



## STANDARD TERMS AND CONDITIONS OF THE AGREEMENT BETWEEN COLLIER AND MALAN COLLECTIONS (PTY) LTD

(Registration number 2016/302364/07)

### AND THE CLIENT

#### 1 INTERPRETATION

In this agreement, clause headings are for convenience and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention:

An expression which denotes the singular shall include the plural, and vice versa, and words importing the masculine gender shall include the feminine gender, and words importing persons shall include partnerships and bodies corporate, and vice versa;

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

**“Administration Fee”** means the percentage as set forth in the schedule contained in paragraph 1 of the agreement, which excludes VAT;

**“Business Day”** any day which is not a Saturday, Sunday or official public holiday in South Africa;

**“Face Value”** means the full value of the Debtor’s account, including VAT, where applicable, as accepted by the Agent, including any subsequent adjustments such as credit notes;

**“Factoring Fee”** means the percentage as set forth in the schedule contained in paragraph 1 of the agreement, which excludes VAT;

**“Debtor”** means the person or entity that is responsible for paying the Client for services rendered to the patient in each given instance, even if it is the patient himself or its guardian;

**“Implementation Date”** means the date on which the rights and obligations of the respective parties become enforceable and shall be the date as identified in paragraph 1 of the agreement;

**“Prime”** means the Prime Interest Rate as quoted by Standard Bank of South Africa from time to time;

**“Signature Date”** means the date of signature hereof by both Parties;

**“The Client”** means the client as identified in paragraph 1 on the agreement;

**“The Agent”** means the Agent as identified in paragraph 1 on the agreement;

**“VAT”** Value-Added Tax levied in terms of the VAT Act 89 of 1991, as amended;

Any reference to any statute, regulation or other legislation shall be a reference to that statute, regulation or other legislation as at the commencement date, and as amended or substituted from time to time.

Any term defined in the covering agreement or anywhere else other than this clause, that term shall bear the meaning ascribed to it in that clause wherever it is used in this agreement.

Where any number of days is to be calculated from a particular day, such number shall be calculated as excluding such particular day and commencing on the next day. If the last day of such number so calculated falls on a day which is not a Business Day, the last day shall be deemed to be the next succeeding day which is a Business Day.

References to day/s, month/s or year/s shall be construed as calendar day/s, month/s or year/s.

The rule of construction that the contract shall be interpreted against the party responsible for the drafting or preparation of the agreement, shall not apply.

## **2 FACTORING**

- 2.1 The Agent shall provide collection services to the Client in respect of the accounts, as recorded in paragraph 1 of the agreement;
- 2.2 Once the account has been received by the Agent, same can in accordance with the provisions of this agreement be purchased from the Client at the Face Value thereof less the Factoring Fee.
- 2.3 The Factoring Fee shall be calculated as the percentage, contained in paragraph 1 of the agreement, of the Face Value of any of the factored accounts, purchased from the Client from Implementation Date forward, plus VAT.
- 2.4 The Client hereby sells, cedes, assigns, transfers and makes over to the Agent all its right, title and interest in and to the factored accounts whether existing or future as provided for in terms of this agreement.
- 2.5 The sale of each such individual account shall be subject to the terms and conditions as contained in this agreement.
- 2.6 The Client shall not, whilst this agreement is in force, be entitled to sell, cede, transfer or make over any of its accounts as defined, to any third party.
- 2.7 The Agent's liability to pay factored accounts becomes due, in the week in which the account was received, provided that such liability becomes payable subject to the conditions set forth in paragraph 6.
- 2.8 The Agent shall retain the right to vary the Factoring Fee, which right of variation shall be exercised within the Agent's sole discretion, provided that the Agent shall give the Client 30 (thirty) days' written notice of each such variation, during which period of notice, the prevailing Factoring Fee shall remain of force and effect subject to the provisions of paragraph 3.9 below.
- 2.9 In the event of a change in the Prime interest rate charged by the Agent's financier from time to time, the Agent shall be entitled, but shall not be obliged, to effect an immediate change to the Factoring Fee, without notice to the Client.
- 2.10 UNPAID ACCOUNTS
- 2.10.1 In the event of the Client allowing discount on any account that has already been purchased by the Agent from the Client, the Client shall remain liable and indebted to the Agent, with immediate effect, in an amount equal to the discount.
- 2.10.2 In the event of the Client writing off any account that has already been purchased by the Agent from the Client, the Client shall remain liable and indebted to the Agent, with immediate effect, in an amount equal to the Face Value in respect of such written off account. Which Face Value will be set off against any payments due to the Client.
- 2.10.3 In the event of the Debtor for any reason whatsoever not paying any factored account of the Client within 180 (one hundred and eighty) days calculated as from the date of purchase on the particular account, then the factoring service applicable to that account will expire, and the purchase price of that account, exclusive of any interest, will become due and payable immediately by the Client. Subject to paragraph 6.3, any such amount will be set-off against any monies due and payable by the Agent to the Client at any given time.
- 2.10.4 Once any amount due by the Client in terms of this paragraph has been settled in full, the Agent shall, in as far as may be necessary and when requested thereto in writing, cede and assign any and all right, title and interest as the Agent may have in and to the uncollectable account back to the Client.
- 2.10.5 The Agent shall continue to pursue collection for the account to which paragraph 3.10.3 above applies, on the same basis as before. Should monies due on such accounts be collected, the terms and conditions as set out in paragraph 4 shall dictate.

