

**Version 1: Date of Last Review – 28 July 2015**

## **AGREEMENT: STANDARD SUBSCRIPTION TERMS & CONDITIONS**

**Territory: Republic of Kenya**

### **PART ONE: EXPLANATION**

#### **Consumer Guide**

This Agreement must be read in conjunction with the Consumer Guide to appreciate the composition of the Sema Doc Product and, in particular, the Subscription Services which are the subject matter of this Agreement.

#### **Application**

The terms and conditions hereinafter set out apply to those Persons who wish to make use of and/or who are making use of the Subscription Services, as hereinafter defined, by subscribing therefore through, on and/or by means of any one of the channels herein provided for and/or as otherwise may be provided for from time to time.

#### **Structure & Form of Agreement**

This Agreement is structured into **5** (five) **Parts**, with:

- **Part One** explaining the structure and form of this Agreement; and
- **Part Two** setting out the definitions and the manner of interpreting this Agreement; and
- **Part Three** dealing with the specific terms and conditions pertaining to the Subscription Services; and
- **Part Four** dealing with the specific terms, conditions and provisions pertaining to the Sema Doc Product and, in particular, the Bank Bank's Terms and Conditions and the Insurer's Terms and Conditions, as well as the legal relationships by and between Hello Doctor, the Bank, the Insurer and/or the Subscriber, as the case may be; and
- **Part Five** dealing with the general terms and conditions pertaining to the Subscription Services.

### **PART TWO: DEFINITIONS AND INTERPRETATION**

#### **Definitions**

For the purpose of this Agreement, the following words and/or expressions will, unless the context clearly indicates otherwise, have the meanings hereinafter set out:

**"Activate"** or **"Activates"** or **"Activation"** or words of similar meaning, means when the Subscriber dials the required USSD number and follows the prompt options to activate the Subscriber's Sema Doc Account and these Subscription Services;

**"Activation Date"** means the date on which the Subscriber Activates the Sema Doc Account;

**"Agreement"** means this agreement, being the terms, conditions and provisions as hereinafter set out, as supplemented and/or amended by the additional specific terms and conditions contemplated and provided for herein, including any and all additions and/or amendments from time to time;

**"Bank"** means the Commercial Bank of Africa Limited;

“**Bank Account**” means either of the following bank accounts with the Bank:

- an M-Pesa bank account; or
- an M-Shwari bank account; or
- the Health Account,

which are the subject matter of the Bank’s Terms and Conditions;

“**Banking Services**” means those services offered by the Bank and which are subject to the Bank’s Terms and Conditions, being:

- the services delivered or to be delivered by the Bank to give effect to the Sema Doc Account, including but not limited to collecting, transferring and/or paying any monies in respect thereof for and on behalf of the Subscriber; and/or
- the making available of the Health Loan,

as the case may be and where applicable;

“**Bank’s Network**” means the electronic network operated by the Bank for its customers, including but not limited to the Bank’s unstructured service data system and/or the M-Pesa System functionality developed by and for the Bank to operate the Sema Doc Product;

“**Bank’s Terms and Conditions**” means the terms and conditions applicable to the Bank and/or the Banking Services, as the case may be;

“**Commencement Date**” means, in respect of the Subscription Services, the Day on which the Subscriber Activates the Subscription Services on the Bank’s Network;

“**Consumer Guide**” means the consumer friendly guideline prepared, reviewed and updated jointly by Hello Doctor, the Bank and the Insurer from time to time to give a brief overview and explanation of the Sema Doc Product;

“**Discretion**” means, in relation to a Party, the sole, absolute and unfettered discretion of that Party, provided such discretion is exercised in a reasonable and not in a capricious manner;

“**Domicilium**” is a Latin term meaning domicile or physical address where a Party generally resides or operates its business, as the case may be;

“**Force Majeure**” means, in relation to the failure and/or inability of a Party to perform (wholly, partially or late), some unforeseen event or circumstance beyond the reasonable control of the affected Party which prevents it from performing, timeously or otherwise, its obligations under this Agreement and which includes, but is not limited to:

- war, civil war, riots, armed conflicts or terrorism; and/or
- nuclear contamination; and/or
- chemical or biological contamination; and/or
- lack of electrical power due to only the incapacity of supply by a national electrical supply grid and/or supply generally, including cessation by a local authority; and/or
- technical problems or downtime related to a fixed line or mobile tele-communications provider; and/or

- explosions, earthquakes, lightning, floods and other natural disasters,

which, in each case, is beyond the Party's reasonable control, having exercised reasonable care and diligence to prevent and/or mitigate against the occurrence and/or consequences of that event or circumstance, but will not include –

- any event or circumstance which is caused by the negligence or inaction of a Party or that of such Party's sub-contractors or agents or employees; and/or
- any event which a diligent Party could reasonably have been expected to both take into account at the time of execution of this Agreement, and avoid or overcome in the performance of its obligations hereunder;

**"Health Account"** or **"Sema Doc Account"** means the Subscriber's dedicated bank account with the Bank used only to:

- deposit funds into to meet the Subscriber's Monthly Subscription Payments; and/or
- pay Subscription Usage Fees; and/or
- save for Health Facility Expenses; and/or
- pay Health Facility Expenses;

**"Health Facility Expenses"** means only those expenses, fees, costs and/or charges which the Bank, in its Discretion, accepts as relating to the provision of healthcare;

**"Health Loan"** means the health loan facility to be made available by the Bank to the Subscriber on and in accordance with the Bank's Terms and Conditions;

**"Hello Doctor"** means Hello Doctor Limited;

**"Hello Doctor Website"** means the website [www.hellodoctor.co.ke](http://www.hellodoctor.co.ke);

**"Hospital Cash Benefit"** means the policy of insurance underwritten by the Insurer in terms of which the Subscriber is to receive a hospital cash benefit subject to and in accordance with the Insurer's Terms and Conditions as set out in the Insurer's Policy of Insurance;

**"Insurer"** means Cannon Assurance Kenya Limited;

**"Insurer's Terms and Conditions"** means the Insurer's terms and conditions applicable to the Hospital Cash Benefit;

**"Intellectual Property"** means any and all rights, title and interest of whatsoever nature or kind in intellectual property (whether registered or not), including but not limited to past and future copyright, related rights, patents, utility models, trademarks, trade names, service marks, designs, databases, graphics, icons, semi-conductor topography, know-how, trade secrets and inventions (whether patentable or not), goodwill and all other identical or similar intellectual property as may exist anywhere in the world and any applications for registration of such intellectual property which are owned, licensed to, used and/or held (whether or not currently) by Hello Doctor and/or any of its service providers, including but not limited to any of its medical practitioners;

**"Laws"** or **"the Law"** means the law of the Territory, including but not limited to the common law, legislation, regulations and all judicial decisions and other notifications or similar directives made pursuant thereto that have the force of law, whether issued by an executive, a legislative, provincial, local, judicial or administrative entity or Person in the Territory;

**“Monthly Subscription Payments”** means the Subscription Fees to be paid Monthly by the Subscriber on the Payment Date;

**“Parties”** means the Subscriber and Hello Doctor, collectively or individually, as the context may require or determine, and a reference to the term **“Party”** means any one of them;

**“Payment Date”** means the date on which the Subscriber’s:

- Monthly Subscription Fees; and/or
- Subscription Usage fees,

are to be paid by the Subscriber to Hello Doctor, being the same date each Month, being that date of the Month when the Subscriber Activated the Sema Doc Account or the Subscription Services;

**“Prescribed Conditions”** means:

- only those medical and healthcare related conditions listed as such on the Hello Doctor Website from time to time indicating the limited number of medical and healthcare conditions the doctors are allowed to /may or will diagnose on the Talk to a Doctor Subscription Service; and/or
- those chronic medical and healthcare related conditions which the Subscriber has been diagnosed with and is receiving treatment and medication therefore, requiring only a repeat prescription;

**“Sema Doc Product”** means the aggregated product offered jointly by Hello Doctor, the Bank and the Insurer comprising the following 3 (three) separate and individually offered services:

- the Subscription Services offered by Hello Doctor; and
- the Banking Services offered by the Bank; and
- the Hospital Cash Benefit underwritten by the Insurer;

