” means Ministry of Finance;

“NAMAF” means the Namibian Association of Medical Aid Funds established in terms of section 10 of the Medical Aid Funds Act, 1995 (Act No. 23 of 1995);

“NAMAF practice number” means the practice number provided by NAMAF, allocated per individual or private health care facility and its individuals, which will be the only valid practice number to be used for PSEMAS;

“private health facility” means any privately owned institution, facility, building or place, other than a hospital, licensed as such in terms of the Hospitals and Health Facilities Act, 1994 (Act 36 of 1994), where patients receive a Healthcare Service and includes the facilities specified in Schedule 1 of the Hospitals and Health Facilities Act, 1994 (Act 36 of 1994);

“hospital” means any public hospital, privately owned institution, facility, building or place, registered as such in terms of the Hospitals and Health Facilities Act, 1994 (Act 36 of 1994);

“proof of membership” means a card or computer issued proof issued by the Ministry upon which a member’s particulars and those of the member’s dependents (if any), which may include biometric information, are recorded as well as the status of membership of PSEMAS and that of the member’s dependents (if any) or any other electronic form of proof of membership as may be implemented by the Ministry;

“PSEMAS” means the Public Service Employees’ Medical Aid Scheme established in terms of the applicable regulations to the Public Service Act, 1995 (Act 15 of 1995);

“tariff” means the agreed tariff calculated by the Ministry, which may be based on the tariffs determined by PSEMAS from time to time.

2. Any reference to legislation refers to that legislation as at the date of signature hereof, as amended or re-enacted from time to time, and includes reference to any regulations, notices or rules that may have been promulgated thereunder.

2. OBLIGATIONS OF THE HEALTHCARE SERVICE PROVIDER

- 2.1. The Healthcare Service Provider agrees to provide the Healthcare Service described herein as an independent contractor.
- 2.2 It is mutually understood and agreed that the Healthcare Service Provider is at all times acting and performing these duties and functions in the capacity of an independent contractor.
- 2.3 It is expressly agreed by the parties hereto that no work, act, commission or omission by the Healthcare Service Provider pursuant hereto shall be construed to make or render the Healthcare Service Provider the agent, employee or servant of the Ministry.
- 2.3 The Ministry shall have authority to control and direct the methods by which the Healthcare Services Provider performs Healthcare Services. The Ministry shall have the right to determine what Healthcare Services shall be provided and in what manner it shall be provided.
- 2.4 The Healthcare Service Provider agrees to perform such Healthcare Services, at all times, in strict accordance with currently approved and accepted professional methods, protocols and practices applicable to the specific scope of practices of the Healthcare Service Provider; and

- 2.5 The Healthcare Service Provider shall be responsible for the payment of all taxes incurred as a result of these Terms and Condition, and further agrees to indemnify and hold the Ministry harmless from the same.
- 2.6 The Healthcare Service Provider and any Healthcare Service Providers employed or providing services on behalf of the Healthcare Service Provider shall maintain all applicable licenses, registration, enrollment and approval requirements and shall meet all requirements which may be set from time to time by either NAMAFA, the Ministry of Health and Social Services, the Social Security Commission, the Receiver of Revenue and the relevant Council(s) responsible for such licensing, registration or enrollment.
- 2.7 The Healthcare Service Provider represents and warrants that, the Healthcare Service Provider and any Healthcare Service Provider employed or providing services on behalf of the Healthcare Service Provider has:
- 2.7.1 the necessary licenses, registrations, enrollments or other approvals required to provide Healthcare Services and that such licenses, registrations, enrollments or other approvals have never been suspended, revoked, restricted, or deemed to be probationary;
 - 2.7.2 never been reprimanded, sanctioned, or disciplined by the Ministry of Health and Social Services or applicable Council(s) or similar institutions in a foreign jurisdiction;
 - 2.7.3 not been subject to a final judgement in a professional liability action and no action, based on an allegation of professional liability or malpractice, has ever been settled by payment to the complainant;
 - 2.7.4 never had clinical privileges suspended , curtailed, or revoked by any hospital;
and