## **3 ADMINISTRATION**

- 3.1 The Agent shall provide collection services to the Client in respect of the accounts, as recorded in paragraph 1 of the agreement, which are not factored as per paragraph 3 above.
- 3.2 In exchange for the collection services provided by the Agent to the Client, the Client agrees and undertakes to pay to the Agent the Administration Fee, as referred to in paragraph 1 of the agreement, plus VAT.
- 3.3 The Administration Fee shall be calculated as the percentage, contained in paragraph 1 of the agreement, of the Face Value of all collected accounts for a monthly period.
- 3.4 The Agent shall retain the right, in its sole discretion, to vary the Administration Fee, provided that the Agent shall give the Client 30 (thirty) days' written notice of each such variation during which period of notice, the prevailing Administration Fee shall remain of force and effect.

3.5 The Agent's liability to pay the Client for an administration account becomes due, in the week in which a Debtor pays an account into the Deposit account designated in paragraph 7, provided that such liability becomes payable subject to the conditions set forth in paragraph 6.

3.6 The Client hereby agrees and consents to the Administration Fee, contemplated in paragraph 1 of the agreement, being a first charge out of any monies paid due to the Client in terms of the administration accounts.

#### **4 RIGHTS AND DUTIES**

4.1 The Agent shall consider each account submitted to it by the Client for the administration thereof so as to establish, prima facie, that the relevant account is in proper form as required.

4.2 The Agent shall advise the Client within 7 (seven) days of delivery of the account, of the Agent's decision as to whether or not it will accept such account or whether it contains any deficiencies which require resolution.

4.3 The Agent shall, where required and appropriate, implement legal debt recovery proceedings in terms of and in accordance with applicable debt recovery legislation, and the Client's governing ethical rules, in its sole discretion. By his/her signature hereto, the Client mandates the Agent and appoints it as their or its agent to act on its behalf, sign all documents necessary and instruct attorneys where necessary and required for purposes of such collection processes.

4.4 All monies received, in cash, electronic transfer or by other means, by the Client from any Debtor or patient, whether directly or indirectly, for services rendered to the patient as defined in this agreement, shall be deposited by the Client into the Deposit account as stated in paragraph 7 below. Alternatively, such amounts received by the Client shall be set off against amounts due to the Client in terms of paragraphs 6.3. Should such set off result in an amount owing to the Agent, the Client shall settle such amount on demand.

4.5 The Agent shall collect the accounts of the Client as per paragraph 1 of the agreement, under its own name and shall not make use of the name of the Client in all documents, other than to identify that the Agent is acting on behalf of the Client.

#### **4.6 PRESCRIBED ACCOUNTS**

4.6.1 The Client will not hand over accounts for collection that has prescribed or are within a 9 (nine) month period of being prescribed.

4.6.2 The Client hereby indemnifies the Agent for damages arising, of whatsoever nature, if and when an account handed over to the Agent for collection, was prescribed at the time of handover or becomes prescribed.