**“Service Provider”** means any Person who offers and/or provides services of whatsoever nature and/or kind to Hello Doctor, the Bank and/or the Insurer for and in respect of the Sema Doc Product;

**“SMS”** means a Short Message Service, being the commonly used text messaging service available on cellular and mobile phones;

**“Subscriber”** means the Person who subscribes for the Subscription Services;

**“Subscription Fees”** means the fees charged and/or to be charged by Hello Doctor for the Subscription Services from time to time, which initial fees are recorded on the Hello Doctor Website and, where applicable, including the Sema Doc Product as a whole;

**“Subscription Period”** means, where applicable, the period of time for which a Subscriber subscribes for a Subscription Service, which may be Monthly or fixed for a period of time, depending on the period selected by the Subscriber and its availability -the Subscription Period shall be indefinite unless this Agreement is terminated in accordance with this Agreement and/or the Bank’s Terms and Conditions and/or the Insurer’s Terms and Conditions;

**“Subscription Process”** means the process and procedure required to be followed by the Subscriber to subscribe for the Sema Doc Product or the Subscription Services, as set out in the Consumer Guide and/or as may be prompted by and on the Bank’s Network;

**“Subscription Services”** means the package of services, comprising a bundle of benefits, rights, obligations and financial commitments, as the case may be, offered by Hello Doctor on or through the Sema Doc Product, including but not limited to, as at the Signature Date,;

- **Text a Doctor**, which entitles the Subscriber to private and confidential one-on-one health text messages to and from a doctor, Monday to Sunday, including access to daily live group chats, moderated by doctors; or
- **Talk to a Doctor**, which entitles the Subscriber to 24/7 direct telephonic access to a doctor anytime, anywhere, by logging a request for the next available doctor to telephone the Subscriber back; or
- **Health Tips**, which comprises health information or messages written, vetted and localised by doctors, sent to the Subscriber by means of SMS's,

as summarised and explained in the Consumer Guide from time to time – these services may be reviewed, updated, added to and/or removed by Hello Doctor from time to time, meaning that the above list of services is not exhaustive and that this definition may be varied from time to time to bring it in line with the services offered by Hello Doctor from time to time, limited as to the Prescribed Conditions;

“**Subscription Usage Fees**” means the fees and charges to be charged by Hello Doctor to the Subscriber as and when the Subscriber uses the Text a Doctor or Talk to a Doctor Subscription Services, including the prescription services, which fees will be published as such on the Hello Doctor Website from time to time;

“**USSD**” and or “**USSD Platform**” means the electronic media channel through which a Subscriber can subscribe for and access the Sema Doc Product, including but not limited to the Subscription Services, by dialling a specific number from a cellular or mobile phone;

“**VAT**” means Value Added Tax, where and if applicable; and/or

“*vice versa*” is a Latin term meaning the other way round.

### **Interpretation**

In interpreting this Agreement, unless otherwise specified,;

1. any reference to a currency will be a reference to the prevailing currency of the Territory;
2. any reference to “**date of signature hereof**” or “**Signature Date**” (or words of similar meaning) will be read as meaning, when the Subscriber Activates the Subscription Services;
3. any reference to the terms “**Signature**”, “**Signs**”, “**Initial**” or words of similar meaning means a hand-written signature or initial or signing by hand, as the case may be, and includes an “*electronic signature*”;
4. any reference, express or implied, to any legislation, includes references to:
  - 4.1 such legislation as re-enacted, amended, replaced, extended, consolidated or applied by or under any other form or manner of legislation (before and/or after Signature hereof); and
  - 4.2 any legislation which that piece of legislation re-enacts (with or without modification); and
  - 4.3 any subordinate legislation made (before or after the Signature hereof) under any enactment and/or statute, as re-enacted, amended, replaced, consolidated, extended or applied as described in Clause 4.1 or under any legislation referred to in Clause 4.2,

provided that no such legislation made or passed after the date of signature hereof will increase the liability of any Party under this Agreement (save, where and if applicable, for any increase in the statutory maximum interest rate allowed and/or claimable under any Law);

5. any reference to a Part, Clause, Section, Schedule (including any form) and/or Schedule of Fees on the Hello Doctor Website will, unless clearly stipulated otherwise, be deemed to be a reference to a Clause, Part, Section, Schedule or to this Agreement and on the Hello Doctor Website from time to time;
6. any reference to this Agreement means this Agreement and all Parts, Clauses, Sections and Schedules (including any form) referred to herein;
7. all Parts, Clauses, Sections, Schedules (including any form) will be deemed to form Part of this Agreement, unless stipulated otherwise;
8. headings of the Clauses in this Agreement are for the purpose of convenience and reference only and will not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any Clause hereof;
9. Clause headings and/or head notes to any paragraph are inserted for reference purposes only and will not affect nor influence the interpretation of any of the provisions to which they relate;
10. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition Clause, effect will be given to it as if it were a substantive provision in the body of the Agreement;
11. any reference to a Day, week, Month or year will be construed as a Gregorian Day, week, Month or year, as the case may be;
12. any reference to a **"Day"** will mean a period of 24 (twenty four) hours running from 1 (one) second past midnight to midnight that same Day;
13. any reference to **"Month"** will mean the period running from 1 (one) second past midnight to midnight on the same numerical Day of the succeeding Month;
14. any reference to **"Business Day"** will mean any Day other than a Saturday, Sunday and/or Public Holiday, as the case may be, whereas the term **"Calendar Day"** means each and every Day of the week;
15. any reference to a public holiday or the words **"Public Holiday"** will be only those statutorily recognised and gazetted Public Holidays in the Territory from time to time;
16. any reference to **"Business Hours"** will mean 09h00 to 17h00 Local Time;
17. any references to specific times will be to the official time as applied from time to time in the Territory (**"Local Time"**);
18. if any obligation or act is required to be performed on a particular Day or date, it will be performed, unless otherwise stipulated, by 17h00 Local Time;
19. when any number of Days is prescribed, same will be reckoned exclusively of the first and inclusively of the last Day unless the last Day falls on a Saturday, Sunday or Public Holiday in the Territory, in which case the last Day will be the next succeeding Business Day in the Territory;
20. where figures are referred to in numerals and in words, if there is any conflict between the two, the words will prevail;
21. expressions defined in this Agreement will bear the same meanings on the Hello Doctor Website to the extent it does not itself contain its own conflicting definitions;
22. the use of the words **"include"**, **"including"**, **"without limitation"** and **"in particular"** whether or not followed by a specific example will not be construed as limiting the meaning of the general

wording preceding it and the *eiusdem generis* rule will not be applied in the interpretation of such general wording or such specific example – this rule means when particular words pertaining to a class, category or genus are followed by general words, the general words are construed as limited to things of the same kind as those specified;

23. the words “**other**” and “**otherwise**” will not be construed *eiusdem generis* with any preceding words where a wider construction or interpretation is possible;
24. where any term is defined within the context of any particular Clause, the term so defined, unless it is clear from the Clause in question that the term so defined has limited application to the relevant Clause, will bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation Clause;
25. there will be an obligation and it will be binding on and enforceable by and against the estates, heirs, executors, administrators, trustees, permitted assigns, liquidators or similar Person of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party will be deemed to include such Party's estate, heirs, executors, administrators, trustees, permitted assigns, liquidators or similar Person, as the case may be;
26. the expiration or termination of this Agreement will not affect such of the provisions of this Agreement as expressly provide or contemplate that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the Clauses themselves do not expressly provide for this;
27. any provision which contemplates performance or observance subsequent to any termination or expiration of this Agreement, will survive any termination or expiration of this Agreement and continue to be of full force and effect;
28. termination, howsoever arising, will be without prejudice to and will not affect the accrued rights, remedies, claims and/or liabilities of either or any of the Parties arising hereunder prior to such termination;
29. the expiry or termination of this Agreement will not prejudice the rights of either or any of the Parties in respect of any antecedent breach or non-performance by either or any Party of any of the terms and conditions hereof;
30. should this Agreement be signed on a date that results in the use of any tenses herein being inappropriate, the term will be read in the appropriate tense;
31. the rule of construction that the contract will be interpreted against the Party responsible for introducing a Clause and/or the structuring of any provision and/or the drafting or preparation of the Agreement, will not apply and is hereby waived by the Parties;
32. the rule of construction that the contract will be interpreted most favourable to the consumer and/or the Party receiving the service or product will not apply and is hereby waived by the Parties, subject to and to the extent permissible by the Law of the Territory;
33. an expression or word which signifies or refers to –
  - 33.1 any gender includes, where applicable and appropriate, the other genders; and/or
  - 33.2 a “**Person**”, includes, where applicable and appropriate, a natural person or juristic persons, such as a company, close corporation, trust, partnership, association, government, national, provincial or local authority or other entity (including a business entity), whether or not having a separate legal personality; and/or
  - 33.3 the singular includes the plural and *vice versa*, where applicable and appropriate;
34. any reference to “**Writing**” or words of similar meaning means legible (coherent and

understandable) writing in English in handwritten or typographical manner or form;

