

# TERMS OF THE FLEXICARE PRODUCT

## 1. INTERPRETATION

- 1.1. The headings of the clauses in these Terms are for the purpose of convenience and reference only and will not be used in the interpretation of, nor modify nor amplify these Terms nor any clause hereof. Unless a contrary intention clearly appears, words importing:
  - 1.1.1. Any one gender includes the others
  - 1.1.2. The singular includes the plural and vice versa
  - 1.1.3. Natural persons include created entities (corporate or unincorporated) and the state and vice versa
- 1.2. Any reference in these Terms to "date of acceptance hereof" will be read as meaning a reference to the date these Terms are accepted and agreed to during the digital application journey.
- 1.3. Any reference to an enactment is to that enactment as at the date of acceptance hereof and as amended or re-enacted from time to time.
- 1.4. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect will be given to it as if it were a substantive provision in the body of these Terms. This is notwithstanding that it is only in the definition clause.
- 1.5. When we mention any number of days in these Terms, it will be construed as being a reference to calendar days unless qualified by the word "business" in which instance a "business day" will be reckoned exclusively of the first and inclusively of the last day. This is unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day will be the next day which is not a Saturday, Sunday or public holiday.
- 1.6. Where we refer to figures in numerals and in words, and there is any conflict between the two, the words will prevail.
- 1.7. Expressions defined in these Terms will bear the same meanings in schedules to these Terms that do not themselves contain their own definitions.
- 1.8. Reference to days, months or years will be construed as Gregorian calendar days, months or years.
- 1.9. The use of any expression in these Terms covering a process available under South African law such as a winding-up (without limitation eiusdem generis) will be construed as including any equivalent or analogous proceedings under the law of such defined jurisdiction. This is if any of the Parties to these Terms is subject to the law of any other jurisdiction.
- 1.10. Where any term is defined within the context of any clause in these Terms, the term so defined will bear the meaning ascribed to it for all purposes according to these Terms. This is unless it is clear from the clause in question that the term so defined has limited application to the relevant clause and notwithstanding that that term has not been defined in this interpretation clause.
- 1.11. The expiration or termination of the Flexicare product will not affect such of the provisions of these Terms as expressly provide 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.
- 1.12. The rule of construction that the contract will be interpreted against the Party responsible for the drafting or preparation of these Terms, will not apply.
- 1.13. Any reference in these Terms to a Party will, if such Party is liquidated or sequestrated, be applicable also to and binding upon that Party's liquidator or trustee, as the case may be.

## 2. DEFINITIONS

- In these Terms, unless the context clearly indicates otherwise, the following words and expressions will have the following meanings:
- 2.1. "**Applicable Laws**" means all laws, regulations, rules, codes of conduct and determinations from regulatory authorities applicable to financial services providers, registered insurers, medical scheme administrators and managed healthcare organisations in relation to the marketing and sales of the Flexicare product and the services and which applicable laws will include, but not be limited to:
    - The Financial Advisory and Intermediary Services Act 37 of 2002 (FAIS Act)
    - The Insurance Act 18 of 2017
    - The Medical Schemes Act 131 of 1998
    - The Protection of Personal Information Act 4 of 2013 (POPIA)
  - 2.2. "**Auto and General**" means Auto and General Insurance Company Ltd, with registration number 1973/016880/06
  - 2.3. "**Authorised Sub-contractor**" means a Supplier sub-contracted to Discovery Health to provide Services contemplated in these Terms, approved in writing and signed by Discovery Health as per a sub-contractor agreement.
  - 2.4. "**Claims**" means:
    - 2.4.1. Payment claims by a Supplier or Authorised Sub-contractor pursuant to the provision of Services.
    - 2.4.2. Reimbursement claim by a Member or Employee pursuant to having paid the Fee of a Supplier or Authorised Sub-contractor.
  - 2.5. "**Confidential Information**" means all and any information or data in whatever form (including oral, written, electronic and visual) relating to a Party or any of its affiliates and/or third parties contracted with that Party. This is if it is by its nature or contents identifiable as or could reasonably be expected to be confidential and/or proprietary to that Party, or any of its affiliates and/or third parties contracted with that Party. Without limiting the generality of the foregoing, it includes (even if not marked as being confidential, restricted, secret, proprietary of any similar designation) technical and financial information and ideas pertaining to a Party's business. This includes certain confidential business records and information related to its business operations and business relationships, and information which is not readily available in the normal course of business to competitors of the Party disclosing such information.
  - 2.6. "**Data Protection Legislation**" means applicable data protection or data privacy laws, including POPIA, in force in the Republic of South Africa from time to time;
  - 2.7. "**Disclosing Party**" means a Party who discloses Personal Information and/or Confidential Information to a Receiving Party, or on whose behalf Personal Information has been collected by the Receiving Party, pursuant to these Terms;
  - 2.8. "**Discovery Health**" means Discovery Health (Pty) Ltd, registration number 1997/013480/07, being a private company duly registered and incorporated according to the company laws of the Republic of South Africa carrying on business as a medical scheme administrator and managed healthcare organisation.
  - 2.9. "**Fee**" means the fee for the Services as more fully described in your policy documents.
  - 2.10. "**Flexicare**" or "**the Product**" means a unique member funded primary healthcare service/product governed in terms of the

Applicable Laws, provided by Auto and General and outsourced to Discovery Health, who on behalf of Auto and General also administers and provides the Services/product to address the needs of Members who wish to provide access to primary healthcare for their Employees and will Indemnify the Members in respect of the costs associated with the provision of Services as set out in your policy documents.. The marketing, sales and administration has been outsourced to Discovery Health.

