

BILATERAL AGREEMENT between

THE COLLEGES OF MEDICINE OF SOUTH AFRICA (“CMSA”)

and

THE SOUTH AFRICAN COMMITTEE OF MEDICAL DEANS (“SACOMD”)

1. Preamble

1.1 The parties recognise the need to advance the standards of education and training of medical specialists in South Africa.

1.2 The parties aim to work efficiently and effectively to fulfil their respective mandates as set out in this agreement and considering that:

The SACOMD has the standing of an informally constituted body of the Medical Deans of South African Universities registered with the Council of Higher Education to train undergraduate and postgraduate medical practitioners within the Republic of South Africa.

These Universities are mandated by Statute to offer postgraduate academic programmes which lead to the awarding of Masters degrees, including the MMed degree and:

- i. Enrol registrars in their MMed programmes for vocational and academic training as specialists;
- ii. Award Master of Medicine qualifications;
- iii. Are subject to a rigorous process of quality assurance exercised through the Council for Higher Education and the Health Professions Council of South Africa (HPCSA); and
- iv. Are responsible for the quality control of the education and continuous integrated assessment their registered students receive.

The CSMA was registered as a non-profit company in 1955. It is mandated to conduct examinations in the following:-

- i. Fellowship examinations recognised by the HPCSA for specialist registration, and by the universities as a component for the MMed degree;
- ii. Certificate Examinations which are recognised by the HPCSA for the registration of subspecialists;
- iii. Examinations for Diploma and Higher Diploma qualifications recognised by the HPCSA as additional non-specialist qualifications.

1.3 The parties have identified the need for a formal partnership to promote the shared vision of the parties by engaging in a constructive collective and synergistic manner as set out in this Agreement.

1.4 The parties also recognise the extensive overlap in their responsibilities and functions. This is reflected in the fact that many of the CMSA's functionalities are university appointees and that many of the CMSA functions are conducted by individuals in their university capacity and in University facilities.

2. Definitions

Unless otherwise stated, or the context otherwise requires, the words and expressions listed below shall bear the meanings ascribed to them:

- 2.1 **Act** – means the Health Professions Act, 1974 (Act No 56 of 1974);
- 2.2 **Agreement** – means this Bilateral Agreement including the Service Level Agreements any annexures attached to any of these documents;
- 2.3 **Confidential Information** – means information which includes, but is not limited to, all business, operational, organisational and technical knowledge, transactions and information including all documents, which have not become known to the public according to the wishes of the interest of any party or any information which is confidential as a result of the nature of the information;
- 2.4 **Effective Date** – means the date on which this agreement is signed;
- 2.5 **Examinations** – mean any examinations conducted under the auspices of the CMSA in terms of which healthcare professionals including diplomas, subspecialist certificates and Fellowships;
- 2.6 **Exit Examinations** – Examination which is a requirement for registration as Specialists and Subspecialists in in terms of the Act;
- 2.7 **HPCSA** – means the Health Professions Council of South Africa established in terms of section 2 of the Act;
- 2.8 **Parties** – means the CMSA and the SACOMD and “Party” shall have the corresponding meaning;
- 2.9 **Service Level Agreement** – means the service level agreement to be entered into between the parties with the aim of implementing this Agreement;
- 2.10 **Termination Date** – the date on which this Agreement terminates

3. Objectives of the Agreement

- 3.1 This Agreement is aimed at enabling the parties to work efficiently and effectively to fulfil their respective overlapping mandates; including the objective of the respective universities to foster an environment directed at high quality academic instruction, assessment and research, and for the CMSA, the fair, high quality, peer reviewed, summative assessment of candidates within each specialty and sub-speciality.
- 3.2 The parties undertake to foster a relationship of cooperation and support in the offering of the full spectrum of academic activities that lead to quality and sustainable specialist medical care.
- 3.3 To manage the dual responsibilities of the persons working for both parties.
- 3.4 The parties commit themselves to regular, formal communication.
- 3.5 The parties undertake to ensure that any protocols and/or policies are transparent, fair, goal-orientated and free of bias or prejudice.

4. **The Parties Commitment**

4.1 In their dealings with each other in terms of this Agreement, the Parties undertake to:

4.1.1 Respect the condition that individual members of the SACOMD are not authorized to commit their parent university to any understanding or agreement which exceeds their legal competence in terms of the authority vested in them by the statutes and established practices of the parent university.

4.1.2 The aforementioned notwithstanding, the SACOMD will:

- Strive to encourage its members to consensus decisions;
- Encourage its members to take the steps necessary to implement those decisions in their Faculties/Schools;
- Advise the CMSA on steps to be taken to engage the Universities in entering effective agreements; and
- Work with the CMSA to draft a multifaceted Service Level Agreement (SLA).