35. any reference to “**Notice**” or notice being required to be given will mean Written notice or notice in Writing;
36. the words “**shall**”, “**will**” and/or “**must**” used in the context of any obligation or restriction will have a prescriptive and peremptory (meaning absolute) application;
37. a reference to a consecutive series of two or more Clauses is deemed to include all the Clauses including and between the first and the last mentioned Clauses;
38. defined terms or words appearing in title case or starting with a capital letter must be given their defined meaning whilst the same terms or words appearing in lower case must be interpreted in accordance with their plain English and grammatical meaning;
39. no provision will, unless otherwise specifically provided for, constitute a stipulation for the benefit of any Person who is not a Party to this Agreement, namely it will not provide for a *stipulatio alteri* meaning that a non-Party will not be able to claim any benefit under this Agreement, save and except for the rights of the Bank and/or the Insurer under and by virtue of their respective terms and conditions set out in their agreements with the Subscriber;
40. if any interest is to be charged by Hello Doctor on any payment in arrear or otherwise, interest will accrue daily and be compounded Monthly; and
41. no term, condition and/or provision is to be interpreted or construed so as to exclude any rights granted to a natural Person by virtue of any Law of the Territory.

This Agreement was drafted in the English language. To the extent this Agreement has been translated into another language to comply with any Law of the Territory or otherwise and there is any discrepancy or conflict in the interpretation between the text of the translated version and the English text of this Agreement, the English text shall prevail.

Whilst headings are normally found in **bold print** or Capitalised, in this Agreement certain words and Clauses have been highlighted in **bold print**, *italics*, underlined and/or of a different colour as they:

- may be intended to highlight or draw the Subscriber’s attention to an important word, phrase and/or Clause; and/or
- may require a specific action from the Subscriber; and/or
- may increase the risk and/or liability of the Subscriber; and/or
- may serve as an acknowledgement by the Subscriber; and/or
- may limit the risk and/or liability of Hello Doctor and/or any Third Party Person,

however, Hello Doctor’s failure to **bold print**, *italicise*, underline and/or put a word, phrase and/or Clause in a different colour does not mean that any of such other words, phrases and/or Clauses are unimportant, insignificant and/or immaterial.

## **Introduction**

Hello Doctor is essentially an electronic sales platform designed to promote a better understanding, knowledge and awareness of various medical and health care topics and/or products, acting as an interface between medical practitioners and consumers; presenting the consumer with a greater choice of and access to various health care topics and/or products, as well as the opportunity to communicate with registered medical practitioners to discuss health care topics, which



communication will not include a diagnosis or treatment, unless it be one of the Prescribed Conditions.

### Consumer Protection

If this Agreement, including any and all of its terms and conditions, are governed or regulated by any consumer Law, it is not intended that any such term and/or condition contravene the said Law. As such, notwithstanding and in addition to any other provision herein contained, if a consumer Law does apply to this Agreement and any and all of its terms, conditions and/or provisions, then and in that event this Agreement, including any and all of its terms, conditions and/or provisions, must be treated as being **qualified**, to the extent necessary, to procure and ensure that the consumer Law is complied with in every respect.

## **PART THREE: SUBSCRIPTION SERVICES**

### **Type of Subscription Services**

The Subscriber understands and accepts that the Subscriber is not entitled and has no right to subscribe for or demand a Subscription Service for which he is not entitled to subscribe for and/or has not subscribed and paid for. To this extent the **Subscription Services are confined to the Prescribed Conditions**.

### **Variation**

Hello Doctor reserves the right to and will, at all times, in its Discretion, have the right from time to time to vary, change, add to and/or withdraw any of the Subscription Services and/or the Prescribed Conditions, as the case may be, subject at all times to it honouring its obligations hereunder.

### **Subscriber's Obligation to Regularly Check Hello Doctor's Website**

The Subscriber is obliged to and must regularly check the Hello Doctor Website to confirm the nature, content, features and pricing of the Subscription Services, the Prescribed Conditions, the Subscription Fees and the Subscription Usage Fees.

### **Important Disclaimer**

Notwithstanding the high level of skills, training, professional qualifications and expertise, the Subscription Services are not intended nor suited to be a replacement or substitute for professional medical advice, diagnosis or treatment relative to a specific medical question or condition.

The Subscriber understands and accepts that the Subscription Services are **not unlimited** or **without restriction** in that:

- the doctors are only available on a shift basis in the Discretion of Hello Doctor; and
- the Subscriber shall have no right to demand or insist upon talking to or texting with a specific doctor; and
- **the doctors will only be permitted to diagnose and treat the Subscriber for any of the Prescribed Conditions and not all medical or healthcare conditions**; and
- the doctors can only make a **diagnosis** of the **Prescribed Conditions** by means of the **Talk to a Doctor Subscription Service** and **NOT** by means of the Text a Doctor Subscription Service; and
- unless otherwise clearly and specifically stated, all information obtained on, through and/or by means of the Hello Doctor Website, any SMS, from a doctor outside of the Prescribed Conditions and/or from the Text a Doctor Subscription Service is for reference, informational and educational purposes only.

Prescriptions, unless otherwise determined by Hello Doctor,:

- will be sent to the Subscriber by SMS; and/or
- may only be accepted by some pharmacies; and/or
- will be for the Subscriber's own account.

Prescriptions will only be scripted for:

- Prescribed Conditions; and/or
- medical chronic conditions where the Subscriber has already been diagnosed by another doctor and requires a repeat script,

subject at all times to the independent assessment of the doctor, such that a doctor, in his Discretion and medical opinion, is of the mind that the issuing of a prescription is applicable, necessary or required.

Unless otherwise specifically stated, the Subscription Services:

- should not be construed, considered and/or mistaken for a substitute for consulting with a medical practitioner; and/or
- do not constitute a consultation, examination and/or diagnosis; and/or
- do not render treatment; and/or

and, as such, Hello Doctor must not be mistaken for a medical practice.

Hello Doctor shall be entitled, but not obliged, to:

- **refuse** to consider any medical and/or healthcare condition; and/or
- **refer** the Subscriber to another medical practitioner,

if and to the extent:

- the medical condition is not one of the Prescribed Conditions; and/or
- the Subscriber has insufficient funds in his or her Health Account.

To be absolutely clear, unless otherwise specifically provided for, the Subscription Services do not and will not involve or comprise any form of face-to-face consultation, diagnosis and/or treatment.

### **Subscription of the Subscription Services**

To be eligible to use the Subscription Services the Subscriber must subscribe or must have subscribed for the Subscription Services by means of Activating his or her Sema Doc Account with the Bank in accordance with the process prescribed in the Bank's terms and conditions and as explained in the Consumer Guide.

Hello Doctor by advertising the Subscription Services has invited the Subscriber to make an offer to subscribe for the Subscription Services. In the event the Subscriber makes an offer by Activating, Hello Doctor will have the Discretion and right to accept or reject such offer, in which event it will take additional action to demonstrate its intention to reject the offer.

## **Payments & Payment Method**

The Subscriber must and will pay Hello Doctor:

- the Subscription Fees; and
- the Subscription Usage Fees,

as and when due and payable.