- 2.11. **“Indemnity”** means the indemnity Auto and General gives to the Member pursuant to Claims.
- 2.12. **“Intellectual property”** means any:
- Know-how (not in the public domain)
  - Invention (whether patented or not)
  - Design
  - Trademark (whether registered or not) or copyright material (whether registered or not)
  - Processes
  - Process methodology (whether patented or not)
  - All other identical or similar intellectual property
- This is any of the above as may exist anywhere in the world which is not in the public domain and any applications for registration of such intellectual property.
- 2.13. **“Intellectual Property Rights”** means, in relation to any intellectual property, all and any:
- (i) Proprietary rights thereto. or
  - (ii) Any other right, title, authority or entitlement held by either Party in respect thereof, whether under license or otherwise.
- 2.14. **“Member”** means an individual business owner that would like to obtain the Flexicare policy to provide access to primary healthcare to its Employees.
- 2.15. **“Operator”** has the meaning ascribed thereto in POPIA;
- 2.16. **“Parties”** mean Member and Discovery Health, and **“Party”** means either Discovery Health or Member as the context may indicate.
- 2.17. **“Personal Information”** has the meaning ascribed thereto in POPIA and is being or may be processed by the Receiving Party pursuant to these Terms and the Member’s policy documents;
- 2.18. **“POPIA”** means the Protection of Personal Information Act No 4 of 2013 and any regulations passed thereunder, as may be amended from time to time;
- 2.19. **“Processing”** has the meaning ascribed thereto in POPIA and derivatives thereof will have cognate meanings;
- 2.20. **“Receiving Party”** means a Party who receives Personal Information and/or Confidential Information from the Disclosing Party, or on whose behalf it collects Personal Information, pursuant to these Terms and such receipt of Personal Information renders that Party an Operator;
- 2.21. **“Representative”** means an officer, director or employee of the Receiving Party;
- 2.22. **“Secure Email”** means emails delivered over a strict secure protocol to prevent external interference and the risk of an unauthorised individual, corporate or entity gaining access thereto. It also includes security features, such as password protecting emails, message-recall functions and full audit trail on read print and forward receipts.
- 2.23. **“Services”** means the medical services, that will be administered by Discovery Health, given by the Suppliers and in respect of which Discovery Health is liable in respect of the Claims.
- 2.24. **“Supplier”** means a person registered as a medical practitioner according to the Health Professionals Act 56 of 1974 and

licensed, contracted, employed or procured by Discovery Health as an Authorised Sub-contractor to render the Services.

- 2.25. **“Terms”** means these terms and conditions together with all its sections, parts thereof and thereto and any amendments thereto, executed by the Parties in writing;
- 2.26. **“Third Party Operator”** means a third party who is an Operator of the Receiving Party.
- 2.27. **“VAT”** means value-added tax levied according to the Value-added Tax Act 89 of 1991, as amended.
- 2.28. Annexures to this agreement:

Annexure	Title
A	Debit order mandate

### 3. INTRODUCTION

- 3.1. Flexicare is a unique member-funded primary healthcare service or product governed according to the Applicable Laws, provided by Auto and General and outsourced to Discovery Health, who on behalf of Auto and General also administers and provides the Services/product to address the needs of Members who wish to provide access to primary healthcare for their Employees and will Indemnify the Members in respect of the costs associated with the provision of Services as set out in your policy document.
- 3.2. Discovery Health has entered into an agreement with Auto & General with regards to the Flexicare product. According to this agreement with Auto & General, Discovery Health may market, sell and administer the Flexicare product, and its services, as provided for in these Terms.
- 3.3. Auto and General is a registered short-term insurer and financial services provider.
- 3.4. Discovery Health is knowledgeable and experienced in giving a wide range of services, including wellness management and interventions in large corporates.
- 3.5. The Member is desirous of obtaining a Flexicare policy according to which Auto and General will Indemnify the Services to Members in respect of Claims pursuant to the rendering of Services on these Terms.

### 4. INDEMNITY

Auto and General hereby Indemnifies the Member for all Claims in respect of the provision of Services by Suppliers for the duration of these Terms. This is if Authorised Sub-contractors provides the Services.

### 5. FEES AND COMMERCIAL TERMS

The Member will pay to Discovery Health on behalf of Auto and General the Fees as set out in the policy documentation.

### 6. PAYMENT TERMS

Unless otherwise stated in these Terms, the Member will pay any payments due according to these Terms as far as possible (and unless otherwise specified in the policy documents), to Discovery Health according to the billing structure Discovery Health created for the Member. It must also be in line with an original tax invoice from Discovery Health prepared according to section 20 of the Value-added Tax Act, 89 of 1991 for the Services supplied. All amounts payable according to these Terms, include VAT charged at the prescribed rate, unless expressly stated otherwise.