- 2.7.5 the Healthcare Service Providers employed by the Healthcare Service Provider are duly qualified and licensed, registered or enrolled with the applicable professional Council, and are in good-standing with such Council.
- 2.8 The Healthcare Service Provider shall not be entitled to claim in more than one city, town, region or area on the same NAMAF practice number, during the same period, unless there is proof that his or her practice has been relocated and supporting documentation has been submitted to the Ministry of Finance and the Administrator.
- 2.9 The following conditions must be met by a hospital and private health facility:
- 2.9.1 proof of registration or license issued in terms of the Hospitals and Health Facilities Act, 1994 (Act No. 36 of 1994);
- 2.9.2 details of the healthcare service providers employed by the private hospital or private health facility and proof of their compliance with the requirements in terms of these Terms and Conditions;
- 2.9.3 where a private hospital or private health facility operates more than one hospital or facility, details of the healthcare service providers available at each hospital or facility should be provided.

3. SERVICES TO BE RENDERED

- 3.1. The Healthcare Service Provider agrees and undertakes to render its Healthcare Services to any member of PSEMAS, in accordance with the Rules and Regulations of PSEMAS, applicable scope of practices and the Terms and Conditions hereof.
- 3.2. Nothing contained herein shall be construed or interpreted by either party as placing a specific obligation on the Ministry or a member to utilise the Healthcare Services of the Healthcare Service Provider.

- 3.3. The Ministry shall directly, or through the Administrator, advise the Healthcare Service Provider of the PSEMAS Rules and Regulations applicable and relevant to the Healthcare Service Provider's profession and Healthcare Services from time to time.
- 3.4. The Healthcare Service Provider agrees to cooperate with the Ministry and the Administrator in respect of all matters relating to the provision and administration of Healthcare Services, including such additional functions/responsibilities, which the Ministry may ascribe to the Administrator from time to time.
- 3.5. The Ministry, Administrator or any of its employees, agents or assigns shall not accept any liability for the fraudulent and/or dishonest use of PSEMAS membership by members or third parties. In the event that it is proven that membership of PSEMAS was used in a dishonest manner as a result of actions of employees of the Ministry/Administrator such employees will be held personally liable.
- 3.6. The Healthcare Service Provider shall ensure that a valid Identity Document is produced by each member, together with the proof of membership, and any other method or procedure stipulated in order for the Healthcare Service Provider to verify the identity and membership of the particular PSEMAS member, prior to rendering the Healthcare Services.
- 3.7. In instances of fraud, dishonesty or false representations by a member, the Ministry shall not be required to pay the Healthcare Service Provider such services so rendered and in such an instance the member will be fully liable for the payment thereof.
- 3.8. The Healthcare Service Provider shall exhaust all reasonable efforts to prevent any member from abusing, misusing or over-utilising PSEMAS, including but

not limited to, verifying personal information of members, reporting abuse of PSEMAS and misuse of benefits by members.

- 3.9. The Healthcare Service Provider shall, as required from time to time, be provided by the Administrator with practice analysis and the Ministry and the Administrator shall have the right to consult with the various Boards/Societies/Councils in the Healthcare Service industry related to norms, trends and peer review(s).
- 3.10. It is expected from the Healthcare Service Provider to have thorough knowledge of and abide by the PSEMAS Rules and Regulations and tariffs and the Healthcare Service Provider may, contact the Administrator to procure any information relating to the same.
- 3.11. The Ministry may amend the PSEMAS Rules and Regulations from time to time, which amendments shall only become operational after 30 (thirty) days' prior notification has been given to the Healthcare Service Provider.

4. PROCEDURE FOR CLAIM PROCESSING

- 4.1. The Healthcare Service Provider undertakes to submit to the Administrator a claim for Healthcare Service Providers services rendered to a member within 180 (one hundred and eighty) days from the date on which the Healthcare Services were so rendered failure to which the claim shall lapse.
- 4.2. The claim shall be submitted in the prescribed manner and shall contain such information as required by the Ministry and/or Administrator from time to time.
- 4.3. Within 30 (thirty) days of receipt of a claim submitted by the Healthcare Service Provider, the Administrator, on behalf of the Ministry, will determine the validity of the claim by assessing whether:

- 4.3.1. the member is a current and valid member of PSEMAS whose benefits are not exhausted or insufficient;
- 4.3.2. the claim contains all the necessary information as required herein;
- 4.3.3. the Healthcare Service Provider is authorised, in accordance with the applicable laws and regulations, to render the particular Healthcare Service claimed for;
- 4.3.4. the claim complies with these specific Terms and Conditions, the PSEMAS Rules and Regulations and tariffs; and
- 4.3.5. there exists no *prima facie* irregularity in respect of the claim itself, or the claim format or process.
- 4.3.6. The Administrator on behalf of the Ministry has the right to demand proof of levy paid by the members.
- 4.4. Where a claim is determined to be valid, the Administrator shall, on behalf of the Ministry, effect payment to the Healthcare Service Provider within 30 (thirty) days from the date of such determination.
- 4.5. Where a claim is determined to be invalid:
 - 4.5.1. the Administrator will communicate the reasons for such invalidity to the Healthcare Service Provider within 30 (thirty) days of such determination;
 - 4.5.2. the Healthcare Service Provider is required to resubmit the claim within 30 (thirty) days of receipt of such communication from the Administrator; and

- 4.5.3. upon receipt of the resubmitted claim, the Administrator will reassess the claim.
- 4.6. The Administrator, on behalf of the Ministry, is responsible for the assessment and determination of the validity of all claims submitted by the Healthcare Service Provider, and it is agreed that:
- 4.6.1. all correspondence and communication regarding claims will be directed to the Administrator; and
- 4.6.2. the Ministry will not attend to, or be required to attend to any enquires resulting from the submission of claims to the Administrator, unless such enquiry is appropriately channeled through the Administrator.
- 4.7. The Healthcare Service Provider agrees only to submit claims based on prescribed PSEMAS tariffs which specifically arise from Healthcare Services rendered to members.
- 4.8. The parties record and agree that a claim which is not submitted according to the provisions hereof, will not be considered for payment.
- 4.9. The parties record and agree that the Ministry has the right to claim back any payment made or is in the process of being made to the Healthcare Service Provider due to incorrect submission, processing or non-compliance to the PSEMAS Rules and Regulations or tariffs.
- 4.10. Members of PSEMAS and the Healthcare Service Provider must sign the specified claim(s) when obtaining a Healthcare Service from the Healthcare Service Provider for submission of claims.
- 4.11. The member or his/her dependent(s) must be furnished with proof of the total amount to be claimed from PSEMAS by the Healthcare Service Provider for the Healthcare Service rendered.

- 4.12. It is mandatory that the Healthcare Service Provider charges the member the applicable levy for Healthcare Service prescribed by the Ministry from time to time
- 4.13. All claims to be considered for payment shall indicate and contain the following details:
- 4.13.1. Name and initials of the member as per proof of membership;
 - 4.13.2. Postal address of member;
 - 4.13.3. Membership number as per proof of membership;
 - 4.13.4. Date of birth (yyyy/mm/dd) and initials of dependent(s) as per proof of membership, where applicable;
 - 4.13.5. Date that the service was rendered;
 - 4.13.6. Detailed description by tariff code, tariff description, tariff amount, name of medicine, National Pharmaceutical Product Index (NAPPI) codes, strength, quantity and price of medicine;
 - 4.13.7. Signature of the Healthcare Service Provider in his/her own capacity;
 - 4.13.8. Signature of the member or dependent/guardian
 - 4.13.9. Copy of the Identity Document of the member/guardian/dependent; and

- 4.13.10. Proof of member's co-payment in the event of emergency motivation by the Healthcare Service Provider as to the reason for omitting the co-payments.
- 4.14. The Ministry has the right to amend or augment the information required for the submission of claims from time to time. Service provider to be informed thirty (30) days prior to implementation of amended rules.
- 4.15. Hard copies of all claims are required for submission, irrespective of the mode of submission, e.g. electronic format.
- 4.16. The Ministry shall further be entitled to require any other additional information as communicated to the Healthcare Service Provider from time to time.
- 4.17. The Ministry is further entitled to such additional information regarding the claim and the particular Healthcare Service as it may from time to time deem necessary and appropriate.
- 4.18. Claims of Healthcare Service Provider who are not in good standing with Receiver of Revenue will not be honoured, until such a time that good standing is reconfirmed.
- 4.19. Claims from multiple practices on the same NAMA F practice number, is prohibited and will be treated as fraudulent, in addition such claims will not be honored.