The Subscriber must and will pay Hello Doctor for the Sema Doc Product and, in particular, the Subscription Services, by:

- opening, operating and maintaining a Health Account with the Bank; and
- depositing a minimum amount of KSh300 (three hundred Kenyan Shillings) each Month prior to the Payment Date into the Health Account.

The Subscription Fees must and will be payable Monthly in advance, with only the first Month being free. For the avoidance of doubt, reactivation does not constitute Activation entitling the Subscriber to the first Month free.

The Subscription Usage Fees must and will be payable at the time the service is requested. In the event of insufficient funds in the Health Account, the service will not be provided until funds are deposited into the Health Account and the request is initiated again.

For purposes of this Agreement, when referring to the term "Monthly" for any payment, it will be with reference to the Day of the Month on which the Subscriber Activated or reactivated the Subscription Services. By way of explanation: assuming the Subscriber Activates his or her Subscription Services on the 5<sup>th</sup> (fifth) of January, then the Subscriber's Payment Date will be the 5<sup>th</sup> (fifth) Calendar Day of each Month and he or she will be obliged to pay his or her:

- Monthly Subscription Fees Monthly in advance on such date; and/or
- Subscription Usage Fees on such date.

All Subscription Fees will be due and payable on the due dates therefore irrespective whether or not the Subscription Services have been or are being utilised by the Subscriber.

The Subscriber hereby appoints, authorises and/or instructs, as the case may be, the Bank as his or her agent to give effect to each and every payment due to Hello Doctor for and in respect of the Subscription Services, and, as such, remains responsible and liable for such payment to Hello Doctor – hereby assuming the risk that payment will be duly and fully made to Hello Doctor.

## **Commencement**

The Subscription Services commence when Activated and will endure indefinitely for so long as payment is timeously made therefore, unless:

- the Subscription Period of the Subscription Services determine otherwise, in which event it will be limited to the Subscription Period and the specific terms and conditions thereof; and/or
- otherwise terminated in accordance with the provisions hereof.

This Agreement will come into being and be of full legal force and effect when the Subscription Services are Activated; from which date this Agreement will constitute a legally binding agreement by and between Hello Doctor and the Subscriber.

## **Suspension and Termination**

Notwithstanding any other term or condition of this Agreement, Hello Doctor will be entitled, but not obliged to:

- suspend the Subscription Services, without any recourse to itself, pursuant to the Force Majeure provisions herein contained; and/or
- suspend the Subscription Services and/or cancel or terminate this Agreement, without any reason and recourse to itself, if and to the extent the Subscriber fails, neglects and/or refuses to make any payment timeously and/or at all; and/or
- cancel or terminate this Agreement, without any reason and recourse to itself, by giving the Subscriber Written Notice in that regard.

The Subscriber will be entitled to cancel this Agreement at any time, by giving Hello Doctor Written Notice thereof by sending an email to [support@hellodoctor.co.ke](mailto:support@hellodoctor.co.ke), save that he or she will not be entitled to:

- any refund for any unexpired portion for any remaining period subscribed for; and
- cancel before and until the Subscriber has repaid his or her Health Loan in full, if applicable.

If and to the extent:

- this Agreement is cancelled by either Hello Doctor or the Subscriber; or
- the Bank cancels the agreement by and between the Bank and the Subscriber; or
- the Insurer cancels the policy underwriting the Hospital Cash Benefit,

the Subscription Services shall, unless otherwise agreed to in Writing by Hello Doctor, forthwith and with immediate effect cease, meaning that the Subscriber will no longer have access or any right to such Subscription Services. For the avoidance of doubt, the Agreement shall terminate and the Subscription Services shall cease at the time and on the date the Subscriber or Hello Doctor, as the case may be, gives notice of termination.

If and to the extent:

- the Subscriber fails, neglects, refuses and/or is unable to pay the full extent of the Subscription Fees on the Payment Date therefore; or
- there is insufficient funds in the Subscriber's Health Account to pay the full extent of the Subscription Fees on the Payment Date therefore,

then and in that event the Subscriber will be granted a grace period of 3 (three) Calendar Days ("**Grace Period**") within which to pay the outstanding amount due and payable.

The Subscriber shall be entitled to the Subscription Services during the Grace Period.

If and to the extent:

- the Subscriber fails, neglects, refuses and/or is unable to pay the full extent of the Subscription Fees on the expiry of the Grace Period; or
- there is insufficient funds in the Subscriber's Health Account to pay the full extent of the Subscription Fees on the expiry of the Grace Period,

then and in that event the Subscriber's subscription to the Sema Doc Product, including but not limited to the Subscription Services, will, unless otherwise agreed to in Writing by Hello Doctor, be **automatically suspended** and **all services declared inactive** and Hello Doctor shall have the right, but not the obligation, to forthwith terminate this Agreement.

The Subscriber will NOT be entitled to the Subscription Services during any period of suspension.

If and to the extent the Subscriber's Subscription Services have been suspended, the Subscriber may reactivate such services by following the process and procedure provided for in the Consumer Guide, save and except to the extent the Subscriber deposits sufficient monies into his or her Health Account to pay for any arrear Subscription Fees and Subscription Usage Fees and the Monthly Subscription Fee for that Month.

## **PART FOUR: THE OTHER SEMA DOC PRODUCT ELEMENTS**

### **Specific Terms and Conditions incorporated by Reference**

The Sema Doc Product comprises the following 3 (three) constituent elements to be undertaken and/or delivered by the below stated 3 (three) separate and independent Persons:

- the Subscription Services by Hello Doctor; and
- the Banking Services by the Bank; and
- the Hospital Cash Benefit by the Insurer,

which are linked together to provide the Subscriber with a product offering, each based on terms and conditions applicable to the specific Sema Doc Product. To this extent, the Bank's Terms and Conditions in respect of the Banking Services and/or the Insurer's Terms and Conditions in respect of the Hospital Cash Benefit must, by implication, apply to and/or be read in conjunction with these terms and conditions and *vice versa*; they will and, where applicable and necessary, are hereby and are also deemed to be incorporated into these terms and conditions, save and except where they do not themselves conflict with the terms and conditions of this Agreement.

To the extent there are any additional and/or specific terms and conditions which relate and/or pertain to the payment of and/or for the Subscription Services, as specified and/or prescribed by any Service Provider, those terms and conditions, where applicable and necessary, are hereby and also deemed to be incorporated into these terms and conditions to the extent such specific terms and conditions do not themselves conflict with the terms and conditions of this Agreement.

When accepting the terms and conditions of this Agreement, the Subscriber must read and likewise hereby agrees to those additional specific terms and conditions which relate and/or pertain to the payment and/or otherwise of or for the Subscription Services, as specified and/or prescribed by any Service Provider delivering such services.

To the extent there is any conflict between any terms, conditions and/or provisions of any Service Provider and this Agreement, the terms and conditions of this Agreement will, where applicable and necessary, prevail and take precedence.

The Subscriber must read and accept the terms and conditions of each of the Sema Doc Products and those pertaining to the payment therefore, because when Activating his or her Sema Doc Account and the Subscription Services the Subscriber will have (and to the extent necessary will have been deemed to have) signified having read and accepted these and such additional terms and conditions.

### **Relationships**

Nothing in this Agreement will be deemed to constitute a partnership as between:

- the Parties; and/or
- Hello Doctor and the Bank; and/or
- Hello Doctor and the Insurer,

or any other combination of the foregoing Persons.

**Claims as against Hello Doctor, the Bank and/or the Insurer**

To the extent the Subscriber has a claim under the Sema Doc Product, if such claim is in respect of:

- the Subscription Services, then and in that event the Subscriber will only have a claim against Hello Doctor; and
- the Banking Services, then and in that event the Subscriber will only have a claim against the Bank; and
- the Hospital Cash Benefit, then and in that event the Subscriber will only have a claim against the Insurer.

The Subscriber understands and accepts that he or she will NOT have a claim against:

- Hello Doctor for and in respect of the Banking Services and/or the Hospital Cash Benefit; and/or
- the Bank for and in respect of the Subscription Services and/or the Hospital Cash Benefit; and/or
- the Insurer for and in respect of the Subscription Services and/or the Banking Services,

hereby irrevocably waiving all rights to bring claims against those Persons where not applicable.