### 7. DISCOVERY HEALTH OBLIGATIONS

- 7.1. Discovery Health, will for the duration of these Terms, diligently and with reasonable care and skill carry out its obligations according to its outsourced product agreement with Auto and General. They will do it in a manner consistent with the

provisions set out in these Terms. This is in furtherance of Auto and General's indemnification of the Member for all Claims submitted for the provision of Services.

- 7.2. It is recorded that the Indemnity is limited to the provision of Services by the recognised Suppliers and Authorised Sub-contractors. On this basis, it is acknowledged that Discovery Health will, on behalf of Auto and General, settle the Claims of Suppliers and Authorised Sub-contractor directly according to contractual agreements they will have entered into with Discovery Health, thereby giving the Indemnity, as defined.
- 7.3. For the duration of the application of these Terms, Discovery Health will devote such of its time, attention and abilities to its duties, obligations and undertakings under these Terms as may be reasonably required for the proper discharge of its obligations according to these Terms. In this context, it is noted that the arrangement between Discovery Health and the Member is not exclusive and it does not constitute the sole business of Discovery Health.
- 7.4. Auto and General and/or Discovery Health reserves the right to review and update these Terms, Services and benefits of Flexicare on an annual basis. Discovery Health shall provide the Member with the amended or updated Flexicare terms, Services and benefits in accordance with clause 22.4.

#### **8. SUB-CONTRACTING AND DELEGATION OF SERVICES**

- 8.1. Discovery Health may sub-contract with and appoint Suppliers to assist it in the delivery of the Services to the Member. Discovery Health will notify the Member in writing and within a reasonable time of such appointment of any sub-contractor.
- 8.2. Discovery Health will, however, remain primarily responsible to ensure an acceptable Supplier network and that the Services are supplied by Suppliers for such supplier network and will not divest itself of liability for transgressions, acts and omissions of its sub-contractors.

#### **9. UNDERTAKINGS BY THE PARTIES**

- 9.1. The Member undertakes that it will:
  - 9.1.1. Pay to Discovery Health on behalf of Auto and General the monthly Fee for the Indemnity for each eligible Employee.
  - 9.1.2. Give one month's notice of your intention to end your or your dependants Flexicare cover with Discovery Health.
- 9.2. Discovery Health undertakes that it will:
  - 9.2.1. Ensure that the Services are provided according to industry best practice, and according to the Applicable Laws and professional body rules and guidelines governing and regulating its obligations according to these Terms.
  - 9.2.2. Maintain in its name, all required authorisations, consents, licenses, accreditations and approvals of any relevant governmental or regulatory authority or self-regulating organisation in the Republic of South Africa to enable it to procure the rendering of the Services by Suppliers. It will not be involved in any unethical business practices and it is in compliance with. It will, for the application of these Terms, comply with all the Applicable Laws in the rendering or the provision of the Flexicare product or the Services and any other aspect of these Terms. It is recorded that the Services will be rendered by the Suppliers and not directly by Discovery Health. Discovery Health and Auto and General Indemnifies the Member in respect of the Claims by the Suppliers.

#### **10. WARRANTIES**

Each Party warrants and represents that, as at the Effective Date of these Terms:

- 10.1. It has full capacity and authority to enter into and perform its obligations under these Terms.
- 10.2. These Terms is executed by a duly authorised representative of that Party.
- 10.3. There are no actions, suits or proceedings or regulatory investigations pending or, to that Party's knowledge, threatened against or affecting that Party before any court or administrative body or arbitration tribunal that might affect the ability of that Party to meet and carry out its obligations under these Terms. If any of these circumstances, as stated in clause 10.3, arise, the affected Party will notify the other Party in writing within 7 (seven) days thereof.

#### **11. MANAGEMENT OF THESE TERMS**

The Parties agree to co-operate with each other to manage all aspects of these Terms, including the administrative and communication aspects thereof. This arrangement is concluded in a spirit of utmost good faith.

