

## HEALTH SERVICES

### PARTICIPATING HOSPITAL AGREEMENT

**THIS AGREEMENT**, made and entered into on the date set forth on the signature page hereto, by and between .....(the "Hospital"), a facility duly licensed under the laws of Kenya and Health Services ("HS").

**WHEREAS**, HS provides a plan of health care benefits (the "Health") to individuals and their eligible family members and dependants who contract with HS or who are the beneficiaries of a contract with HS for such benefits ("Members"), and in connection with such Plan, arranges for the provision of health care services, including Hospital Services, to such Members; and

**WHEREAS**, the Hospital desires to provide Hospital Services to Members in accordance with the terms and conditions of this Agreement as hereinafter set forth; and

**WHEREAS**, HS desires to arrange for the services of the Hospital for the benefit of the Members of the Plan.

**NOW, THEREFORE**, in consideration of the foregoing recitals and the mutual covenants and promises herein contained and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties hereto agree and covenant as follows:

#### PART I. DEFINITIONS

*Covered Services* means those health services and benefits to which Members are entitled under the terms of the applicable Health Maintenance Certificate, which may be amended by HS from time to time.

*Emergency Services* means those Medically Necessary services provided in connection with an "Emergency," defined as a sudden or unexpected onset of a condition requiring medical or surgical care which the Member receives after the onset of such condition (or as soon thereafter as care can be made available but not more than twenty-four (24) hours after onset) and in the absence of such care the Member could reasonably be expected to suffer serious physical impairment or death. Heart attacks, severe chest pain, cardiovascular accidents, haemorrhaging, poisonings, major burns, loss of consciousness, serious breathing difficulties, spinal injuries, shock, and other acute conditions as HS shall determine are Emergencies.

C. *Health Maintenance Certificate* means a contract issued by HS to a Member or an employer of Members specifying the services and benefits available under the HS's prepaid health benefits program.

D. *Hospital Services* means all inpatient services that are Covered Services.

E. *Clinical Director* means a Physician designated by HS to monitor and review the provision of Covered Services to Members.

F. *Medically Necessary services and/or supplies* means the use of services or supplies as provided by a hospital, skilled nursing facility, Physician, or other provider required to identify or treat a Member's illness or injury and which, as determined by HS's Clinical Director or its Medical Supervisory Board are:

consistent with the symptoms or diagnosis and treatment of the Member's condition, disease, ailment, or injury;

appropriate with regard to standards of good medical practice;

not solely for the convenience of the Member, his or her Physician, hospital, or other health care provider; and  
the most appropriate supply or level of service which can be safely provided to the Member. When specifically applied to an inpatient Member, it further means that the Member's medical symptoms or condition requires that the diagnosis or treatment cannot be safely provided to the Member as an outpatient.

**G.** *Member* means both an HS subscriber and his/her enrolled family members for whom premium payment has been made.

**H.** *Participating Physician* means a doctor who, at the time of providing or authorising services to a Member, has contracted with or on whose behalf a contract has been entered into with HS to provide professional services to Members.

**I.** *Participating Provider* means a doctor, hospital, skilled nursing facility, home health agency, or any other duly licensed institution or health professional under contract with HS to provide health care services to Members. A list of Participating Providers and their locations is available to each Member upon enrolment. Such list shall be revised from time to time as HS deems necessary.

**J.** *Physician* means a duly licensed doctor of medicine.

**K.** *Primary Care Physician* means a Participating doctor who provides primary care services to Members (e.g., general or family practitioner, internist, paediatrician, or such other physician speciality as may be designated by HS) and is responsible for referrals of Members to referral Physicians, other Participating Providers, and if necessary, non-Participating Providers.

## **PART II. HOSPITAL OBLIGATIONS**

**A.** Hospital shall provide to Members those Hospital Services which Hospital has the capacity to provide. Such services shall be provided by Hospital in accordance with the provisions of its Articles of Incorporation and bylaws and medical staff bylaws and the appropriate terms of this Agreement.