**PART FIVE: GENERAL AND OTHER TERMS, CONDITIONS AND/OR PROVISIONS**

**Offer and Acceptance**

It is specifically understood that it is the Subscriber who makes an offer to Hello Doctor for the Subscription Services, with Hello Doctor having the unfettered right to accept or reject such offer.

The Subscriber hereby expressly dispenses with actual or physical Notification by Hello Doctor of acceptance of the offer.

**VAT**

Unless the context of the Clause concerned and/or the Hello Doctor Website clearly indicates that the amount concerned is exclusive of VAT, all amounts provided for in this Agreement will be inclusive of VAT (if applicable) and any VAT chargeable in respect of matters giving rise to such payments (or other consideration) will be added into such payment or other consideration and paid by the Subscriber and/or the Purchaser, as the case may be.

All or any VAT arising from and/or in terms of this Agreement will become due for payment and will be paid by the Subscriber and/or the Purchaser, as the case may be, forthwith against payment of the full consideration for such goods and/or services.

Any dispute which may arise as to the liability for and/or payment of VAT or the amount thereof will be referred to Hello Doctor’s auditors (acting as independent experts) for decision and their decision will be final and binding as between the Parties and carried into effect.

VAT will be charged, at the prevailing rate, on all products and services acquired and/or subscribed for by a Person resident in the Territory or, if applicable, his or her country of residence.

The Purchaser and/or Subscriber will, if applicable, be entitled to request a VAT invoice, which will be provided electronically.

### **Refunds**

Under no circumstance will Hello Doctor refund any expired and/or unexpired Subscription Period.

### **Barring and Restrictions**

Hello Doctor will be entitled, but not obliged, to take steps to restrict the Subscriber from making repeated short-term subscriptions, from making further subscriptions and the Subscriber will be so barred and restricted.

### **Errors and Omissions**

Subject to the provisions of any consumer Law (to the extent and where applicable):

- Hello Doctor will use its reasonable endeavors to make its services and products available to the Subscriber and to maintain the availability thereof for use by him or her, on the understanding that such services and/or products are provided on an "as is" and "as available" basis; and
- Hello Doctor cannot and does not, directly or indirectly, impliedly or otherwise, represent, warrant or guarantee that the services and/or products will at all times be free of errors or interruptions, be always available, fit for any purpose, not infringe any third party rights, be secure and reliable, or will conform to its delivery timeline requirements; and
- Hello Doctor does not warrant the accuracy, adequacy or completeness of the information provided on any Service Provider's electronic platform (including but not limited to any invoice issued pursuant thereto) and, as such, expressly disclaims liability for any errors or omissions that may be contained in such information.

If and to the extent any service and/or product is erroneously offered at incorrect prices, Hello Doctor will not be obliged and/or committed to sell such service and/or product at such incorrect prices, but will refund monies paid by the Subscriber should he or she not wish to proceed with the subscription at the correct price.

### **Invoicing**

No invoices will be issued by Hello Doctor to the Subscriber, unless specifically requested or required by Law. In which instance, Hello Doctor will, in its Discretion, issue such invoice electronically or by SMS.

### **Certificate**

A certificate signed by any director of Hello Doctor (whose appointment or authority as such it will not be necessary for Hello Doctor to prove), certifying any amount owing or outstanding in terms of the provisions of this Agreement which is, will be or has become due and payable, rates of interest and other charges applicable thereto will, in the absence of manifest error, be *prima facie* (meaning at first sight) proof of the matters therein stated for all purposes, including for the purposes of furnishing further particulars, obtaining provisional sentence and obtaining judgment against the Subscriber, as the case may be.

### **Payments**

All payments by the Subscriber to Hello Doctor must and will be made without any counter-claim, deduction and free and clear of exchange and bank fees, charges and commission, taxes, levies,

imposts, duties, charges, penalties or any other deductions imposed on the Subscriber, except to the extent that the Subscriber is required by Law to make payment subject thereto.

Payment by the Subscriber will only be deemed to have been made to Hello Doctor once the monies remitted by the Subscriber or the Bank from the Health Account have been received by and cleared into Hello Doctor's bank account.

If payment is made via any other intermediary, such bank and/or other intermediary will act as the agent of the Subscriber.

The Subscriber hereby authorises Hello Doctor and the Bank to debit the Subscriber's Health Account on the Payment Date of each Month and/or immediately after the Grace Period for all and/or any fees, costs, charges and taxes owed by the Subscriber in terms of this Agreement. In this regard, Hello Doctor and the Bank will be entitled, authorised and instructed to make multiple submissions during a Month to procure or obtain payment.

If and to the extent the Subscriber incurs any costs, fees, taxes, duties, imposts, expenses and/or charges of any nature whatsoever in communicating, corresponding, texting, transferring monies to and from the Subscriber's Health Account or otherwise to or for Hello Doctor, including but not limited to bank charges, such costs, fees, taxes, duties, imposts, expenses and/or charges shall be for the Subscriber's account.

### **Electronic Messaging**

The Subscriber hereby consents, authorises and instructs Hello Doctor to send SMS and other electronic messages to his or her electronic messaging devices (including but not limited to his or her personal computer and/or mobile or cellular phone) at any of the electronic mail addresses and contact details supplied by the Subscriber, with Hello Doctor being entitled but not be obliged, to:

- inform him or her of amendments to this Agreement and/or to any price change in respect of any service or product; and/or
- furnish him or her with access to this Agreement; and/or
- communicate information to him or her regarding any account or records he or she has with Hello Doctor; and/or
- inform him or her of planned and unplanned interruptions to any service; and/or
- inform him or her of new or available products and services; and/or
- inform him or her of promotions and special offers.

The Subscriber may opt out of receiving the above messaging service provided he or she notifies Hello Doctor thereof, in Writing, by email sent to the Hello Doctor electronic mail address [support@hellodoctor.co.ke](mailto:support@hellodoctor.co.ke).

*Hello Doctor has no and will not have any liability to the Subscriber, including but not limited to any member of his or her household or any third party or other Person as a result of or in connection with any SMS and/or electronic messaging (save as may result from Hello Doctor's gross negligence) whether by Hello Doctor, by the Subscriber, or by a third party or other Person, using any Subscription Service.*

*The Subscriber hereby indemnifies and holds Hello Doctor harmless against any loss or harm that the Subscriber, including but not limited to any member of his or her household or any third party or other Person, may suffer or incur as a result of any such communications, hereby waiving all and/or any rights and/or claims of whatsoever nature in that regard.*



## **Warranties**

The Subscriber hereby represents and warrants to and in favour of Hello Doctor that:

- he or she has the required legal capacity to enter into and be bound by this Agreement; and
- he or she confirms that he or she is 18 (eighteen) years of age or older (if a higher age is required in the Territory) and that there are no limitations upon his or her right to contract with Hello Doctor - if the Subscriber is under 18 (eighteen) years of age or his or her contractual capacity is subject to any legal form of limitation, this Agreement will not be binding on either of Hello Doctor or any of them unless the Subscriber is able to prove that in accepting this Agreement, he or she was assisted by his or her legal guardian, custodian or by such other Person legally authorised to assist him or her in contracting or to contract on his or her behalf; and
- this Agreement constitutes legal, valid and binding obligations on him or her and is legally enforceable against such Subscriber; and
- the mobile device on or through which the Subscriber Activated his or her Subscription Services is the property of the Subscriber and that all Laws in obtaining, registering, operating and/or owning such device have been complied with in every respect; and
- all factual information supplied by him or her to Hello Doctor in contemplation of or for the purposes of this Agreement, including but not limited to the Subscription Services, is true and accurate in all material respects as at the date thereof and is not misleading in any way; and
- he or she will immediately Notify Hello Doctor in Writing of any change in his or her address, contact details and/or banking details.