#### **12. DATA SHARING AND PROTECTION OF PERSONAL INFORMATION**

- 12.1. By submitting any Personal Information to Discovery Health in any form, the Member acknowledges that such conduct constitutes an unconditional, specific and voluntary consent to the Processing of such Personal Information by Discovery Health and Auto and General. This is under the Data Protection Legislation in the manner contemplated in clause 12.2. The consent will, in the absence of any written objection received from Member, be indefinite and for the period otherwise required according to the Data Protection Legislation.
- 12.2. The Indemnity is given on the understanding that all Discovery Health's contact with the Employees will be confidential and consistent with professional codes of ethics. Discovery Health will not feed details back to the Member that identify an individual user of the Services, unless with their written consent or where in the reasonable opinion of Discovery Health, there is a threat to life or a major threat to property or the business of Member. In such circumstances, Discovery Health will only give the details on a need-to-know basis and only if Discovery Health judge the information to be of significance. Clear clinical procedures exist in such circumstances and will be communicated to you at the outset. These procedures will be defined according to professional code of conduct as laid out by the relevant professional councils.
- 12.3. Discovery Health and Auto and General has the right to remove any part of the Personal Information that can identify an Employee from the information they received and that is under their control or possession. They also acquire all other rights over such Personal Information (if and to the extent that it cannot be re-identified again), by virtue of section 6(1)(b) of POPIA. This includes the right to process, transfer, share or use such Personal Information for any operational, analytical, statistical, academic, commercial or any other lawful purpose. For the purposes of this clause, the term "re-identified" will bear the meaning ascribed to it in section 1 of the POPIA.
- 12.4. To the extent that the Receiving Party Processes Personal Information, it warrants that:
  - 12.4.1. it shall Process such Personal Information only on the written instruction of the Disclosing Party, in accordance with these Terms or as required by Data Protection Legislation and as necessary to perform its obligations under these Terms and for no other purpose;
  - 12.4.2. it shall not create or maintain data which is derived from such Personal Information, except for the purpose of performing

- its obligations under these Terms and as authorised by the Disclosing Party in writing;
- 12.4.3. it shall, at any and all times during which it is Processing such Personal Information:
- 12.4.3.1. comply with Data Protection Legislation, and not, by act or omission, place the Disclosing Party in violation of any applicable Data Protection Legislation;
- 12.4.3.2. implement and maintain appropriate and reasonable technical and organisational security measures to protect the security of such Personal Information, including security measures applicable to the storage and transmission of such Personal Information, and to prevent a data security breach, including, without limitation, a breach resulting from or arising out of the Receiving Party's internal use, Processing or other transmission of such Personal Information, whether between or among the Receiving Party's Representatives or any Third Party Operator;
- 12.4.3.3. assign an employee who will be responsible for implementing and maintaining the technical and organisational security measures required in terms of these Terms and, upon the Disclosing Party's request, provide evidence that it has established and maintains such technical and organisational security measures governing the Processing of such Personal Information;
- 12.4.3.4. safely secure all such Personal Information when Processing such Personal Information on a laptop or other portable device (including memory sticks, USB flash drives, or other storage medium devices);
- 12.4.4. it shall notify the Disclosing Party without undue delay and no later than 1 (one) day from the date of obtaining knowledge of any data security breach in respect of such Personal Information and, at the Receiving Party's cost and expense, assist and cooperate with the Disclosing Party concerning any disclosures to affected parties and other remedial measures as requested by the Disclosing Party or required under applicable law;
- 12.4.5. it shall not permit any Representative or Third Party Operator to process such Personal Information, unless such Processing is in compliance with these Terms and is necessary in order to carry out the Receiving Party's obligations under these Terms;
- 12.4.6. it shall not disclose such Personal Information to any third party (including, without limitation, its Affiliates and subsidiaries and Third Party Operators) unless –
- 12.4.6.1. the disclosure is necessary in order to carry out the Receiving Party's obligations under these Terms;
- 12.4.6.2. such third party is bound by the same provisions and obligations as those set out in these Terms;
- 12.4.6.3. the Receiving Party has received the Disclosing Party's prior written consent; and
- 12.4.6.4. the Receiving Party remains responsible for any breach by such third party of the obligations set out in these Terms to the same extent as if the Receiving Party caused such breach;
- 12.4.7. it shall establish policies and procedures to provide all reasonable and prompt assistance to the Disclosing Party in responding to any and all requests, complaints, or other communications received from any individual who is or may be the subject of any such Personal Information;
- 12.4.8. it shall immediately cease Processing any Personal Information and shall return, delete, or destroy (at the Disclosing Party's election), or cause or arrange for the return, deletion, or destruction of, all such Personal Information, including all originals and copies of such Personal Information in any medium and any materials derived from or incorporating such Personal Information, upon the expiration or earlier termination of these Terms or otherwise on the instruction of the Disclosing Party, but in no event later than 10 (ten) days from the date of such expiration, earlier termination or instruction, unless prescribed by law or otherwise agreed;
- 12.4.9. it and all of its Representatives shall adhere to the requirements and security safeguards set out in POPIA;
- 12.4.10. it shall designate adequate resources to assist with the compliance and implementation of the obligations imposed on the Parties in terms of POPIA and will implement the necessary controls to ensure appropriate data protection and governance of such Personal Information. The Receiving Party will provide the Disclosing Party, on its request, with evidence of the implementation of such controls;
- 12.4.11. it shall conduct periodical internal and external reviews to measure the adequacy of the implemented controls on infrastructure and platforms that are used to Process such Personal Information;
- 12.4.12. it shall not use such Personal Information for any purpose that is inconsistent with POPIA on or before the time of collection of that Personal Information; and
- 12.4.13. it shall employ prudent and effective business continuity and disaster recovery facilities and procedures for the purposes of protecting all such Personal Information.
- 12.5. The Disclosing Party may, with 7 (seven) days' prior written notice to the Receiving Party, carry out periodic performance reviews and may monitor, audit and inspect the Receiving Party's performance under and compliance with these Terms and Data Protection Legislation by means of annual due diligence reviews and/or by appointing independent auditors to conduct an audit and/or quality assurance inspection as it may from time to time require into any aspect of these Terms.
- 12.6. The Receiving Party shall provide the Disclosing Party with its full co-operation to fully enable the Disclosing Party to review, monitor, audit and inspect the Receiving Party's performance under and compliance with this Paragraph and Data Protection Legislation.
- 12.7. On notification of an adverse finding following a review, audit or inspection, the Receiving Party shall provide the Disclosing Party with written feedback on the finding within 48 (forty eight) hours.
- 13. SECRECY AND CONFIDENTIALITY**
- 13.1. Notwithstanding the cancellation or termination of these Terms for any reason whatsoever, Receiving Party will not for any reason whatsoever, use, divulge, disclose, exploit or permit the use of in any manner whatsoever the Disclosing Party's Confidential Information divulged to it according to these Terms. This is during the existence of these Terms or at any time after the date of termination of these Terms. They will also not disclose the contents of these Terms, for any other reason whatsoever except to the extent that it is required for the purposes of fulfilling its obligations according to these Terms.