**B.** Hospital shall render Hospital Services to Members in an economical and efficient manner consistent with professional standards of medical care generally accepted in the medical community. Hospital shall not discriminate in the treatment of members and, except as otherwise required by this Agreement, shall make its services available to Members in the same manner as to its other patients. In the event that an admission of a Member cannot be accommodated by Hospital, Hospital shall make the same efforts to arrange for the provision of services at another facility approved by HS that it would make for other patients in similar circumstances. In the event that Hospital shall provide Member non-Covered Services, Hospital shall, prior to the provision of such non-Covered Services, inform the Member:

of the service(s) to be provided,  
that HS will not pay for or be liable for said services, and  
that Member will be financially liable for such services.

**C.** Except in an Emergency, Hospital shall provide Hospital Inpatient Services to a

Member only when Hospital has received certification from HS in advance of admission of such Member. Services which have not been so approved or authorised shall be the sole financial responsibility of Hospital.

D. If, and to the extent that, the Hospital is not authorised to perform pre-admission testing, the Hospital agrees to accept the results of qualified and timely laboratory, radiological, and other tests and procedures which may be performed on a Member prior to admission. The Hospital will not require that duplicate tests or procedures be performed after the Enrolee is admitted, unless such test and procedures are Medically necessary.

E. In an emergency, Hospital shall immediately proceed to render medically necessary services to the Member. Hospital shall also contact HS within twenty-four (24) hours of the emergency treatment visit or emergency admission. HS has 24-hour on-call coverage for notification of emergency services or admits.

If Hospital fails to notify HS within the required time period, neither HS nor the Member shall be liable for charges for Hospital services rendered subsequent to the required notification period that are deemed by HS not to be medically necessary.

F. Hospital shall co-operate with and abide by HS's programs that monitor and evaluate whether Hospital services provided to Members in accordance with this Agreement are Medically necessary and consistent with professional standards of medical care generally accepted in the medical community. Such programs include, but are not limited to, utilisation management, quality assurance review, and grievance procedures. In connection with HS's programs, Hospital shall permit HS's utilisation management personnel to visit Members in the Hospital and, to the extent permitted by applicable laws, to inspect and copy health records (including medical records) of Members maintained by Hospital for the purposes of concurrent and retrospective utilisation management, discharge planning, and other program management purposes.

G. Hospital shall co-operate with HS in complying with applicable laws relating to HS.

### **PART III. RECORDS**

A. Hospital shall maintain with respect to each Member receiving Hospital Services pursuant to this Agreement a standard hospital medical record in such form, containing such information, and preserved for such time period(s) as are required by the rules and regulations of Health.

The original hospital medical records shall be and remain the property of Hospital and shall not be removed or transferred from Hospital except in accordance with applicable laws and general Hospital policies, rules, and regulations relating thereto; provided, however, that HS shall have the right, in accordance with paragraph (B) below, to inspect, review, and make copies of such records upon request.

B. Upon consent of the Member and a request for such records or information, Hospital shall provide copies of information contained in the medical records of Members to other authorised providers of health care services and to HS for the purpose of facilitating the delivery of appropriate health care services to Members and carrying out the purposes and

provisions of this Agreement, and shall facilitate the sharing of such records among health care providers involved in a Member's care. HS, shall have the right upon request to inspect at reasonable times and to obtain copies of all records that are maintained by Hospital relating to the care of Members pursuant to this Agreement.

#### **PART IV. INSURANCE AND INDEMNIFICATION**

Hospital shall secure and maintain at its expense throughout the term of this Agreement such policy or policies of general liability and professional liability insurance as shall be necessary to insure Hospital, its agents, and its employees against any claim or claims for damages arising by reason of injury or death, occasioned directly or indirectly by the performance or non-performance of any service by Hospital, its agents, or its employees.

Hospital and HS each shall indemnify and hold the other harmless from any and all liability, loss, damage, claim, or expense of any kind, including costs and legal fees, arising out of the performance of this Agreement and for which the other is solely responsible.

#### **PART V. MEDICAL STAFF MEMBERSHIP**

Notwithstanding any other provision of this Agreement, a Participating doctor may not admit or treat a Member in the Hospital unless he/she is a member in good standing of Hospital's organized medical staff with appropriate clinical privileges to admit and treat such Member.

#### **PART VI. HS OBLIGATIONS**

**A.** HS shall provide to or for the benefit of each Member an identification card, which shall be presented, for purposes of assisting Hospital in verifying Member eligibility. In addition, HS shall maintain other verification procedures by which Hospital may confirm the eligibility of any Member.

