
TERMS OF REFERENCE FOR THE HEALTH SECTOR ANTI-CORRUPTION FORUM (“HSACF”)

**REGARDING MUTUAL COLLABORATION, CO-OPERATION AND ASSISTANCE
RELATING TO ADDRESSING KEY VULNERABILITIES IDENTIFIED IN THE
HEALTH SECTOR**

ADOPTED AND AGREED TO BY:

THE SPECIAL INVESTIGATING UNIT (“SIU”)

a statutory entity established by Proclamation No. R. 118 of 31 July 2001 under section 2(1) of the Special Investigating Units and Special Tribunals Act 74 of 1996 (“the SIU Act”) herein represented by Adv. JL Mothibi in his capacity as the Head of the Special Investigating Unit

AND

NATIONAL DEPARTMENT OF HEALTH (“NDoH”)

a national department established in terms of section 7 of the Public Service Act, Proclamation No. 103 of 1994, herein represented by Ms MP Matsoso in her capacity as Director-General

AND

THE COUNCIL FOR MEDICAL SCHEMES (“CMS”)

a statutory body established by the Medical Schemes Act, No. 131 of 1998 to provide regulatory supervision of private health financing through medical schemes herein represented by Dr Kabane in his capacity as the Chief Executive Officer / Registrar

AND

THE DIRECTORATE FOR PRIORITY CRIME INVESTIGATION (“DPCI”)

established as an independent directorate within the South African Police Service in terms of Section 17C of the South African Police Service Act, 1995 as amended by the South African Police Service Amendment Act, 2008 (Act 57 of 2008), herein represented by General SG Lebeya in his capacity as National Head of DPCI

AND

THE FINANCIAL INTELLIGENCE CENTRE (“FIC”)

Established by the Financial Intelligence Centre Act, 2001 (Act 38 of 2001), herein represented by Advocate X. Khanyile in her capacity as the Director

AND

THE HEALTH FUNDERS ASSOCIATION (“HFA”)

a non-profit organisation representing stakeholders involved in the funding of private healthcare in South Africa, and representing the entities listed in annexure “B”, herein represented by Ms L. Mosiah in her capacity as the Chief Executive Officer

AND

THE HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA (“HPCSA”)

established in terms of section 2 of the Health Professions Act, No. 56 of 1974, herein represented by Dr M.R Billa in his capacity as the Chief Executive Officer / Registrar

AND

CORRUPTION WATCH (“CW”)

a non-profit organisation established to fight corruption and hold leaders accountable for their actions, herein represented by Mr D. Lewis in his capacity as Executive Director

AND

THE NATIONAL PROSECUTING AUTHORITY (“NPA”)

established in terms of section 179 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) as read with the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998) to institute criminal proceedings on

behalf of the State and to carry out any necessary functions incidental to instituting criminal proceedings, herein represented by Advocate S. Batohi in her capacity as National Director of Public Prosecution

AND

SECTION 27 (“S27”)

a public interest law centre that seeks to achieve substantive equality and social justice in South Africa, herein represented by Ms U. Rugege in her capacity as Executive Director

AND

THE BOARD OF HEALTHCARE FUNDERS OF SOUTHERN AFRICA (“BHF”)

a non-profit company established to ensure the sustainability of the healthcare sector by enabling medical schemes, managecare organisations and administrators to provide accessible, affordable, quality healthcare to their medical scheme members, and representing the entities listed in annexure “A”, Dr K. Mothudi in his capacity as the Managing Director

(COLLECTIVELY REFERRED TO AS “THE PARTIES”)

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1. PREAMBLE

WHEREAS the Parties have identified key vulnerabilities in the health sector;

AND WHEREAS such vulnerabilities result, inter alia, in the loss of public and private funds;

AND WHEREAS such losses impact adversely on everyone's right of access to healthcare services and on peoples' rights to life, equality and dignity as well as the right to the delivery of adequate health care services and are detrimental to the public interest;

AND WHEREAS the Parties are desirous of addressing such vulnerabilities through forensic investigation and criminal prosecution, recovering losses suffered by the State and the private healthcare sector and preventing future losses through implementing or facilitating the implementation of legislation and policy and informing various stakeholders in the sector of their rights and obligations;