4.2 The CMSA will:

- Inform SACOMD timeously regarding any material changes in its ability to conduct fair, high quality, peer reviewed, summative assessment of candidates within each specialty and sub-speciality.
- Inform SACOMD regarding problems encountered in conducting such examinations.
- Collaborate with SACOMD related to its engagements with the HPCSA and in particular regarding renewal of any contracts with the HPCSA.
- Collaborate with SACOMD in regard to potential changes in its rules and regulation including the code of conduct for examinations and grievance procedures.

5. **Meetings of the Parties**

The parties will schedule at least two (2) meetings per year. The agenda of these meetings will be agreed upon before the date on which the respective meeting is scheduled.

6. **Authorities**

The authorities responsible for the implementation of this Agreement shall be -

6.1 In respect of the SACOMD, the Chairperson of the SACOMD; and

6.2 In respect of the CMSA, the President of the CMSA.

7. **Good Faith**

The parties undertake to display good faith with all dealing with each other.

8. Confidentiality

- 8.1 The parties recognise that information, agreed to or noted by the Parties to be confidential, may be passed from one Party to the other Party for purposes of the Agreement and that confidential information may arise from the implementation of the Agreement (“confidential information”).
- 8.2 The Parties undertake not to divulge and shall ensure that its employees shall not divulge to any person any confidential information arising from the performance of, related to or discovered in the course of the performance of the services required under this Agreement, unless:
- this is done to a duly authorised representative/s of the other Party or its own staff, and only if this is necessary for the proper rendering of the services under the Agreement;
 - with the prior written authority of the other Party;
 - ordered to do so by a court of law.
- 8.3 The Parties shall ensure that examiners, invigilators, and moderators act in accordance with this clause.
- 8.4 Neither Party may publish or publicly disclose any confidential information without the prior written consent of the other Party, which consent may not be unreasonably withheld, unless ordered by a court of law.
- 8.5 Each Party shall indemnify and hold harmless the other from and against any and all claims, demands, actions, suits or proceeding of whatever nature including, all costs and expenses incurred in connection therewith, brought or instituted by third parties and based on or arising out of that Party’s disclosure or utilisation of Confidential Information.

9. Intellectual property

- 9.1 Any and all reports produced by either Party in the performance of the services required under this Agreement, shall remain the property of that party.
- 9.2 All question paper/s and memoranda in respect of the CMSA examinations shall remain the property of the CMSA.
- 9.3 Notwithstanding the above, intellectual property rights shall vest in the Party originating or holding legal title to such property.

10. Conflict of Interest

- 10.1 For the purpose of this Agreement, conflicts of interest are interpreted as instances where an individual may reasonably be expected by both parties, by virtue of their office, to have a duty to promote the interests of these offices, and these interests are perceived to diverge.
- 10.2 Conflicts of interest may be perceived, potential or actual conflicts of interest and may include, but are not limited to, the following:
- University and/or SACOMD officers who serve on the Board, Senate, Standing Committees and Subcommittees of the CMSA.

- CMSA officers who serve on the SACOMD. and/or who have a formal association with a university/ies and who may also serve on the Board, Senate, Standing Committees and Subcommittees of the University/ies.
- 10.3 In all cases where possible conflicts of interest may arise, such officers will declare it and, if requested, recuse themselves from the discussions or activities giving rise to such conflict of interest.
- 10.4 Where a potential conflict of interest is deemed sufficiently compelling to warrant the disqualification of an officer of either Party from serving on the official structures of the other, a suitable response will be negotiated on an ad hoc basis by the President of the CMSA and the Chairperson of the SACOMD.

11. Notices and Legal Process

- 11.1 Each Party chooses this address for all purposes under this Agreement ("Chosen Address"), whether for serving court process or documents, giving any notice, or making any other communications of whatsoever nature and for whatsoever purpose under this Agreement:

Colleges of Medicine of South Africa

17 Milner Road
 RONDEBOSCH
 CAPE TOWN
 7000

Fax: 021-685-3766

The South African Committee of Medical
 Deans

Ms. Michelle Buchler
 c/o Universities of South
 Africa (USAf)

email: sacomd@usaf.ac.za

- 11.2 Any notice required or permitted under this Agreement is valid only if in writing.
- 11.3 Any Party may by notice to the other Parties change its Chosen Address to another physical address in the Republic of South Africa and that change takes effect on the seventh day after the date of receipt by the Party who last receives the notice.
- 11.4 Any notice delivered by hand to the Chosen Address of a Party before 17h00 is deemed to have been received on the date of delivery.
- 11.5 Despite anything to the contrary in this Agreement, a written notice actually received by a Party, including a notice sent by telefax or email, is an adequate notice to it even though not sent or delivered to its Chosen Address.