- 13.2. The undertaking given by the Parties herein will not preclude them from disclosing Confidential Information:
- 13.2.1. To the extent that they may be obliged to do so by the provision of any law, statute or regulation or during any legal proceedings and then only make such disclosure to the extent that is reasonably required for the purpose for which the disclosure is required.
- 13.2.2. To the extent they may be required to do so according to a due diligence exercise.
- 13.2.3. To the extent that they may be required to do so in a prospectus as a listing requirement on a stock exchange.
- 13.2.4. Insofar as such disclosure is necessary to their officers, employees and professional advisers. This is if the officer, employee or professional adviser to whom such information is disclosed will have bound himself or herself to equivalent undertakings and obligations as set out herein. The relevant Party will use its best endeavours to ensure that such officer, employee or professional adviser will abide by such undertakings and obligations.
- 13.3. The Parties hereby undertake, as an irrevocable stipulation in favour of one another to protect proprietary interest in the Confidential Information, and in doing so to:
- 13.3.1. Not use or permit the use of the Confidential Information for any purpose other than to fulfil its obligations according to these Terms.
- 13.3.2. Not, after the Effective Date of these Terms or any extensions thereof, to divulge or disclose to others in any form whatsoever, either directly or indirectly, any of the Confidential Information.
- 13.3.3. Not, after the date hereof or at any time after the termination of these Terms, use for their own benefit, or for the benefit of any other person in any form or manner whatsoever, directly or indirectly, any of the Confidential Information.
- 13.3.4. Not solicit, interfere with or entice or endeavour to entice away from one another any employee or any other person, firm or company who was a customer or who was accustomed to dealing with one of the Parties at any time during the continuance of these Terms.
- 13.3.5. Secure the integrity and confidentiality of any Confidential Information by taking appropriate, reasonable, technical and organisational measures to prevent loss of, damage to or destruction of any Confidential Information and unlawful access to Confidential Information.
- 13.3.6. Establish and maintain appropriate safeguards against all reasonably foreseeable internal and external risk to Confidential Information and regularly verify that safeguards are effectively implemented.
- 13.3.7. Where email is used as a mode of communication, to communicate by secure email.
- 13.3.8. Notify each other if there is any unauthorised disclosure of Confidential Information to any third party and will give reasonable assistance to each other to mitigate such breach and reclaim Confidential Information.
- 13.3.9. Return to the Disclosing Party within 10 (ten) business days of receipt of a request by the Disclosing Party, or destroy if so instructed, all copies of any document, handwritten notes, computer disk or other formats in which Confidential Information is stored together with a certificate that it has not retained any part thereof. This obligation will not apply to the extent that any Party is required under any Applicable Law or regulation to retain such Confidential Information.
- 13.3.10. The undertakings given by the Parties in respect of this clause will not apply to or exclude any information that:
- 13.3.10.1. Is or becomes generally available to the public other than by the negligence or default of the Receiving Party, or by the breach of these Terms by any of them.
- 13.3.10.2. A Disclosing Party confirms in writing is disclosed on a non-confidential basis.
- 13.3.10.3. Has lawfully become known by or come into the possession of the Receiving Party on a non-confidential basis from a source other than the Disclosing Party having the legal right to disclose same.
- 13.3.10.4. Which is independently acquired by the Receiving Party as a result of work carried out by a person to whom no disclosure of such information has been made.
- 13.3.10.5. Is already known by the Receiving Party, provided that such knowledge is evidenced by the written records of the Receiving Party existing at the signature date of these Terms, provided that the onus will at all times rest on the Receiving Party to establish that such information falls within the ambit of this clause.
- 13.4. Information will not be deemed to be within the above exclusions merely because such information is embraced by more general information in the public domain or in the Receiving Party's possession. Any combination of features will not be deemed to be within the above exclusions merely because individual features are in the public domain or in the Receiving Party's possession, but only if the combination itself and its principle of operation are in the public domain or in the Receiving Party's possession.
- 13.5. The Parties undertake to keep all details about the terms of these Terms confidential unless otherwise agreed in writing by the Parties.
- 13.6. The Parties will ensure that all representatives of the Parties dealing with the terms and conditions of these Terms, will sign a similar confidentiality undertaking which will on request be made available to the person requesting it.
- 13.7. The provisions of this clause will still stand after the termination of these Terms.
- 14. COPYRIGHT AND INTELLECTUAL PROPERTY**
- Nothing in these Terms will affect the ownership of any Intellectual Property Rights owned or controlled by a Party before the application of these Terms. Neither Party grants to the other any right or license under any of its Intellectual Property Rights, except as expressly granted in these Terms or any subsequent ancillary intellectual property agreement.
- 15. LIMITATION OF LIABILITY**
- 15.1. Each Party will be liable and hold the other Party harmless for any losses sustained by the latter Party which are attributable to:
- 15.1.1. The negligence of the former Party, its representatives or agent in the supply of service and other failure by the former Party or its directors, employees, representatives or agents to properly comply with its obligation according to these Terms.
- 15.1.2. Fraud or other willful default by the former Party or its directors, employees, representatives or agents.
- 15.2. Notwithstanding the foregoing, neither Party will be liable whatsoever to the other Party in respect of indirect or consequential damages (including loss of profits, loss of