4.6.3 The Agent will not continue to collect on prescribed accounts as this will be in breach of Section 126B of the National Credit Act. The obligation however to identify prescribed accounts will be the obligation of the Client.

4.6.4 If the Agent suffers any damages of whatsoever nature due to the Client not disclosing the fact that an account has prescribed, due to error/negligence/intent by the Client, the Agent will have the right to recover such damages from the Client.

4.6.5 The Client will, when handing over an account, disclose the date of services rendered, date of cause of action, amount last paid and the date when last payment was made to the Agent.

#### **5 PAYMENT OF AMOUNTS DUE**

##### **5.1 FACTORED ACCOUNTS**

5.1.1 The Agent shall pay to the Client the purchase price in respect of all accounts purchased by it as prescribed in paragraph 6.3 below, provided that any such account is accepted by the Agent as provided for in terms of paragraph 5, net of all accounts which are unpaid as provided for in terms of paragraph 3.10 above.

5.1.2 The Agent shall pay such purchase price directly into the bank account as nominated by the Client in paragraph 1 of the agreement.

5.1.3 In the event of the Agent purchasing an account, which the Debtor has already effected, or subsequently effects payment directly to the Client, the Agent shall have the right to recover the Face Value of such account from the Client.

5.1.4 In the event of the Debtor paying money to the Agent in respect of any accounts falling outside the scope of this agreement, the Agent shall pay such monies to the Client.

##### **5.2 ADMINISTRATION ACCOUNTS**

5.2.1 Upon the Debtor paying money to the Agent in respect of the administration accounts of the Client, during the subsistence of this agreement, the Agent shall pay such monies to the Client, net of the Agent's Administration Fee plus VAT as prescribed in paragraph 6.3 below.

5.2.2 In the event of the Debtor paying money to the Agent in respect of any accounts falling outside the scope of this agreement, the Agent shall pay such monies to the Client as prescribed in paragraph 6.3 below.

##### **5.3 DATE, COMBINING AND SET-OFF OF PAYMENT**

- 5.3.1 Amounts due by the Agent to the Client under paragraph 6.1 will be payable to the Client on every Friday of the week following the week in which they became due.
- 5.3.2 Paragraphs 6.1, 6.2, and 6.3 above are subject to the provisions of paragraphs 8 and 11 below.
- 5.3.3 In the event of there being insufficient money due and payable by the Agent to the Client, against which to set-off any amounts due by the Client to the Agent under paragraphs 2, 3, 6, 8 and 11, such amounts shall be payable by the Client to the Agent on demand. The Agent's right of set-off as provided for herein shall not exclude any other legal remedies to which the Agent may ordinarily have recourse in respect of the recovery of any sums due by the Client to the Agent.

## **6 DEPOSIT ACCOUNT**

- 6.1 The Agent shall open a trust account at a financial institution of its choice into which all payments due by the Debtor shall be deposited.
- 6.2 The trust account shall be in the name of the Agent and the only signatories thereto shall be those signatories of the Agent.
- 6.3 The Client shall have no right, title or interest of any nature whatsoever in and to such account.
- 6.4 All bank charges and costs will be for the account of the Agent.

## **7 FRAUDULENT TRANSACTIONS**

- 7.1 In the event of the Debtor not accepting liability in respect of any given account purchased by the Agent from the Client on the ground that such account or any information given for purposes of preparing such an account has in any respect been fraudulently issued, rendered, tendered and/or submitted by the Client or by any director, partner, member, trustee or employee thereof, as the case may be, irrespective of whether or not the account in question was actually fraudulently issued, rendered, tendered and/or submitted by the Client or by any director, partner, member, trustee or employee thereof, or in the event of the Agent, in the Agent's sole discretion, detecting or suspecting fraud in respect of any given account submitted by the Client to the Agent, irrespective of whether or not the account in question was actually fraudulently issued, rendered, tendered and/or submitted by the Client or by any director, partner, member, trustee or employee thereof, then the Agent shall have the right to cancel this agreement with immediate effect.

## **8 BREACH**

- 8.1 Should either party breach any provision of this agreement and fail to remedy such breach within 30 (thirty) days after receiving written notice requiring such remedy, then (irrespective of the materiality of such breach or provision) the other party shall be entitled, without prejudice to its other rights in law including any right to claim damages, to cancel this agreement or to claim immediate specific performance of all of the defaulting party's obligations whether or not otherwise then due for performance. No such cancellation shall affect any rights and obligations which may have accrued in terms of this agreement prior to the date of such cancellation.