**B.** HS shall provide thirty (30) days' advance notice to Hospital of any changes in covered Services or in the co-payments or conditions of coverage applicable thereto.

**C.** HS will, whenever an individual, admitted or referred, is not a Member, advise Hospital within thirty (30) days from the date of receipt of an invoice from Hospital for services to such an individual. In such cases, Hospital shall directly bill the individual or another third party payer for services rendered to such individual.

**D.** In the event that continued stay or services are denied after a patient has been admitted, HS or its representative shall inform the patient that services have been denied.

**E.** HS will provide the hospital with a monthly list of eligible members and or a monthly list of ineligible members.

#### **PART VII. USE OF NAME**

Except as provided in this paragraph, neither HS nor Hospital shall use the other's name, symbols, trademarks, or service marks in advertising or promotional material or otherwise. HS shall have the right to use the name of Hospital for purposes of marketing, informing Members of the identity of Hospital, and otherwise to carry out the terms of this Agreement. Hospital shall have the right to use HS's name in its informational or promotional materials

with HS's prior approval, which approval shall not be unreasonably withheld.

#### **PART VIII. COMPENSATION**

Hospital will be compensated by HS for all Medically Covered Services provided to Members in accordance with the provisions of Attachment A annexed hereto and incorporated herein.

#### **PART IX. PAYMENT TO HOSPITAL BY HS**

For Hospital Services rendered to Members, Hospital shall invoice HS. Except for Hospital Services which HS determines require further review under HS's utilisation management procedures, or when there are circumstances which are beyond the control of HS, including submission of incomplete claims, HS shall make payment of invoices for Hospital Services within thirty (30) calendar days after the HS's receipt thereof. HS authorised co-payments shall be collected by the Hospital from the Member and the Member shall be solely responsible for the payment of such co-payments. All billings by Hospital shall be considered final unless adjustments are requested in writing by Hospital within thirty (30) days after receipt of original billing by HS, except for circumstances which are beyond the control of Hospital. No payment shall be made unless the invoice for services is received within thirty (30) days after the date of discharge of the Member or date of service, whichever occurs later. Hospital shall interim bill HS every thirty (30) days for patients whose length of stay is greater than thirty (30) days.

#### **PART X. PROHIBITIONS ON MEMBER BILLING**

Hospital hereby agrees that in no event, including, but not limited to, non-payment by HS, HS's insolvency, or breach of this Agreement, shall Hospital bill, charge, collect a deposit from, seek compensation, remuneration, or reimbursement from, or have any recourse against a Member or persons other than HS acting on a Member's behalf for services provided pursuant to this Agreement. This provision shall not prohibit collection of co-payment on HS's behalf in accordance with the terms of the Health Maintenance Certificate between HS and Member. Hospital further agrees that:

- (I) this provision shall survive the termination of this Agreement regardless of the cause giving rise to termination and shall be construed to be for the benefit of the Member; and
- (II) this provision supersedes any oral or written contrary agreement now existing or hereafter entered into between Hospital and Member, or persons acting on their behalf.

#### **PART XI. INSPECTION OF RECORDS**

Upon request, and at reasonable times, HS and Hospital shall make available to the other for review such books, records, utilisation information, and other documents or information relating directly to any determination required by this Agreement. All such information shall be held by the receiving party in confidence and shall only be used in connection with the administration of this Agreement.

#### **PART XII. COORDINATION OF BENEFITS**

Hospital agrees to co-operate with HS toward effective implementation of any provisions of HS's Health Maintenance Certificates relating to co-ordination of benefits and claims by third parties. Hospital shall forward to HS any payments received from a third party payer for authorised Hospital Services where HS has made payment to Hospital covering such Hospital Services and such third party payer is determined to be primarily obligated for such Hospital Services under applicable co-ordination of Benefits rules. Such payment shall not exceed the amount paid to Hospital by HS. Except as otherwise required by law, Hospital agrees to permit HS to bill and process forms for any third party payer on Hospital's behalf, or to bill such third party directly, as determined by HS. Hospital further agrees to waive, when requested, any claims against third party payers for its provision of Hospital Services to Members and to execute any further documents that reasonably may be required or appropriate for this purpose. Any such waiver shall be contingent upon HS's payment to Hospital of its (HS's) obligations for charges incurred by Member.