customers, goodwill and/or reputation) caused to the latter Party, except for loss or damages arising from negligence or wilful default by the former Party.

#### **16. FORCE MAJEURE**

- 16.1. Following any interrupting circumstances or *force majeure*, the non-performing Party will:
- 16.1.1. notify the other Party as soon as reasonably possible;
  - 16.1.2. be excused from further performance or observances of its obligations so affected, for as long as such circumstances prevail and will use its best efforts to recommence performance or observance whenever and to the extent possible without delay; and
  - 16.1.3. co-operate with the other Party in implementing such contingency measures as it may reasonably require.
- 16.2. Either Party may terminate the application of these Terms by written notice if the *force majeure* or interrupting circumstance continues for longer than 120 (one hundred and twenty) days.
- 16.3. For purpose of these Terms, "*force majeure*" shall mean an act of God, war or civil disturbance, court order, any delay in any performance due from the other Party, or any other circumstance beyond its reasonable control, including without limitation, failures and fluctuations in electrical power or communication.

#### **17. BREACH**

- 17.1. If a Party ("the defaulting party") is in breach of any provision of these Terms and fails to remedy such breach within 14 (fourteen) days of receipt of a written notice from the other Party ("the aggrieved party"), the aggrieved party will be entitled without prejudice to any other rights at law, including the right to claim damages:
- 17.1.1. to cancel these Terms.
  - 17.1.2. to claim specific performance.
- 17.2. The Parties will be liable according to provisions of the common law and any pertinent legislation for their negligent and wilful acts or omissions and those of its servants.

#### **18. TERMINATION**

- 18.1. During the Initial Period, either Party ("the aggrieved party") will be entitled to end the Flexicare policy documents on written notice to the other Party ("the defaulting party"), if the other Party is in material breach of any of its material obligations under these Terms and has failed to remedy that breach within 14 (fourteen) days after receiving written notice from the aggrieved party, requiring it to remedy that breach, except that in respect of non-payment by the Member:
- 18.1.1. The written notice given to the Member must specify that non-payment of premiums will result in termination of these Terms.
  - 18.1.2. The Member must have failed to make premium payment of such amounts within 60 (sixty) days of receiving such written notice.
- 18.2. Either Party will notify the other within 5 (five) business days of becoming aware of it having:
- 18.2.1. had a judgment granted against it that affects its ability to perform its payment obligations according to these Terms;
  - 18.2.2. being placed in liquidation or under judicial management, whether provisionally or finally and whether voluntarily or compulsorily;
  - 18.2.3. being placed under business rescue, whether voluntarily or by order of court;

- 18.2.4. compromised or attempted to compromise generally with its creditors. If an event contemplated in clause 19.2 occurs, the other Party may cancel the application of these Terms, summarily on written notice to the other Party.
- 18.3. These Terms shall also terminate in the event that the agreement entered into between Discovery Health and Auto and General according to which Discovery Health is authorised to market, sell and administer the Flexicare product is terminated for any reason whatsoever.
- 18.4. Each Party has the right to terminate these Terms at any time on the provision of 30 (thirty) days' written notice. In the event of a breach after the Initial Period, the terms of clause 18.1 will apply.
- 18.5. On termination of the application of these Terms for any reason whatsoever, the Parties' respective rights and obligations under these Terms, apart from those that may have already accrued to them as a result of the operation of these Terms, will terminate.