5. PSEMAS TARIFF

- 5.1. The tariff at which Healthcare Services will be rendered to members of PSEMAS, unless otherwise agreed, will not exceed the tariff minus the levy payable by the member as determined, and as may be amended from time to time on 60 (sixty) days' prior written notification by the Ministry.

- 5.2. Nothing contained herein shall be construed as prohibiting the Healthcare Service Provider from rendering Healthcare Services at a tariff less than that determined by the Ministry, provided that the member pays the required levy on such a tariff.
- 5.3. No split billing will be allowed in that a single treatment shall attract a specific tariff instead of splitting in several treatments with separate tariffs. Further members must not be charged more than the agreed tariff payable to the Healthcare Service Provider.

6. PROHIBITION OF CESSION

The Healthcare Service Provider shall not cede any of his/her rights, title or interest hereunder to any other person whomsoever as this renders the application null and void as applications are submitted in terms of NAMAF practice numbers attached to the Healthcare Service Provider.

7. CHANGE IN LEGAL STATUS

- 7.1. In the event that the Healthcare Service Provider intends changing its legal status, the Healthcare Service Provider shall, at least 60 (sixty) days prior to such change taking effect, notify the Ministry and the Administrator in writing of such intended change.
- 7.2. A change of the Healthcare Service Provider's legal status shall require the Healthcare Service Provider to reapply as a Healthcare Service Provider as per Annexure A1 and A2, as applicable.
- 7.3. If the Healthcare Service Provider intends to change its name as originally indicated on Annexure A1 or A2, as applicable, the Healthcare Service Provider must notify the Ministry of such a change thirty (30) days' before making the change.

7.4. For the purposes of this clause, a change of legal status of the Healthcare Service Provider shall include:

7.4.1. in the case of a company or a close corporation, the selling, transfer, donation or otherwise disposal of shares or member interest;

7.4.2. in the case of a partnership, any change in the constitution of the partnership or the dissolution of the partnership for whatever reason;
and

7.4.3. in the case of a sole proprietor, any partnership with other Healthcare Service Providers or the incorporation of a company or close corporation.

7.4.4. In the case of new or resigned Healthcare Service Provider employed by the practice.

8. INVESTIGATIONS AND SUSPENSION

8.1 In the event of the Ministry receiving a complaint from a member or any other person in connection with any matter relating to a Healthcare Service Provider, the Ministry or Administrator will investigate and mediate upon such complaint and will conduct the necessary investigation and mediation in such manner as it may decide in its sole discretion.

8.2 The Healthcare Service Provider agrees to cooperate, as far as can reasonably be expected from him or her, in any investigation and accord such cooperation to the Ministry and the Administrator, including its agents and representatives contemplated herein.

8.3 The Ministry and its duly authorised agents(s) or representative(s) shall be entitled, during normal business hours, to enter the premises of the Healthcare Service

Provider and shall have the right to inspect the books, documents, correspondence, records and any other relevant information, or matters arising from or which are incidental thereto, whether directly or indirectly.

- 8.4 The Healthcare Service Provider undertakes to further furnish, without undue delay, such information relating to or incidental to any matter governed hereby.
- 8.5 The Healthcare Service Provider shall be obliged, upon request by the Ministry, the Administrator or any of its authorised agents or representatives, to furnish, copies of any documents reasonably required by the Ministry in order to investigate any query, dispute or audit relating to or incidental to the matter relating hereto.
- 8.6 Where the Healthcare Service Provider is found by the Ministry, upon initial investigation, to have committed fraud, dishonesty or false representations, or has engaged in a dishonest business practice, relating hereto, the payment of claims shall immediately become suspended pending the outcome of further investigations by the Ministry, the Administrator and/or other appropriate authorities.
- 8.7 The relevant Council will be alerted to the investigation and all relevant information collected by the Ministry and the Administrator will be made available to the Council to take further disciplinary action apart from the process being undertaken by the Ministry.
- 8.8 The Healthcare Service Provider will automatically be removed as a recognised, approved and accredited Healthcare Service Provider in the event that the results of the initial investigation referred to herein are confirmed consequent to further investigations referred to above.
- 8.9 During such investigation, the member's membership of PSEMAS will similarly be suspended pending the outcome of any investigations carried out by the

Ministry or the Administrator to determine the extent, if at all, of the member's complicity with respect to the events contemplated.