**The Subscriber hereby specifically represents and warrants to and in favour of Hello Doctor that all information offered, proffered, provided, discussed with and/or communicated to any medical practitioner whilst making use of a Subscription Service will be absolutely true and correct in every respect and regard – hereby acknowledging the importance as to the serious consequences if such information is not as represented and warranted.**

Subject to any and/or all applicable Laws, Hello Doctor makes no warranty or representation, whether expressly or implicitly,;

- about any component of the Sema Doc Product or the Subscription Services, or that the Subscriber will be able to have access to or continue to have access to the Sema Doc Product or Subscription Services or that such access will be continuous and/or uninterrupted; and/or
- as to the quality of reception by the Subscriber of the Subscription Service, or any aspect thereof, as Hello Doctor cannot be responsible or liable for electronic media or conveyance through, on and/or via such electronic means as these factors are and will be beyond its control; and/or
- that the software used to provide the Subscription Services and/or the Sema Product, including any software applications, is virus or error-free, flawless or without fault.

Subject to any and/or all applicable Laws, Hello Doctor, in the absence of its gross negligence or wilful misconduct or that of any Person acting for or controlled by it, is and will not be liable to any Person for the content of and/or the use of materials constituting the Subscription Services and/or the Sema Doc Product, whether provided by Hello Doctor, the Bank, the Insurer, a Service Provider, a third party or any other Person.

## **Personal Information**

By entering into this Agreement the Subscriber expressly gives and, to the extent applicable, is and will be deemed to have provided express permission for the collection, collation, processing, receipt, storage, recording, updating, modifying, retrieval, dissemination and distribution of his or her personal information for the purposes set out herein, which Hello Doctor is entitled, but not obliged to do, **save and except that all the Subscriber's personal medical information must and will at all times remain private and confidential and only be accessible to medical personnel.**

Subject to all and/or any Laws to the contrary, the Subscriber must and will:

- provide Hello Doctor with the personal and contact details and information as required by it in order to administer and/or deliver the Subscription Services; and/or
- inform Hello Doctor, in Writing within 7 (seven) Calendar Days of any change to any of the information provided by the Subscriber in relation to the Subscription Services and/or this Agreement.

The Subscriber hereby authorises Hello Doctor (who will not be obliged to), subject to any and/or all applicable Laws, to:

- access from any credit bureaux his or her personal information concerning financial risk and payment habits ("**Payment Profile**") for purposes of fraud prevention and debtor tracing, and to disclose information regarding his or her Payment Profile to such credit bureaux; and/or
- obtain, capture, store, analyse and use for its marketing purposes his or her purchasing habits and profile; and/or
- use information that Hello Doctor may have in relation to the Subscriber for the purposes of -
  - processing any request; and/or
  - administering this Agreement; and/or
  - informing the Subscriber of any new aspects of the Sema Doc Product, as the case may be, or services and/or products provided by Hello Doctor affiliates; and/or
  - informing the Subscriber of promotional competitions; and
  - notifying the Subscriber of any amendments to this Amendment; and
  - disclosing the Subscriber's personal information (save that all private and personal medical information will remain confidential):
    - to companies, businesses or Persons affiliated with Hello Doctor for purposes of marketing their services (subject to the Subscriber's right to refuse such disclosure of personal information); and/or
    - to any company, business or Person which acquires the Hello Doctor business or any part thereof, or which it may acquire; and/or
    - to agents, representatives or service providers which Hello Doctor appoints to process any transaction contemplated and/or provided for herein, administer this Agreement or provide management or other services; and/or

- to Hello Doctor's payment system Service Providers in order to facilitate the collection of any fees, charges and costs using payment systems owned and operated by third parties or other Persons; and/or
- if and to the extent required to do so to comply with any Law; and
- retain the Subscriber's personal information referred to herein for as long as Hello Doctor is required to do so in terms of the Law or in order to exercise or protect any of its rights under or by virtue of this Agreement.

### **Non Hello Doctor Services and/or Products**

To the extent Hello Doctor provides the marketing platform for the purchase by the Subscriber of a service or a product, there will be no legally binding agreement by and between the Subscriber and Hello Doctor and all transactions associated therewith will be by and between the Subscriber and other Person on whose behalf Hello Doctor is conducting such marketing.

To the extent the Subscription Services are packaged with, linked to and/or contain an embedded third party product or service, including but not limited to healthcare or insurance, the Subscriber hereby undertakes, where applicable, to sign such other documentation as may be required by Law or otherwise to give effect to a legal relationship as between the Subscriber and the third party issuing such healthcare or insurance service and/or product. This Clause includes, but is not limited to the Bank's Terms and Conditions in respect of the Banking Services and the Insurer's Terms and Conditions in respect of the Hospital Cash Benefit.

### **Intellectual Property**

The Subscriber hereby accepts, acknowledges and records that, as far as he or she is concerned, all materials, including the information and/or content comprising and/or constituting the Subscription Services are protected by copyright and Intellectual Property rights, which are either owned by, or the use thereof is licensed to, Hello Doctor.

The Subscriber acquires no right, title or interest in Hello Doctor's Intellectual Property and will use his or her best endeavours to maintain and protect its interest and that of its suppliers and licensors in such rights.

The Subscriber may not use and will not permit, facilitate or condone any other Person using any of Hello Doctor's Intellectual Property or duplicate, reproduce, sell, stream, download, distribute or otherwise use or transmit any part or portion of Hello Doctor's Intellectual Property other than as contemplated and provided for in this Agreement – there shall be no commercial gain by any other Person (other than Hello Doctor) from the Subscriber using the Subscription Services and/or Hello Doctor's intellectual Property.

The Subscriber is not and will not be permitted to manipulate Hello Doctor's Intellectual Property – the sale and copying thereof is strictly prohibited.

### **Force Majeure**

Hello Doctor will not be liable for failure to perform if the failure is attributable to a Force Majeure.

If Hello Doctor suffers or has to endure Force Majeure conditions that will result in its non-performance, it will and must Notify the Subscriber, in Writing, by SMS, of the existence of such conditions and the anticipated period of non-performance.

If the actual period of non-performance, because of Force Majeure conditions, exceeds 3 (three) Months from the date of Written Notice of Force Majeure conditions, either of Hello Doctor or the Subscriber, as the case may be, will be entitled, but not obliged, to terminate this Agreement at the

end of such 3 (three) Month period or at any time thereafter during the continuance of the Force Majeure conditions on 60 (sixty) Calendar Days' Written Notice.

Neither Party will owe to the other any damages, reimbursement or indemnification as a result of a Force Majeure termination.

### **Limitation of Liability**

All references to Hello Doctor or its affiliates (wherever herein referred to, the term "**affiliates**" shall include but not limited to the Bank, the Insurer and/or other Service Providers) herein will include a reference to their shareholders, promoters, employees, representatives, directors, agents, consultants, advisers, subcontractors and any other Persons acting for or on their behalf in the provision of any service and/or product contemplated or provided for herein.

Hello Doctor will be entitled to suspend, cancel, vary or terminate this Agreement or any part thereof, without incurring any liability whatsoever, in the event of a prohibition by the government or any regulatory authority of the Territory on the transmission of or access to the Subscription Services and/or any part of the Sema Doc Product, as the case may be, or any impossibility of the performance by Hello Doctor of its obligations under this Agreement, which impossibility arose from circumstances beyond the reasonable control of Hello Doctor.

Neither Hello Doctor nor any of its affiliates is or will be liable for any loss or damages of any nature whatsoever suffered by the Subscriber or any other Person arising out of or in connection with:

- any act or omission of Hello Doctor or its affiliates, save for any act or omission which is wilfully intended to cause loss or is grossly negligent; and/or
- a breach of this Agreement by the Subscriber; and/or
- any interruption, delay, suspension, defect or failure in the distribution or reception of the Subscription Services beyond Hello Doctor's reasonable control.

Notwithstanding any express exclusion of liability recorded herein, neither Hello Doctor nor any of its affiliates will be liable for any loss or damage of any nature, including direct, indirect, special or consequential damages, including loss of profits, suffered by the Subscriber or any third party or Person arising from any cause, except where such loss or damage is caused by the intentional or grossly negligent acts or omissions of Hello Doctor or any of its affiliates.