AND WHEREAS the National Health Insurance Bill is intended to preclude or limit undesirable, unethical and unlawful practices in relation to the National Health Insurance Fund and its users

AND WHEREAS the Parties acknowledge the importance of collaboration, consultation, mutual support and co-operation regarding aspects such as the disclosure of information and in general, mutual co-operation and assistance in relation to the aforementioned matters;

AND WHEREAS the President may, in terms of section 2(1) of the SIU Act, whenever he deems it necessary on account of any of the grounds mentioned in section 2(2) of the SIU Act, by proclamation in the Government Gazette, inter alia, refer allegations to an existing Special Investigating Unit for investigation;

AND WHEREAS the SIU receives allegations, assess said allegations against the grounds mentioned in section 2(2) of the SIU Act and, if justified, then apply to the President for a Proclamation to investigate said allegations;

AND WHEREAS the Parties acknowledge that everything dealt with and agreed to herein is in the context of and subject to all legislation, as amended from time to time, applicable to a Party;

NOW THEREFORE the Parties agree to enter into this Terms of Reference and record the terms of their agreement as follows.

2. DEFINITIONS

In this TOR, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings—

“BHF” means the Board of Healthcare Funders of Southern Africa;

“CMS” means the Council for Medical Schemes, a statutory body established by the Medical Schemes Act, No. 131 of 1998 to provide regulatory supervision of private health financing through medical schemes;

“CW” means Corruption Watch, a non-profit organisation established to fight corruption and hold leaders accountable for their actions;

“DPCI” means the Directorate for Priority Crime Investigation, established as an independent directorate within the South African Police Service in terms of Section 17C of the South African Police Service Act, 1995 as amended by the South African Police Service Amendment Act, 2008 (Act 57 of 2008);

“Effective date” means the date of signature of this TOR by the Party signing last in time;

“FIC” means the Financial Intelligence Centre established by the Financial Intelligence Centre Act, 2001 (Act 38 of 2001);

“HFA” means the Health Funders Association, a non-profit organisation representing stakeholders involved in the funding of private healthcare in South Africa, and representing the entities listed in annexure “B”;

“HPCSA” means the Health Professions Council of South Africa, established in terms of section 2 of the Health Professions Act, No. 56 of 1974;

“HSACF” means the Health Sector Anti-Corruption Forum;

“NDOH” means the National Department of Health, a national department established in terms of section 7 of the Public Service Act, Proclamation No. 103 of 1994;

“NPA” means the National Prosecuting Authority, established in terms of section 179 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) as read with the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998);

“S27” means SECTION27, a public interest law centre that seeks to achieve substantive equality and social justice in South Africa;

“SIU” means the Special Investigating Unit established by Proclamation No. R. 118 of 31 July 2001;

“SIU Act” means the Special Investigating Units and Special Tribunals Act, 74 of 1996;

“SteerComm” means the Steering Committee established in terms of clause 6 of this ToR;

“TOR” means these Terms of Reference;

“the Parties/ Party” means the BHF, CW, CMS, DPCI, FIC, HFA, HPCSA, NDOH, NPA, S27 and the SIU;

“the vulnerabilities” means key vulnerabilities identified in the health sector, including, but not limited to fictitious claims, medical aid fraud, corruption, fruitless and wasteful expenditure or irregular expenditure, as defined in the Public Finance Management Act No 1 of 1999, conduct which constitutes an offence in terms of section 66 of the Medical Schemes Act, No. 131 of 1998 and related maladministration and malfeasance and, generally any conduct which indicates or points to the commission of fraud, corruption or any related offences;

3. PURPOSE

- 3.1 This TOR embodies the understanding of the Parties with regard to a relationship of collaboration, consultation, mutual support and co-operation between them, and serves to strengthen and formalise a relationship between the Parties with reference to the key vulnerabilities that have been identified in the health care sector (“**the vulnerabilities**”) and how best to address the consequences of such vulnerabilities through, inter alia, criminal prosecution and civil litigation.
- 3.2 The Parties agree to provide mutual assistance and co-operation, subject to their relevant governing laws and any other applicable legislation.
- 3.3 The Parties acknowledge that this TOR does not modify or supersede any laws and that it does not create legally binding obligations or enforceable rights between them.
- 3.4 Anything performed under this TOR will be subject to applicable legislation. It will furthermore be subject to applicable policies and standard operating procedures of the Parties and/or any other terms and conditions as may be agreed upon between the Parties.
- 3.5 Each Party will provide the fullest possible measure of assistance to the other, subject to applicable legislation and policies and any other terms and conditions agreed upon between the Parties.
- 3.6 The provisions of this TOR will not give rise to a right on the part of any other person, directly or indirectly, to obtain, suppress or exclude any evidence or to challenge the execution of any conduct under this TOR.
- 3.7 The Parties acknowledge that this TOR is not, in and of itself, a source of authority for the collection, retention, use or disclosure of Personal Information or Health related Information.