## **9 DOMICILIUM AND NOTICES**

- 9.1 The parties choose domicilium citandi et executandi ("domicilium") for all purposes relating to this agreement, including the giving of any notice, the payment of any sum, the serving of any process, as follows –
- 9.1.1 The Agent's physical address:
- COLLIER AND MALAN COLLECTIONS (PTY) LTD  
Ground Floor, Oasim South Building  
Pearson Street  
Central  
Port Elizabeth  
6001
- marked for the attention of The General Manager
- 9.1.2 The Client – the physical, postal and facsimile details contained in paragraph 1 of the agreement.
- 9.2 Either party shall be entitled from time to time, by giving written notice to the other, to vary its physical domicilium to any other physical address (not being a post office box or poste restante) within the Republic of South Africa, to vary its postal domicilium to any other postal address within the Republic of South Africa and to vary its email domicilium to any other email address.

- 9.3 Any notice given, or payment made by either party to the other ("addressee") shall be delivered by hand between the hours of 09:00 and 17:00 on any Business Day to the addressee's physical domicilium for the time being and shall be deemed to have been received by the addressee at the time of delivery.
- 9.4 Any notice given by either party to the other by way of email shall be deemed to have been received by the addressee on the date of transmission of the email, provided such day is a Business Day, failing which it will be deemed to be received on the next succeeding Business Day.
- 9.5 This paragraph shall not operate so as to invalidate the giving or receipt of any written notice which is actually received by the addressee other than by a method referred to in this paragraph.
- 9.6 Any notice in terms of or in connection with this agreement shall be valid and effective only if in writing and if received or deemed to be received by the addressee.

## 10 CANCELTION

- 10.1 Either party shall be entitled to cancel this agreement on 3 (three) calendar months' written notice to the other provided that no such right of cancellation may be exercised within the first 6 (six) months of the continuance in force of this agreement, except insofar as the provisions in paragraph 8, 9 and 11.2 apply.
- 10.2 In the event that the Client fails to disclose material information or communication to the Agent at time of entering into this agreement or at any time thereafter, the Agent may cancel the agreement with immediate effect regardless of paragraph 11.1.
- 10.3 In the event of this agreement being cancelled or terminated for any reason whatsoever, then:
- 10.3.1 The Agent will effect a reconciliation to be done substantially in accordance with the following formula within 7 (seven) days after the end of the notice period, except in the case of fraud where the reconciliation will be done immediately and, on the basis, prescribed by paragraph 8:

$$A = B - (C + D + E)$$

A = Balance due to the Agent / (the Client)

B = Sum of all Claims bought by the Agent at Face Value

C = Sum of all payments received from Debtors

D = Sum of all rejected and unpaid ACCOUNTS reversed in terms of paragraph 3.10.3

E = Sum of any monies due in terms of Administration accounts referred to in paragraph 4

- 10.3.2 Any amount due shall be paid by the Client to the Agent within 7 days of demand thereto
- 10.4 In the event of the Client, at any time during the subsistence of this agreement, ceasing to practice, whether only under the above practice number or in the entity being the party hereto or completely alienating or disposing of its practice or business and those accounts forming a portion of the subject matter of such sale/disposal, the Client shall immediately notify the Agent in writing of such fact.
- 10.5 The Client shall when it ceases to practice, alienation or disposal of the practice or part thereof, immediately become indebted to the Agent in respect of any money due and payable by the Client to the Agent in terms of this agreement, which amount shall be payable on demand.
- 10.6 The aforesaid provisions in this paragraph 11 shall similarly apply in the event of a change of ownership of the Client where the Client is a legal person.

## 11 GOOD FAITH

- 11.1 In the implementation of this agreement, the Parties undertake to observe the utmost good faith and warrant their dealings with each other that they shall neither do anything nor refrain from doing anything that might prejudice or detract from the rights, assets or interests of either party.