The Subscriber hereby indemnifies and holds Hello Doctor and any and all of its affiliates harmless against any claim brought by any third party or Person against Hello Doctor and any of its affiliates:

- arising out of a breach by the Subscriber of the provisions of this Agreement; and/or
- as a result of access to or use by a third party or Person of the Subscription Services and/or a Sema Doc Product, as the case may be; and/or
- associated with the provision of the Subscription Services and/or a Sema Doc Product, as the case may be, to the Subscriber.

### **Disputes**

Should any dispute arise between Hello Doctor and the Subscriber from the terms of this Agreement or any suspension or termination thereof, such dispute may be referred to arbitration by any one of the Parties and, failing agreement by the Parties on an arbitrator, one will be appointed by the President for the time being of the Law Society of the Territory whose decision will be final and binding on the Parties. Such arbitration will be conducted as informally and as inexpensively as possible at any venue in the city in which Hello Doctor operates and is situated selected by the arbitrator and otherwise in accordance with the provisions of that Territory's arbitration legislation and rules.

## **Enforcement**

For the purposes of enforcing any claim and/or order made by any arbitration award the Parties, to the extent necessary and applicable to give effect to the aforementioned, hereby irrevocably submit to the non-exclusive jurisdiction of the High Court of the Territory to apply for such order to be enforced.

## **Breach**

Should the Subscriber:

- fail to make any payment on the due date; or
- commit any other material breach of this Agreement; and

fail to remedy such breach within 3 (three) Calendar Days of receipt by him or her of Written Notice from Hello Doctor calling upon the Subscriber to remedy such breach, Hello Doctor will be entitled, but not obliged, without prejudice to any other rights it may have in Law or in terms of this Agreement, to:

- immediately, without Notice to the Subscriber, suspend access to and/or use of the Subscription Services, save for the Grace Period contemplated herein; and/or
- cancel this Agreement and claim damages; and/or
- claim all legal costs, including attorney and client costs, tracing agents fees and collection charges, which Hello Doctor may incur in taking any steps pursuant to such breach; and/or
- declare all amounts owing to Hello Doctor by the Subscriber, if any, to be immediately due and payable, notwithstanding the fact that such amounts may not yet be due and payable.

Hello Doctor may, in its Discretion, elect to reconnect the Subscriber's access to the Subscription Services notwithstanding a suspension of such access, subject to the Subscriber making payment to Hello Doctor of the then prevailing Hello Doctor administration fee, which payment must be made by the Subscriber into his or her Health Account for collection by the Bank and payment to Hello Doctor.

## **Notices and Domicilium**

Hello Doctor may send any Written Notice to the Subscriber in any manner it deems appropriate.

Any and/or all Written Notices (including but not limited to any communication, correspondence and/or Court process) sent by post, electronic mail, SMS, MMS (multimedia messaging service), Whats App, Mxit, Facebook or other social media platforms, telefax transmission and/or delivered by hand, will be deemed to have been received by the Subscriber on the Day of transmission or delivery, whichever is applicable, save for postal delivery being 7 (seven) Calendar Days from date of despatch.

Any Written Notice actually received by the Subscriber will be deemed to have been properly given to and received by him or her, notwithstanding the fact that such Notice may not have been delivered to his or her chosen *Domicilium* or transmitted to his or her chosen social media platform, telefax number, email address or cellular or mobile phone number.

All Written Notices from the Subscriber to Hello Doctor, except for a breach Notice and/or any Court process, must be sent by email to [support@hellodoctor.co.ke](mailto:support@hellodoctor.co.ke).

Any and/or all breach Notices and/or any Court process to be sent to Hello Doctor must be received by it at its registered office as recorded on the Hello Doctor Website.

### **English Language**

All Notices issued pursuant to and/or in terms of this Agreement, as well as all legal actions and Court and/or other proceedings will be Written and conducted in the English language.

### **Choice of Law**

This Agreement and the rights and obligations of the Parties will be governed by and construed in accordance with the Laws of the Territory.

### **Jurisdiction**

Notwithstanding the fact that a service or product may be delivered cross border, the Parties irrevocably submit and consent to the jurisdiction of the Courts of the Territory, in respect of any claim (including any dispute or difference) arising out of and/or in connection with this Agreement. Accordingly, if the Subscriber who is located outside the Territory, he or she hereby waives all his or her rights to bring any claim of whatsoever nature against Hello Doctor in any jurisdiction other than the Territory, unless otherwise specifically agreed to in Writing by Hello Doctor.

### **Costs, Fees and Charges**

In the event of the Subscriber committing any breach of this Agreement or in the event of Hello Doctor being required to take any legal action in order to enforce any of its rights in terms of this Agreement, the Subscriber undertakes to pay all Hello Doctor's legal and/or collection costs on the scale as between attorney and his own client.

Hello Doctor will be entitled, but not obliged, to charge or claim from the Subscriber any and/or all banking and/or administration fees, costs and/or charges it incurs or is required to pay if and in the event of the Subscriber defaults on any of his or her payments or any other obligations as set out in this Agreement.

### **Cession, Delegation and/or Assignment**

Hello Doctor may cede, delegate, assign and/or otherwise transfer any and/or all of its rights and/or obligations, in whole or in part, under this Agreement without the consent of the Subscriber.

The Subscriber will not be entitled to cede, delegate, assign, and/or otherwise transfer any or all of his or her rights and/or obligations under this Agreement without the prior Written consent of Hello Doctor.

### **Interest**

If applicable, in the event of the Subscriber failing to effect payment of any amounts due in terms of this Agreement on the due date therefore, without derogating from Hello Doctor's other rights herein and in Law, the Subscriber will be liable to effect payment of interest to Hello Doctor on the amount so overdue at the maximum permissible rate allowed from time to time by Law.

### **Entire Agreement**

This Agreement constitutes the complete and exclusive Written expression of the terms of the agreement between the Parties and supersedes all prior or contemporaneous proposals, oral or Written, understandings, representations, conditions, warranties, covenants and all other communications (including but not limited to marketing material) between the Parties relating to the subject matter of this Agreement.

This Agreement may not in any way be explained or supplemented by a prior or existing course of dealings between the Parties pursuant to this Agreement or otherwise.

### **Variations, Waivers & Indulgences**

No variation of, addition to, consensual cancellation of or waiver of any right arising in terms of this Agreement (including this Clause) will be of any force or effect unless it is reduced to Writing and Signed by the Party or on behalf of or by the Parties' respective duly authorised representatives, save that Hello Doctor will have the right to unilaterally amend from time to time its prices in and for the Subscription Services and/or the Sema Doc Product and the amendments brought about thereby will be deemed to be incorporated herein and this Agreement so amended, unless otherwise provided for and/or agreed to in Writing by Hello Doctor.

No failure of any Party to exercise, and no delay by it in exercising, any right, power or remedy in connection with this Agreement (each a "Right") will operate as a waiver of that Right, nor will any single or partial exercise of any Right preclude any other or further exercise of that Right or the exercise of any other Right.

The Rights provided in this Agreement are cumulative and not exclusive of any other Rights (whether provided by Law or otherwise).

Any express waiver of any breach of this Agreement will not be deemed to be a waiver of any subsequent breach. Likewise, one or more waivers of any right, obligation or default will not be construed as a waiver of any subsequent right, obligation or default.

Any liability to any Party under this Agreement may, in whole or in part, be released, compounded or compromised or time or indulgence given by that Party in its Discretion as regards any Party under such liability without in any way prejudicing or affecting its rights against the other Party under the same or a like liability, whether joint and several or otherwise.

### **Matters to be agreed**

Where it is specified in this Agreement that certain matters are to be agreed between the Parties, failure to reach agreement in respect of such matter will not affect the validity and enforceability of the whole or any part of this Agreement unless otherwise provided for.

### **No Agency**

Nothing in this Agreement will be deemed to constitute any Party as an agent of the other Party for any purpose whatsoever except as expressly provided for in this Agreement.

### **Conflict & Compliance with the Law**

Insofar as any of the provisions contained in this Agreement are in conflict with any of the Laws of the Territory and any law of any other country to which this Agreement may apply for the time being in force, such provisions will be deemed to be amended only to the extent necessary to comply with the provisions of such Laws.

Each Party will ensure that it and its activities will, at all times, comply with all applicable Laws and the legislation in the Territory and any other country to which this Agreement may apply.