#### **19. DISPUTE RESOLUTION**

- 19.1. Except in respect of those provisions of these Terms which provide for their own remedies which would be incompatible with mediation or arbitration, a dispute which arises between Parties in connection with:
- 19.1.1. the formation or existence of these Terms;
  - 19.1.2. the implementation of these Terms;
  - 19.1.3. the interpretation or application of the provisions of these Terms;
  - 19.1.4. the Parties' respective rights and obligations according to or arising out of these Terms;
  - 19.1.5. the validity, enforceability, rectification, termination or cancellation, whether in whole or in part of these Terms;
  - 19.1.6. any documents furnished by the Parties pursuant to the provisions of these Terms;
  - 19.1.7. any matter affecting the interests of the Parties according to these Terms;
  - 19.1.8. any fees or costs due or to be adjusted according to these Terms.
- 19.2. If the disputing Parties are unable to resolve that dispute among themselves, they should further attempt to do so through referral of the dispute to the respective Chief Executive Officers or their delegates, within 10 (ten) days from the date of the referral of the dispute, and should this process fail or not occur, either Party may, by written notice to the other Party, refer the dispute to mediation by a single mediator with 10 (ten) days.
- 19.3. If the Parties are unable to agree on a mediator, then any Party may approach the Arbitration Foundation of Southern Africa (AFSA) to submit to each Party a list of names of potential mediators. The Parties will thereafter, have 5 (five) business days within which to agree on a mediator. If they are unable to agree, the chairman of the AFSA will be asked to appoint a suitable mediator.
- 19.4. If for any reason, including lack of co-operation between the Parties, the dispute is not settled by mediation within 30 (thirty) days of the date of the notice above or such longer period as may be agreed to between the Parties in writing, the dispute may be referred by either Party for determination by arbitration.
- 19.5. Any such arbitration must be held:
- 19.5.1. With only:
    - 19.5.1.1. the Parties to the dispute;
    - 19.5.1.2. their representatives;
    - 19.5.1.3. if applicable, witnesses called by one or both the Parties to testify at the hearing, at Sandton in Gauteng.

- 19.6. It is the intention of the Parties that the arbitration will, where possible, be held and concluded within 20 (twenty) days after it has been demanded, or such longer period as the Parties may agree to in writing. The Parties must use their best endeavours to procure the expeditious completion of the arbitration.
- 19.7. The arbitration will be subject to arbitration legislation in force at the time in the Republic of South Africa.
- 19.8. The arbitrator will be appointed by the Parties or failing agreement between them, within 5 (five) days after the arbitration has been demanded, or such a quest of either of the Parties be nominated by an independent party as agreed to between the Parties to these Terms.
- 19.9. The decision of the arbitrator will be final and binding on the Parties.
- 19.10. The arbitrator will be required to give their award in writing, supported by his or her reasons for it.
- 19.11. Any Party to the dispute may apply to court to have the arbitrators' award made an order of court.
- 19.12. The provisions of this clause:
- 19.12.1. constitute irrevocable consent by the Parties to any proceedings according to this clause and no Party will be entitled to withdraw from such proceedings or claim at any such proceedings that it is not bound by such provisions;
- 19.12.2. are severable from the rest of these Terms and will remain in effect despite termination of or invalidity of these Terms for any reason;
- 19.12.3. will not detract from the right of a Party to institute proceedings in a court of competent jurisdiction for appropriate relief if there was a breach of these Terms.
- 19.13. For the purpose of any court proceedings contemplated in these Terms, the Parties consent to the exclusive jurisdiction of the South Gauteng Division of the High Court of South Africa.
- 19.14. The Parties will keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential unless otherwise contemplated herein.

## 20. COSTS

If any legal action is taken on these Terms, the successful Party will be entitled to costs on the attorney-and-client scale. Each Party will be liable for their own cost incurred for the preparation and finalisation of these Terms.

## 21. AUDIT

Either Party to these Terms will be on good cause entitled to conduct an audit of the other Party's compliance with any aspect of these Terms. It will be at its own expense and can happen at any time on reasonable notice for the duration of these Terms and for a period of 6 (six) months after the expiry of the Flexicare policy document. The Party will be entitled to appoint whomever it chooses, to conduct such audit in conjunction with the respective Party's internal auditors.

## 22. DOMICILIUM CITANDI ET EXECUTANDI

- 22.1. The Parties choose as their *domicilia citandi et executandi* their respective addresses set out in this clause for all purposes arising out of or in connection with this Terms at which its breach or termination may validly be served upon or delivered to the Parties.
- 22.2. For purposes of this Terms the Parties' respective addresses will be:
- 22.2.1. For Discovery Health at:  
Physical: 1 Discovery Place, Sandton 2196  
Email: flexicare@discovery.co.za

- Marked for the attention of: Tsepo Mariga
- 22.3. Any notice given according to this Terms will be in writing and will:
- 22.3.1. if delivered by hand and received by the Party representative or any competent office of the Party, be deemed to have been duly received by the addressee on the following business day;
- 22.3.2. if sent by email to its chosen email address stipulated in clause 22.2, will be deemed to have been received on the following business day, unless the contrary is proved.
- 22.4. The Member agrees that any mid-year policy schedule amendments or any annual review and update of the terms, Services and benefits of Flexicare will be communicated in writing to the Member, to the physical address and/or the email address provided.

## 23. APPLICABLE LAW AND JURISDICTION

- 23.1. All matters arising from or in connection with these Terms, including but without any limitation whatsoever its interpretation, validity, existence or termination for any reason will be determined according to the laws of the Republic of South Africa.
- 23.2. The court having jurisdiction to enforce any award made under this clause will be the appropriate division of the High Court of South Africa that has jurisdiction over the Party against whom the award is being enforced.
- 23.3. If, at any time after the Effective Date of these Terms or the date of signature hereof, any legislation, rulings, or regulations applying to these Terms come into operation ("Change in Law"), the Parties shall as soon as possible but not later than the commencement date of the Change in Law, change, amend, or alter any terms or conditions of these Terms in order to comply with such legislation, rulings or regulations.