### **PART XIII TERM AND TERMINATION**

**A.** This Agreement shall take effect on the "effective date" set forth on the signature page and shall continue until terminated as provided herein.

(I) Either party may terminate this Agreement without cause upon at least ninety (90) days' written notice prior to the term of this Agreement.

(II) Either party may terminate this Agreement with cause upon at least thirty (30) days' prior written notice.

**B.** HS shall have the right to terminate this Agreement immediately by notice to Hospital upon the occurrence of any of the following events:

(I) the suspension or revocation of Hospital's license

**C.** HS shall continue to pay Hospital in accordance with the provisions of Attachment A for Hospital Services provided by Hospital to Members hospitalised at the time of termination of this Agreement, pending clinically appropriate discharge or transfer to an HS-designated hospital when medically appropriate as determined by HS. In continuing to provide such Hospital Services, Hospital shall abide by the applicable terms and conditions of this Agreement.

### **PART XIV. ADMINISTRATION**

Hospital agrees to abide by and co-operate with HS administrative policies including, but not limited to, claims procedures, co-payment collections, and duplicate coverage/subrogation recoveries. Nothing in this Agreement shall be construed to require Hospital to violate, breach, or modify its written policies and procedures unless specifically agreed to herein.

### **PART XV. MEMBER'S' GRIEVANCES**

Hospital agrees to co-operate in and abide by HS grievance procedures in resolving Member's grievances related to the provision of Hospital Services. In this regard, HS shall bring to the

attention of appropriate Hospital officials all Member complaints involving Hospital, and Hospital shall, in accordance with its regular procedure, investigate such complaints and use its best efforts to resolve them in a fair and equitable manner. Hospital agrees to notify HS promptly of any action taken or proposed with respect to the resolution of such complaints and the avoidance of similar complaints in the future. The Hospital shall notify the HS after it has received a complaint from an HS Member.

## **PART XVI. MISCELLANEOUS**

If any term, provision, covenant, or condition of this Agreement is invalid, void, or unenforceable, the rest of the Agreement shall remain in full force and effect. The invalidity or unenforceability of any term or provision hereof shall in no way affect the validity or enforceability of any other term or provision.

**B.** This Agreement contains the complete understanding and agreement between Hospital and HS and supersedes all representations, understandings, or agreements prior to the execution hereof.

**C.** HS and Hospital agree that, to the extent compatible with the separate and independent management of each, they shall at all times maintain an affective liaison and close co-operation with each other to provide maximum benefits to Members at the most reasonable cost consistent with quality standards of hospital care.

**D.** No waiver, alteration, amendment, or modification of this Agreement shall be valid unless in each instance a written memorandum specifically expressing such waiver, alteration, amendment, or modification is made and subscribed by a duly authorised officer of Hospital and a duly authorised officer of HS.

**E.** Hospital shall not assign its rights, duties, or obligations under this Agreement without the express, written permission of HS.

**F.** None of the provisions of this Agreement is intended to create nor shall be deemed to create any relationship between HS and Hospital other than that of independent entities contacting with each other hereunder solely for the purpose of effecting the provisions of this Agreement. Neither of the parties hereto, nor any of their respective employees, shall be construed to be the agent, employer, employee, or representative of the other.

**G.** This Agreement shall be construed in accordance with the laws of Kenya.

**H.** The headings and numbers of sections and paragraphs contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

**I.** Any notice required or permitted to be given pursuant to the terms and provisions of this Agreement shall be sent by registered mail or certified mail, return receipt requested, postage prepaid, to:

Health Services  
P.O. Box 1234

Nairobi.

and to Hospital at:

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\_\_\_\_\_  
\_\_\_\_\_

**IN WITNESS WHEREOF**, the foregoing Agreement between ..... and Hospital is entered into by and between the parties, to be effective the ..... day of ....., 19.....

By:\_\_\_\_\_

Title:\_\_\_\_\_

Date:\_\_\_\_\_

HOSPITAL

By:\_\_\_\_\_

Title:\_\_\_\_\_

Date:\_\_\_\_\_