4. GUIDELINES FOR MUTUAL ASSISTANCE

- 4.1 The Parties agree to endeavour to secure sufficient resources in order to implement the provisions of this TOR.
- 4.2 None of the Parties are under any obligation to commit funds under this TOR.
- 4.3 In the event of the Parties identifying and agreeing on a specific form of co-operation that requires funding, the Parties will formalise the specifics, rights and obligations of the Parties in a separate legally binding contract.
- 4.4 Each Party remains responsible for its own expenses, except as may be agreed in a contract contemplated in clause 4.3 above.

5. PRINCIPLES OF CO-OPERATION

- 5.1 The Parties will endeavour to co-operate with one another regarding how best to address the vulnerabilities.
- 5.2 The principles on which the co-operation contemplated shall be based are:
- (a) Mutual trust, respect and benefit to the Parties;
 - (b) Technical information, knowledge and expertise exchanged between the Parties shall not be passed to a third party without the prior written consent of the Originating Party;
 - (c) Commitment to joint training where applicable to enhance knowledge, skills and an understanding of the functions of the respective Parties;
and
 - (d) Adherence to the legislative frameworks governing the Parties, while also giving due consideration to executing their respective mandates without fear, favour or prejudice.

6. GUIDELINES FOR THE EXCHANGE AND ASSESSMENT OF INFORMATION

6.1 In response to requests for information and assistance subject to any conditions established, a Party will provide the fullest possible measure of mutual assistance, subject to its governing statutes and regulations and overall policy.

- (a) Such assistance may include, *inter alia*,
- (i) the exchange of information in pursuance of the respective mandates subject to the limitations of the SIU Act, Protection of Personal Information Act, No. 4 of 2013, Medical Schemes Act, No. 131 of 1998 and any other legislation applicable to the Parties;
 - (ii) the assessment by the SteerComm of matters identified for investigation;
 - (iii) the referral by the SteerComm of such matters for investigation to the relevant organ of State; and
 - (iv) the monitoring of such referrals by the SteerComm.
- (b) The Parties undertakes to create and maintain a framework through which the matters referred to in paragraph 6.1(a) above will be processed, assessed and monitored.

6.2 In order to facilitate an appropriate and timely response to a request for the exchange of information or a request for assistance, the Requesting Party must specify:

- (a) The information or assistance required;
- (b) The purpose for which the information is sought;

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- (c) The reason which has given rise to the request, and indicate its connection with the jurisdiction/mandate of the respective parties;
 - (d) Any information related to the urgency of the request for information or assistance; and
 - (e) The legal provisions in terms of which the application for the exchange of information is made.

6.3 Each request will be assessed on its own merits by a Steering Committee (“**SteerComm**”) comprising representatives of the Parties mentioned in annexure “C” hereto, in order to determine whether assistance can be provided in terms of this TOR and in accordance with the relevant legal provisions.

6.4 Where full compliance with the request is not possible, the Requested Party will consider whether there may be other assistance which may be given.

6.5 In deciding whether to accept or decline a request, the SteerComm will in particular take account of:

- a) Matters specified by the legislation applicable to the Parties;
- b) Whether it would be contrary to public interest to give the assistance sought;
and
- c) The resources available to the Parties to deal with the request;

whereafter the SteerComm shall communicate its decision in writing to the Requesting Party within 10 working days of receipt of the request.

6.6 Without limiting the provisions of clause 16 below, each party shall nominate an authorised representative (“**Authorised Representative**”) to be the key contact

person responsible for monitoring compliance with this TOR. Any notice required to be given by one party to another should be directed to the Authorised Representative using the details as notified in writing from time to time.