## 12 DISPUTE RESOLUTION

- 12.1 All disputes in terms of or resulting from this Agreement including disputes regarding the meaning of or interpretation of a condition of this Agreement or the execution of any such condition or the quantification or determination of an amount or any other matter in dispute, shall be referred to arbitration.
- 12.2 Should any dispute arise any party shall be entitled to require by written notice to the other party that the dispute be referred to arbitration and which notice shall clearly disclose the details of the dispute.

- 12.3 Subject to the provisions of this clause, such arbitration will be held in terms of the arbitration laws for the time being in force in the Republic of South Africa.
- 12.4 The arbitrator will be an independent person appointed within 5 (five) days of the date upon which such arbitration had been requested, and in the absence of an agreement such an arbitrator will be appointed by the Chairman, and if the Chairman cannot or refuses to do so, then by the Vice-Chairman for the time being of the Law Society of the Eastern Cape.
- 12.5 Immediately upon the appointment of such an arbitrator; the party requesting such arbitration may request a date and place when and where the arbitration proceedings will take place.
- 12.6 Such arbitration shall take place in Port Elizabeth under the formalities and procedures as determined by the arbitrator and may be held in an informal and summary manner, on the basis that it shall not be necessary to observe or carry out the usual formalities and procedures, pleading and discovery or the strict rules of evidence.
- 12.7 Failing an agreement between the Parties or a decision by the arbitrator, a party wishing to use a document, photo, sound or video recording, or any item of an evidentiary nature (hereafter referred to as "the exhibits"), must supply details thereof, to the arbitrator and the other party to the arbitration at least 10 (ten) days before the arbitration date. Such notice must include an address where the exhibits may be inspected and the party giving notice, if so requested by the other party, shall supply a copy of the exhibits. The costs of making such copies will be the costs in the cause of the arbitration.
- 12.8 The arbitration shall take place as soon as possible after it has been requested with a view to its possible finalisation within 30 (thirty) days of its request.
- 12.9 The arbitrator shall be entitled to make an award, including an award for specific performance, an interdict, damages or a penalty, including an award as to costs including, if applicable, costs on the attorney and own client scale.
- 12.10 An award made by the arbitrator:
- 12.10.1 shall be final and binding on the Parties to the Agreement; and
- 12.10.2 may be made an order of any court to whose jurisdiction the Parties are subject.
- 12.11 Nothing contained in this clause shall prevent any of the Parties, pending the award of the arbitrator, from obtaining interim relief on an urgent or other basis, from a court with competent jurisdiction.

### **13 SURETYSHIP**

- 13.1 I/We, signed in the agreement as surety/sureties (hereinafter referred to as "the surety/sureties") do hereby bind myself/ourselves to the Agent, as defined in the Agreement to which this suretyship is attached, hereinafter referred to as the "main agreement", as surety/sureties and co-principal debtor/s jointly and severally for the due performance by the Client of the Client's obligations of whatsoever nature and howsoever arising from the main agreement.
- 13.2 The surety/sureties specifically waive/s and renounce/s the benefits of excussion and division.
- 13.3 All admission/s by the Client to the Agent are binding on the surety/sureties, including tacit and implied acknowledgements.
- 13.4 Any leniency granted by the Agent to the Client or surety/sureties at any time is not a waiver of any rights or claims of the Agent against the surety/sureties.
- 13.5 Notwithstanding any part performance of any obligation by the surety/sureties, the surety/sureties has no right to take any action against the Client or any other surety for the Client in respect of the part performance until the obligations of the Client to the Agent have been discharged in full.
- 13.6 The surety/sureties shall not be released from its liability if the Agent makes any payment to the Client which it ought to not have made; or withholds performance from the Client which ought to have been performed; or allows the Client to breach its obligations to the Agent; or fails to take or prosecute to its conclusion any action against the Client; or in any manner prejudices the rights of the surety/sureties or Client.
- 13.7 The terms of any agreement between the Agent and the Client is at all times within the discretion of the Agent and the surety/sureties shall not be released from any liability by reason of the Agent entering into such an agreement or any failure on the part of the Client to perform in whole or in part under any such agreement.
- 13.8 The surety/sureties waive/s all its rights to rely upon prescription of any obligations created by this deed.
- 13.9 Any obligation of the Client for which the surety/sureties is/are liable shall be established by a certificate under the signature of any one director of the Agent and the surety/sureties shall bear the onus in proving any error in such certificate.