12. Independence

- 12.1 This Agreement shall not affect the independence of either Party, nor shall a Party be entitled or have the power or authority, for any purpose or in any form whatsoever, to:
- Enter into an agreement in the name of the other Party;
 - Give any warranty, indemnification or undertaking on the other Party's behalf; and
 - Create any liability for or against the other Party.

13. Disputes

- 13.1 In the event of a dispute arising out of this Agreement, the aggrieved Party will give written notice to the other Party of the particulars of the dispute and the parties will endeavour to resolve the said dispute within thirty (30) days after receipt of such notice.
- 13.2 Any dispute arising out of or in connection with this agreement shall be decided by arbitration in terms of this clause, notwithstanding that the rest of the agreement may have been terminated or been cancelled.
- 13.3 The Arbitrator shall be agreed between the Parties to the dispute but, failing agreement, within ten (10) days after notice requiring the dispute to be referred to arbitration is given, the Arbitrator shall be a person nominated at the request of either Party by the Arbitration Foundation of South Africa.
- 13.4 The arbitration shall be held in a location acceptable to both parties and the Parties shall endeavour to ensure that it is completed within ninety (90) days after the issuing of the arbitration notice.
- 13.5 The Arbitrator's terms of reference are to resolve the dispute as quickly, inexpensively and as fairly as possible in the circumstances by making an appropriate determination including any award for costs.
- 13.6 The procedure (including the venue and times of hearing) relating to such arbitration shall be determined by the Arbitrator in consultation with the parties.
- 13.7 Any award made by the Arbitrator shall be final and binding on the Parties.
- 13.8 The Parties are liable for the cost of the arbitration, including the arbitrator's fees and costs of the venue, in equal shares. Notwithstanding any other clause in this Agreement, the Arbitrator may make any award as to costs for the arbitration.
- 13.9 The particulars of the dispute, the arbitration proceedings and the Arbitrator's award shall as far as practicable, be kept confidential by both all Parties.

14. General and miscellaneous**14.1 Sole record of agreement**

This Agreement constitutes the sole record of the agreement between the Parties with regard to the subject matter hereof. No Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.

14.2 No amendments except in writing

No addition to, variation or agreed cancellation of, or waiver of any right under this Agreement shall be of any force or effect unless recorded in writing and signed in manuscript by or on behalf of the Parties, and no form of electronic signature or electronic communication or exchange shall constitute compliance with this requirement.

14.3 Waivers

No relaxation or indulgence which any Party may grant to any other shall constitute a waiver of the rights of that Party and shall not preclude that Party from exercising any rights which may have arisen in the past or which might arise in future.


14.4 Survival of obligations

Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect.

14.5 Approvals and consents

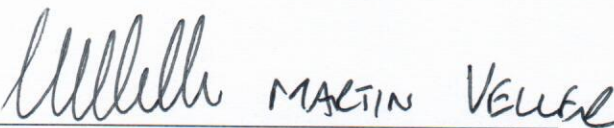
An approval or consent given by a Party under this Agreement shall only be valid if in writing and shall not relieve the other Party or Parties from responsibility for complying with the requirements of this Agreement nor shall it be construed as a waiver of any rights under this Agreement except as and to the extent otherwise expressly provided in such approval or consent, or elsewhere in this Agreement.

Signed at Pretoria on 26 January 2018


Mike SATHAKSE

Colleges of Medicine of South Africa

Signed at Johannesburg on 23 January 2018


Mluleki MARTIN VELLER

The South African Committee of Medical Deans

MATTERS TO BE MANAGED IN THE SERVICE LEVEL AGREEMENTS**1. Disciplinary Measures and Procedures**

The CMSA's Code of Conduct for Examination shall apply to all candidates and all examinations held under the auspices of the CMSA. The CMSA will on a quarterly basis, or when reasonably requested, provide the relevant University with a report on disciplinary matters relating to its students or staff.

2. Grievances and Complaints

The CMSA will advise candidates who participate in examinations held under the auspices of the CMSA that any and all complaints relating to the examinations shall be lodged in writing with the Academic Registrar of the CMSA in accordance with the CMSA's Appeals Mechanism Policy. The CMSA will on a biannual basis, or when reasonably requested, provide the relevant University with a report on grievances or complaints lodged, pending investigations and/or any outcomes thereof.

3. Any other matters agreed to between the parties from time to time