### **Severability & Illegality**

If any provision of this Agreement is held to be invalid, illegal, contrary to public policy or unenforceable by a Court of competent jurisdiction or arbitrator, the validity, legality and enforceability of the remaining provisions will in no way be affected or impaired thereby, and this Agreement will remain and be of full force and effect.

Any provision in this Agreement which is or may become illegal, invalid or unenforceable will be ineffective to the extent of such prohibition or unenforceability and will be treated as *pro non scripto* (meaning as though it had not been Written) and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or

enforceability of such provision.

**Read, Understands & Bound by the Agreement**

The Subscriber:

- confirms that this Agreement and all terms, conditions and provisions were agreed to on a strictly arms’ length and market related basis; and
- confirms that each provision of this Agreement is fair and reasonable in all the circumstances and is part of the overall intention of the Parties; and
- acknowledges he or she has read this Agreement and agrees to be bound by its terms, conditions, provisions and covenants; and
- understands the meaning and import of each and all of the Clauses of this Agreement; and
- understands his or her rights and obligations arising out of this Agreement; and
- confirms that he or she has been free to secure independent legal advice as to the nature and effect of each provision of this Agreement and has either taken such independent legal advice or has dispensed with the necessity of doing so; and
- understands the financial implications, fees and costs provided for in this Agreement; and
- confirms that there were no blank spaces.

**Signature**

This Agreement is Signed by the Subscriber Activating the Subscription Services and/or the Sema Doc Product.

It is not required for this Agreement to be valid and enforceable that a Party must Initial the pages hereof or each of them and/or have its, his or her Signature verified by a witness or actually physically Sign this Agreement.

The Subscriber by Activating will or will be deemed to have:

- read, understood and agreed to each and every Clause of this Agreement; and
- Signed this Agreement.

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**The terms and conditions of use for Talk to a Doctor; Text a Doctor and/or Health Tips follow below.**

**Version 1: Date of last review – 28 July 2015**

**TERMS AND CONDITIONS OF THE USE FOR THE SUBSCRIPTION SERVICES: TALK TO A DOCTOR; TEXT A DOCTOR AND/OR HEALTH TIPS**

The word “**you**” is a reference to a Subscriber.

**Introduction**

In order for a doctor to phone you or respond to your text based messages within the hour and for you to receive your daily health tips, you will be required to accept these terms and conditions, as well as the Standard Subscription Terms and Conditions applicable to Hello Doctor’s Subscription Services, which are set out above on the Hello Doctor Website.



Hello Doctor is a subscription based electronic platform and medium for consumers to telephonically, electronically or digitally converse with a registered healthcare or medical practitioner. All medical practitioners are registered and accredited within the jurisdiction in which he or she operates.

### **Legal Basis**

The medico-legal relationship, if any, created by the doctor phoning you upon your request, or texting you in response to your text based message, is by and between you and the attending doctor.

### **Age**

You represent and warrant that you are at least 18 years of age and that you possess the legal right and ability to enter into an agreement with the attending doctor and/or Hello Doctor. If you are under the age of 18, you must have your parents' consent. To the extent the legal requirement for age of majority is greater than the age of 18, you represent and warrant that you are at least that age.

### **Disclosure of All Relevant Information**

These services are provided in good faith based upon the information given by you, during the phone call or text message. As such, you are required to disclose all relevant information, no matter how trivial, pertaining to your current health and past medical history that may have a bearing on the services to be so provided.

### **Rights – YOUR CHOICE**

It is your right not to use the Subscription Services. It is your right to ask the attending doctor any question to solicit information of an educational nature to empower you with information to make an informed decision. Please note that by participating in any call or text based interaction with an attending doctor you will be signifying your consent to participate in such call or receiving advice or educational information. The attending doctor cannot and will not diagnose you or offer treatment for any medical condition other than for a Prescribed Condition if using the Talk to a Doctor Service. If for any other medical condition or if using the Text a Doctor Subscription Service, the doctor can only give you guidance as to what the correct medical process would be if and to the extent of a particular condition. All calls will be recorded and kept confidential. All text based messages will be archived and kept confidential. However, if you participate in open group text based forums or discussions, the information you divulge will, by its very nature, be publicly available and for all those participating to see; there being no confidentiality in open forums.

### **Not a Substitute for in person medical care**

Other than in respect of the Prescribed Conditions using the Talk to a Doctor Subscription Service, the service you receive is not clinical medical advice, but rather preventative healthcare information of an educational nature to empower you to make an informed decision and choice; it does not replace and is not intended to replace in person medical care, advice, instruction or treatment. As such, you are urged to immediately seek medical treatment if and to the extent the reason for your call persists.

### **No warranty**

Hello Doctor and the attending doctor:

- (i) make no warranty as to the content of any information and/or response; and
- (ii) do not guarantee that a conversation with a doctor via the telephone and/or text message is the appropriate course of action for your particular health care problem.

### **No change in health condition**

You are solely responsible for all information and/or communication given during the telephone conversation, text message or other communication. You undertake to contact your doctor immediately should your condition change or your symptoms worsen. If you require urgent care, you should contact your local emergency services immediately. Any and all services that you acquire through Hello Doctor and the attending doctor shall be solely for your personal use.

**Risks**

You understand and accept that there is an inherent risk in not having a physical examination. Your use of the Subscription Services is at your sole risk and you assume full responsibility for all risks associated therewith. All information or services provided through the Subscription Services are provided without any warranty of any kind, express or implied. To the fullest extent permissible under the Law of the Territory or any other law, Hello Doctor and the attending doctor, their shareholders, affiliates, directors, officers, managers, employees, advisers and/or other representatives hereby disclaim all representations and warranties, express or implied, statutory or otherwise, including but not limited to warranties of fitness for a particular purpose. Without limiting the foregoing, there is and shall be no warranty as to the reliability, accuracy, timeliness, usefulness, adequacy, completeness or suitability of the services and/or the products so provided.

**Limitation of Liability**

Hello Doctor and the attending doctor shall not be liable for any direct damages in excess of: (i) the subscription price of any service subscribed or paid for; and/or (ii) in the event no purchase price was paid or required, an amount equal to no greater than the equivalent of KSh1,000 (one thousand Kenyan Shillings). In addition, to the maximum extent permitted by Law, Hello Doctor and the attending doctor shall not be liable for any special, punitive, indirect, incidental or consequential damages, including but not limited to personal injury, wrongful death or loss of use, whether in any action in warranty, contract, delict (including, but not limited to negligence or fundamental breach), or otherwise arising out of or in any way connected with the use of, or the inability to use, these services or any product proffered or acquired through these services or any material or information contained in, accessed through, or products purchased through these services.

**Indemnity**

You indemnify, defend and hold harmless Hello Doctor and the attending doctor and their affiliates from and against all losses, liability, expenses, damages and costs, including all attorney's fees, arising out of or related to any breach of the terms of use, your relationship with Hello Doctor and the attending doctor, any negligent or wrongful action or omission by you related to your use of services through Hello Doctor, or any negligent or wrongful use of the services, including negligent or wrongful conduct by you or any other Person acting on your behalf.

**Waiver**

Hello Doctor shall not be responsible or liable, directly or indirectly, for any damage or loss caused, or alleged to be caused, by or in connection with, use of or reliance on, any information, products and/or services available on or through Hello Doctor and/or all those associated and/or affiliated with it, including the attending doctors, the Bank, the Insurer and the Service Providers. Accordingly, in consideration for the services so provided, you, the Subscriber requesting the call back, hereby waive your right to bring any normal, reasonable and/or legally enforceable claim, action, proceeding, application and/or demand against Hello Doctor and/or all those associated and/or affiliated with it, including the attending doctors, for any and/or all claims, costs, damages and/or expenses or otherwise arising out of and/or suffered by you and/or your family as a result or consequence of making use of these services or otherwise.

**Acceptance of Hello Doctor's Terms & Conditions**

By Activating the Sema Doc Product in terms of the Consumer Guideline, you confirm that you, as the Subscriber to the Subscription Services, have read, understood and agreed to both these and the Standard Subscription Terms and Conditions.