- 8.10 Where a Healthcare Service Provider is found to have contravened the Rules and Regulations or billing guidelines of PSEMAS in anyway the Healthcare Service Provider may be required to pay the equivalent to the Ministry.

9. DURATION AND TERMINATION

- 9.1 These Terms and Conditions become binding on the Healthcare Service Provider from date of signature of Annexure A1 or A2, as applicable, by the Healthcare Service Provider.
- 9.2 The Healthcare Service Provider must register with the relevant council annually and submit a certificate of good standing from the Receiver of Revenue bi-annually.
- 9.3 These Terms and Conditions shall subsist until the end of each government financial year.
- 9.4 Notwithstanding anything to the contrary contained herein, and subject to an express and contrary written indication from the Ministry, the Application shall automatically terminate if one or any of the following occurs:
- 9.4.1 the Healthcare Service Provider's required registrations, good standing certificates from Receiver of Revenue lapses;
 - 9.4.2 the Healthcare Service Provider cedes its right, title or interest to any third party without first having obtained the written consent of the Ministry;
 - 9.4.3 the Healthcare Service Provider undergoes a change in legal status without notifying the Ministry; or

- 9.4.4 the Healthcare Service Provider is declared insolvent, sequestrated or liquidated (whether provisionally or finally).
- 9.4.5 this section must be read in conjunction with section 2. Obligations of the Healthcare Service Providers.
- 9.5 These Terms and Conditions can be terminated at the election of either party, provided that the party so wishing to terminate, shall advise the other party thereof, in writing, on at least 60 (sixty) days' prior written notice. This includes the Ministry's right to revoke the Application of the Healthcare Service Provider that is continuously claiming above the peer's norm.
- 9.6 Preference will be given to Namibian Service providers for services that are not scarce.

10. MEDIATION AND ARBITRATION

- 10.1 If a dispute arises out of or relates to these Terms and Conditions, or the alleged breach thereof, the Parties agree first to try in good faith to settle the dispute by mediation within thirty (30) days through a process as determined by the Attorney-General before resorting to arbitration.
- 10.2 In the event that mediation has failed, the dispute shall be referred to arbitration, by any of the parties, by way of a notice to the other party, in which notice particulars of the dispute are set out.
- 10.3 Such arbitration proceedings shall be held in either Windhoek or Oshakati, Namibia, as the Ministry shall determine, and shall be held in a summary manner, which shall mean that it shall not be necessary to observe or carry out –
- 10.3.1 the usual formalities of procedure (e.g. there shall not be any pleadings or discovery);

- 10.3.2 the strict rules of evidence; or
- 10.3.3 immediately and with a view to it being completed within 21 (twenty-one) calendar days after it is demanded.
- 10.4 The arbitrator for such arbitration proceedings shall –
- 10.4.1 if the matter in issue is primarily an accounting or financial matter, be an independent auditor with at least 5 (five) years’ experience, agreed upon by the parties and, failing such agreement, nominated by the chairperson for the time being of the Namibian Institute of Chartered Accountants; or
- 10.4.2 if the matter in issue is primarily a Healthcare Service Providers matter, be a Healthcare Services practitioner with at least 10 (ten) years’ experience, agreed upon by the parties and, failing such agreement, nominated by the Ministry of Health and Social Services or the relevant Council;
- 10.4.3 any other matter, be a practicing legal practitioner with at least 10 (ten) years’ experience, agreed upon by the parties and, failing such agreement, nominated by the Chairperson for the time being of the Law Society of Namibia; or
- 10.4.4 in the event where the parties are unable to agree whether the nature of a dispute is primarily of an accounting or financial nature, healthcare matter, technical nature or any other nature, then the nature of that dispute shall be decided by a practicing legal practitioner with at least 10 (ten) years’ experience, agreed upon by the parties and, failing such agreement, nominated by the Chairperson for the time being of the Law Society of Namibia.
- 10.5 The decision of the arbitrator shall be final and binding on the parties, who shall summarily carry out that decision and either of the parties shall be entitled to have the decision made an order of any court with competent jurisdiction.