- 6.7 The Requesting Party must deliver the shared information securely to the Requested Party by transferring it in accordance with the applicable security measures relevant to the Requesting Party, to the Authorise Representative of the Requested Party.
- 6.8 Once received by the Requested Party, the Requested Party is responsible for ensuring the security of the shared information until it is disposed of in accordance with applicable legislation.

7. TRAINING

- 7.1 The Parties may assist one another to plan and implement training programmes designed in order to share expertise and skills in common areas and in order to do so, may also when appropriate, make use of, *inter alia*, conferences and seminars.
- 7.2 The Parties shall endeavour to stimulate discussion of matters / issues of mutual concern and / or interest.

8. COMMENCEMENT AND TERMINATION

- 8.1 This Agreement supersedes and replaces all previous oral or written agreements or TORs between the Parties.
- 8.2 This TOR will come into effect on the Effective Date and shall endure, subject to its terms and conditions, until it is terminated by either Party by giving thirty days written notice to the other Party.

9. UNSOLICITED INFORMATION

9.1 The information acquired in terms of this TOR is subject to any confidentiality requirements in law and in particular any legislation applicable to the Parties.

9.2 If any Party comes into possession of information which would be likely to assist the other Party in administering or enforcing the laws for which it is responsible, the first-mentioned Party may notify the other Party of the existence of that information, subject to paragraphs 9.1 and 6.1(a) above.

10. PERMISSIBLE USES AND CONFIDENTIALITY

10.1 The Parties and their officials are obliged to treat information under this TOR as confidential, except where compliance with a legal duty or compulsion by law necessitates disclosure. In the event of such disclosure the other Party shall be informed in writing without delay.

10.2 Where information may be and is exchanged in terms of this TOR such information will be exchanged between the Requested Party and the Requesting Party as soon as is reasonably possible. In regard to exchanges of confidential information, each Party agrees not to disclose any such information to a third Party except as provided for in applicable legislation and, in the event of such disclosure by any Party, the Party making such disclosure shall inform the other Party in writing without delay.

10.3 Information supplied will be used for the purpose only for which it was requested.

10.4 The Requesting Party will provide the Requested Party with technical assistance to the extent reasonably required to permit use of the shared Information in accordance with the approved purposes.

11. ANNEXURES TO THIS AGREEMENT

- 11.1 This is a founding general agreement between the Parties. Further details with regard to matters agreed to in terms of this TOR, including, but not limited to, creating a framework through which the matters referred to in paragraph 6.1(a) above will be processed, will be dealt with between the applicable business units of the Parties.
- 11.2 Such other specific additional agreements or procedures and processes as the case may be will be in writing and agreed to by signature thereof by relevant Parties and will come into effect on the date of signature of the Party signing last in time.
- 11.3 Such additional agreements, procedures and processes will form part of this TOR and the duration of any such agreement, procedure or process will be conditional upon the existence or continuing existence of this TOR or any amendment or replacement thereof.

12. SETTLEMENT OF DISPUTES

- 12.1 When a dispute arises out of the interpretation, operation or implementation of this TOR, the Parties must in good faith, make every reasonable effort to settle the dispute amicably through direct negotiation with the other Party or negotiations through a mutually agreed to intermediary.

13. REVIEW AND AMENDMENT

- 13.1 The operation and implementation of this TOR shall be subject to periodic review by the Parties but not less than once in every twelve month period from the Effective Date of this TOR.
- 13.2 Notwithstanding the aforesaid, in the event of material changes in legislation affecting the content of this TOR, the Parties shall review and amend this TOR within a period of 30 days from the date of the relevant changes coming into

effect, in order to comply with the legislative amendments and with retrospective effect where necessary.

13.3 Any amendment agreed to by the Parties shall be in writing and shall form part of this TOR and such amendment will come into effect on such a date as agreed upon by the Parties.

14. GOOD FAITH

The Parties undertake to implement this TOR based on a foundation of mutual trust and good faith.

15. MEETINGS

The Parties will meet on a quarterly basis to discuss any matters of mutual interest in relation to the implementation and execution of this TOR.

16. IMPLEMENTATION AND EXECUTION

The Parties shall be responsible for the implementation and execution of this TOR.

