

MEMORANDUM OF AGREEMENT

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between

**THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA THROUGH ITS NATIONAL
DEPARTMENT OF HEALTH**
(hereinafter referred to as the "NDoH")

herein represented by **Ms M.P Matsoso**
in her capacity as **DIRECTOR-GENERAL** and duly authorised.

And

THE OFFICE OF HEALTH STANDARDS COMPLIANCE
(hereinafter referred to as the "OHSC")

herein represented by **Prof L.E Mazwai**
in his capacity as **Board Chairperson: OHSC** and duly authorised.

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- 1.3 **"CEO"** means the Chief Executive Officer of the **OHSC** or any person acting in this capacity and appointed in terms of Section 79H of the NHA;
- 1.4 **"CFO"** means the Chief Finance Officer of the National Department of Health until the **OHSC** has appointed it's CFO and the arrangement has been communicated in writing to the Department;
- 1.5 **"Commencement Date"** means the date on which the this Agreement came into effect, which is the 1st April 2015, despite the date of signature;
- 1.6 **"DG"** means the Director-General of the National Department of Health or anyone acting in this position;
- 1.7 **"DDG"** means the Deputy Director-General of the National Department of Health or anyone acting in this position;
- 1.8 **"Employees"** means the employees of the **OHSC**;
- 1.9 **"Goods and services"** means the goods and services belonging to the **OHSC**;
- 1.10 **"Machinery and equipment"** means the machinery and equipment belonging to the **OHSC**;
- 1.11 **"NDoH"** means the National Department of Health of the Republic of South Africa;
- 1.12 **"NHA"** means the National Health Act, 2003 (Act No. 61 of 2003);
- 1.13 **"OHSC"** means the Office of Health Standards Compliance;
- 1.14 **"Ombud"** means the Health Standards Ombud appointed by the Minister of Health working in collaboration with the **OHSC**;
- 1.15 **"Parties"** mean the National Department of Health (**NDoH**) and the Office of Health Standards Compliance (**OHSC**);
- 1.16 **"PMFA"** means the Public Management Finance Act, 1999 (Act No. 1 of 1999);

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1.17 "Service Level Agreement" means an agreement that defines the level of services to be provided by the NDoH to the OHSC; and

1.18 "The Minister" means the Minister of Health.

2 PURPOSE / OBJECTIVES OF AGREEMENT

The purpose of this Agreement is for the NDoH to provide support service to the OHSC in line with the PFMA and PSA in order to enable the OHSC to execute its mandate in line with the provisions of the NHA, until such time the OHSC is capable of executing its mandate on its own.

3 INTERPRETATION

In this Agreement:

- 3.1 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 nor to modify nor amplify the terms of this Agreement nor any clause hereof, unless a contrary intention clearly appears;
- 3.2 words importing any gender include the other gender, singular includes the plural and vice versa; and natural person includes juristic person (incorporated or unincorporated) and the state;
- 3.3 any reference in this Agreement to "date of signature hereof" shall be read as meaning a reference to the date of the last signature of this Agreement;
- 3.4 all schedules and annexures hereto shall be deemed to be incorporated herein and shall form an integral part hereof;
- 3.5 where a number of days is prescribed in this Agreement, it shall consist of business days exclusive of Saturday, Sunday or South African public holidays and shall be reckoned exclusively of the first and inclusively of the last day;

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- 3.6 where a day upon or by which any act is required to be performed is not a business day, the parties shall be deemed to have intended such act to be performed upon or by the first business day thereafter;
- 3.7 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 3.8 where annexures or definition of this Agreement contain a substantive provision conferring rights and/or obligations, effect shall be given thereto as if it forms part of the main body of this Agreement;
- 3.9 expressions defined in this Agreement shall bear the same meanings in annexures or schedules to this Agreement which do not themselves contain their own definitions;
- 3.10 where any term is defined within the context of any particular clause in this Agreement, it shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that term has not been defined in this interpretation clause.

4 DURATION

This Agreement shall become effective on the 01 April 2015 notwithstanding the date of signature and shall terminate on 31 March 2016 or on such date (time) when the OHSC has acquired the full human and system capacity to manage the functions in Clause 6 below.

5 APPLICABILITY OF OTHER DOCUMENTS

- 5.1 The **OHSC Strategic and Annual Performance Plans** shall be an integral part of this document and is incorporated as **Annexure A** to this Agreement.
- 5.2 The **Financial and other Delegations of Authority** to the CEO as approved by the Board are incorporated as **Annexure B** to this Agreement.