- 10.6 The “arbitration” clause in these Terms and Conditions shall be severable from the rest of these Terms and Conditions and therefore shall remain effective between the parties after the application has been terminated.
- 10.7 No clause in these Terms and Conditions which refers to arbitration shall mean or be deemed to mean or interpreted to mean that either of the parties shall be precluded from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 10.8 Any notice, demand or other communication properly addressed by either party to the other party’s postal address provided in the Application in terms hereof, for the time being, and sent by prepaid registered post shall be deemed to be received by the latter on the 14th business day following the date of posting thereof.
- 10.9 Other means and methods (including telefacsimile) may be used for the transmission or delivery of notices, acceptances and other communications, but no presumption of delivery shall arise if any such other means or method is used.

11. BREACH

Should any party commit an irremediable breach or a remediable breach of any material provision hereof, and fail to remedy such breach within 30 (thirty) days after having received written notice from the other party requiring it to do so, then the party aggrieved by such breach shall be entitled, without prejudice to any of its other rights in law, to cancel the Application.

12. NECESSARY POWERS AND AUTHORISATIONS

- 12.1 The parties under take to pass all resolutions, sign all documents and take all reasonable and necessary steps to give effect to and ensure the proper discharge of their respective duties in terms hereof.

12.2 The signatories to the Application warrant that they are duly authorised to bind the parties to the Terms and Conditions contained herein.

13. CONFIDENTIALITY

13.1 The parties agree to disclose confidential information to the other as far as it may be necessary to enable the other party to fulfill its obligations and carry out its functions under these Terms and Conditions.

13.2 Both parties agree that they will not, during the course of its association with the other, or at any time thereafter, disclose confidential information to any third party for any reason or any purpose whatsoever without prior written consent of the other.

14 NON-WAIVER

14.1 Neither party shall be regarded as having waived, or be precluded in any way from exercising, any right under or arising from these Terms and Conditions by reason of such party having at any time granted any extension of time for, or having shown any indulgence to the other party with reference to, any payment or performance hereunder, or having failed to enforce, or delayed in the enforcement of, any right of action against the other party.

14.2 The failure of either party to comply with any non-material provision of these Terms and Conditions shall not excuse the other party from performing the latter's obligations hereunder fully and timeously.

15. SEVERABILITY

15.1 If any term or other provision of these Terms and Conditions is invalid, illegal or incapable of being enforced by any risk of law or public policy, all other conditions and provisions hereof shall nevertheless remain in full force and effect

so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to the other party.

15.2 Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify these Terms and Conditions so as to effect the original interest of the parties as closely as possible in an acceptable manner such that the transactions contemplated hereby are fulfilled to the greatest extent possible.

16. COMPLETE TERMS AND CONDITIONS

16.1 These Terms and Conditions and the Annexures defined herein constitute the entire agreement between the parties relating to the subject matter hereof.

16.2 None of the following actions shall be binding unless recorded in a written document signed by the parties:

16.2.1 amendment or consensual cancellation of any provision or term hereof or of any contract, or other document issued or executed pursuant to or in terms hereof;

16.2.2 no settlement of any disputes arising under hereunder; and

16.2.3 no extension of time, waiver or relaxation or suspension of any of the provisions or terms of these Terms and Conditions or any contract, or other document issued pursuant to or in terms of these Terms and Conditions.

16.3 Any extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.

- 16.4 No extension of time or waiver or relaxation of any of the provisions or terms of these Terms and Conditions or other document issued or executed pursuant hereto, shall preclude such party thereafter from exercising its rights strictly in accordance with these Terms and Conditions.
- 16.5 No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

CARL G.H. SCHLETTWEIN, MP
MINISTER