17. SIGNATURES

Signed and agreed to at _____ on this _____ day of _____
2019

For and on behalf of the SIU

Signed and agreed to at _____ on this _____ day of _____
2019

For and on behalf of NDoH

Signed and agreed to at _____ on this _____ day of _____
2019

For and on behalf of the CMS

Signed and agreed to at _____ on this _____ day of _____
2019

For and on behalf of the DPCI

Signed and agreed to at _____ on this _____ day of _____
2019

For and on behalf of the FIC

Signed and agreed to at _____ on this _____ day of _____
2019

For and on behalf of the NPA

Signed and agreed to at _____ on this _____ day of _____
2019

For and on behalf of the HPCSA

Signed and agreed to at _____ on this _____ day of _____
2019

For and on behalf of the BHF

Signed and agreed to at _____ on this _____ day of _____
2019

For and on behalf of the HFA

Signed and agreed to at _____ on this _____ day of _____
2019

For and on behalf of the S27

Signed and agreed to at _____ on this _____ day of _____
2019

For and on behalf of CW

Entities represented by the BHF

- 1) Barloworld Medical Scheme
- 2) BIMAF EC
- 3) BIMAF WC
- 4) BP Medical Aid Society
- 5) Building & Construction Industry Medical Aid Fund
- 6) Cape Medical Plan
- 7) Compcare Wellness Medical Scheme
- 8) Compensation Fund
- 9) Engen Medical Benefit Fund
- 10) Fishing Industry Medical Scheme
- 11) Government Employees Medical Scheme (GEMS)
- 12) Grintek Electronics Medical Aid Scheme
- 13) Horizon Medical Scheme
- 14) Hosmed Medical Aid Scheme
- 15) Imperial Group Medical Scheme
- 16) Libcare Medical Scheme
- 17) Makoti Medical Aid
- 18) Medimed Medical Scheme
- 19) Medipos Medical Scheme
- 20) Medshield Medical Scheme
- 21) Nedgroup Medical Aid Scheme
- 22) Old Mutual Staff Medical Aid Fund
- 23) Opmed
- 24) PG Group Medical Scheme
- 25) Rand Water Medical Scheme

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- 26)Rhodes University Medical Scheme**
 - 27)SABC Medical Aid Scheme**
 - 28)SAMWUMED**
 - 29)SEDMED**
 - 30)Sizwe Medical Fund**
 - 31)POLMED - South African Police Service Medical Scheme**
 - 32)Sisonke Health Medical Scheme**
 - 33)Suremed Health**
 - 34)TFG Medical Aid Scheme**
 - 35)Thebemed**
 - 36)Tiger Brands Medical Scheme**
 - 37)Wooltru Healthcare Fund**

Entities represented by the HFA

- 1) Bestmed
- 2) Bankmed
- 3) Profmed
- 4) Discovery Health Medical Scheme
- 5) LA Health
- 6) Fedhealth
- 7) Momentum Health
- 8) Glencore
- 9) Medihelp
- 10)WCMAS
- 11)Malcor
- 12)Remedi
- 13)Tsogo Sun
- 14)CAMAF
- 15)Alliance Midmed Medical Scheme
- 16)De Beers
- 17)SA Breweries Medical Scheme
- 18)TFG
- 19)Selfmed
- 20)University of KwaZulu Natal
- 21)Sasolmed
- 22)Naspers

HSACF Steer-Com Members

#	Name & Surname	Entity	Contact Details
1.	Mr Pranesh Maharaj	Chairperson HSACF Steer-Com	PMaharaj@siu.org.za (012) 843 8509 082 337 8962
2.	Mr Nkululeko Conco	Section 27	conco@section27.org.za (011) 356 4100 082 714 8320
3.	Ms Kavisha Pillay	Corruption Watch	KavishaP@corruptionwatch.org.za (011) 242 4100 083 660 2814
4.	Dr Katlego Mothudi	Board of Healthcare Funders	katlegom@bhfglobal.com (011) 537 0200 082 806 7833
5.	Major-General SC Mosipi	DPCI - Hawks	MosipiS@saps.gov.za (012) 846 4237 082 779 8681 / 082 779 8685
6.	Adv Steyn	National Prosecuting Authority	MSteyn@npa.gov.za (012) 845 6789 071 352 6901
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11.	Mdu Nxumalo	Secretariat HSACF Steer-Com	MNxumalo@siu.org.za (012) 843 0095 083 347 1649