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- (i) the transfer of the relevant assets and liabilities from NDoH to the OHSC and accessing of, transferring of and reporting on donor funds;
 - (ii) procurement of travel and related services for the OHSC staff until the OHSC has concluded a contract with a travel management services company, the costs of which will be recouped from the OHSC; and
 - (iii) carrying the cost of travel insurance for the OHSC staff until the OHSC has acquired its own insurance policy, which costs will be recouped from the OHSC.
- 6.2 A separate Memorandum of Agreement (MoA) shall be concluded to govern the exchange, use and safeguarding of ownership of data and information exchanged between the Parties, to support the Parties' respective missions including but not limited to the following:
- (a) advising the Minister on norms and standards to be prescribed or the review thereof;
 - (b) monitoring the indicators of risks;
 - (c) collecting information relating to prescribed norms and standards;
 - (d) investigating the complaints related to the breaches of prescribed norms and standards;
 - (e) making recommendation for the interventions by national or provincial department of Health in ensuring compliance with prescribed norms and standards; and
 - (f) recommending or imposing sanctions for persistent non-compliance.

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9 CONTRACT MANAGEMENT AND REPORTING

9.1 The Parties shall meet **monthly** to discuss and review the implementation of this Agreement.

9.2 The **NDoH** will be represented by:

- (a) **Ms V M Rennie** in her capacity as the **Head: Corporate Services** of the **NDoH**.
- (b) **Mr I van der Merwe** in his capacity as the **Chief Financial Officer** of the **NDoH**.

9.3 The **OHSC** will be represented by:

- (a) **Mr B Msibi** in his capacity as the **Acting CEO** of the **OHSC**.
- (b) **Mr J Mapatha** in his capacity as the **CFO** of the **OHSC**.

10 ASSIGNMENT, CESSION AND DELEGATION

10.1 The Parties herein shall not assign, cede or delegate any right and /or obligations under this Agreement to a third party without each other's written approval.

10.2 This Agreement is also binding on the successors in title, assignees and administrators of the respective parties.

11 FORCE MAJEURE

11.1 Failure of any of the Parties to fulfil any of its obligations under this Agreement shall not be considered to be a breach or default insofar as such inability was caused by a force majeure. In this regard the defaulting party must prove that:

- (a) the failure was due to an impediment wholly beyond its control;

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14 AMENDMENT OF THIS AGREEMENT

No addition to or variation, consensual cancellation or novation of this Agreement shall be of any force or effect unless reduced to writing and signed by both parties or their duly authorized representatives.

15 DOMICILIA AND NOTICES

15.1 The **NDoH** choose as its *domicilia citandi et executandi* for all purposes arising from this Agreement, the addresses specified below:

Attention: **Ms M.P Matsoso**

Physical: Civitas Building
Corner Thabo Sehume and Struben Streets
Pretoria

Postal: Private Bag X399,
PRETORIA,
0001

Telfax: _____

Email dg@health.gov.za

15.2 The **OHSC** choose as its *domicilia citandi et executandi* for all purposes arising from this Agreement, the addresses specified below:

Attention: **Mr B Msibi**

Physical: MRC Building
1 Soutpansberg Rd
Pretoria

Postal: Private Bag X21
ARCADIA
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Property Rights from Publicly Financed Research and Development Act, Act 51 of 2008.

16.3 This clause shall survive termination of this Agreement.

17 GENERAL

17.1 This Agreement, in two signed originals, constitutes the sole record of the agreement between the parties in regard to the subject matter hereof. Each party shall retain one of the two signed originals.

17.2 No party shall be bound by any representations, express or implied, warranties, promises or the like, not recorded herein, incorporated as an Annexure or otherwise reduced to writing and signed by or on behalf of the parties.

17.3 This Agreement supersedes and replaces prior commitments, undertakings or representations, whether oral or written, between the parties in respect of the subject matter hereof.

17.4 No relaxation of the terms of this Agreement and no indulgence which one party may grant to the other will in any way operate as an estoppel against the former party or be deemed to be a waiver of its rights, or in any other way limit, alter or prejudice those rights.

18 GOVERNING LAW

This Agreement is governed by the laws of the Republic of South Africa.

19 AUTHORITY

Each person signing this Agreement for and on behalf of a Party hereto hereby warrants in his or her official capacity that he or she is duly authorised by such Party to do so.

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ANNEXURES

A	OHSC Strategic and Annual Performance Plan
B	OHSC Delegation of Authority Framework

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L.M.