## 24. CESSION AND ASSIGNMENTS

- 24.1. Neither Party to these Terms and policy documents will be entitled to cede or assign any of its rights or obligations according to these Terms to any third party without the written consent of the other, which consent may not be unreasonably withheld.
- 24.2. The provisions of clause 24.1 will not apply if there is a change in control of the Member or any of its divisions or subsidiaries, whether through a sale of assets, business, or otherwise, as a result of any internal corporate restructure of the Member.
- 24.3. If an event contemplated in clause 24.2 occurs, the affected Party will notify the other Party within 30 (thirty) days of the event.

## 25. NATURE OF THESE TERMS

- 25.1. The Parties to these Terms are independent contractors.
- 25.2. Notwithstanding anything to the contrary herein contained, the Parties hereto acknowledge that they have no authority whatsoever to represent the other in any capacity whatsoever. In particular, but without limiting the generality of the foregoing, neither Party will be entitled to conclude any contract on behalf of the other or to sign any document on behalf of the other.

## 26. SEVERABILITY

If any provision of these Terms is held to be illegal, invalid or unenforceable under present or future laws effective during the term hereof, such provision will in no way affect, impair or invalidate any term or provision herein. Such remaining terms and provisions will remain in full force and effect, be fully severable and ineffective



by such severance, provided that the invalid provisions are not material to the overall purpose and operation of these Terms.

**27. NON-RELAXATION**

No latitude, extension of time or other indulgences given or allowed by any/either Party to any other Party for the performance of any obligation hereunder will under any circumstances be construed to be an implied consent by such Party or operate as a waiver or a notation of. The same goes for the enforcement of any right arising from these Terms and any single or partial exercise of any right by any Party. It will not otherwise affect any of that Party's rights according to or arising from these Terms. It will not stop such Party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereto.

**28. VARIATION**

No addition to or validation, consensual cancellation or notation of these Terms and no waiver of any right arising from these Terms or its breach and termination will be of any force or effect unless reduced to writing and signed by both the Parties or their duly authorised representatives.

**29. SURVIVING PROVISIONS**

The provisions of clause 12, 13, 14, 19, 20, 21 and 24 will continue after this Terms has stopped and will continue to be binding on the Parties.

**30. WHOLE TERMS**

These Terms constitutes the whole agreement between the Parties as to the subject matter hereof and no agreements, representations or warranties between the Parties, other than those set out herein, are binding on the Parties.

## ANNEXURE A

### Flexicare Debit Order Mandate

Your premiums will be deducted through a debit order.

### Mandate Terms and Conditions

This authority and mandate refer to the application ("the MandateTerms")

I/We:

- Warrant that the account information I/we have provided above is an account in my/our name and that the information furnished by me/us in this authority and mandate is true and correct.
- Authorise Flexicare to issue and deliver payment instructions to my bank, recorded above, for the collection by Flexicare from the bank account (or any other bank or branch to which I may transfer my account) any amounts due under or in terms of this application to change banking details on condition that the sum of such payment instructions will never exceed my obligations as framed in the Terms which shall commence on the date that the banking details are effective and shall continue until this authority and mandate is terminated by me by giving Flexicare no less than ordinary working days written notice thereof or immediately in the event that I instruct my bank to withdraw this authority and mandate.
- Confirm that the payment instructions mentioned above must be issued on the first working day of the month. If the change in banking details are not activated in time for the debit order collection and there is an amount outstanding, Flexicare can collect that amount in the interim, upon activation of the banking details. If I change the date of the debit order after activation of the banking details, I confirm that the payment instructions must be issued and delivered on the day that I have nominated ("payment day") and thereafter on the same day in each and every successive month. If the payment day falls on a Sunday or recognised South African public holiday, the payment day will automatically be the next working day.
- Authorise Flexicare to track my bank account and re-present the payment instruction referred to above in the event that there are insufficient funds in my bank account to meet my obligations under or in terms of the Terms.
- Acknowledge that my bank will treat each payment instruction to pay premiums or amounts due under the Terms to Flexicare as if each payment instruction came from me personally as the account holder.
- Undertake to advise Flexicare in writing of any changes to my account details and acknowledge that Flexicare will not be held responsible or liable for any claim, loss or harm that I or any third party may suffer as a result of me providing incorrect banking details herein or if the bank account is in the name of another person or entity or as a result of my failure to notify Flexicare of a change in banking details or if the bank account has insufficient funds to meet my obligations under or in terms of the Terms.
- Know and understand that the withdrawals hereby authorised will be processed through a computerised system provided by South African banks. The details of each withdrawal from my bank account will be printed on my bank statement and must show the reference number of the membership inserted in the Terms so as to enable me to identify this membership.
- Acknowledge that although this authority and mandate may be terminated by me, such termination does not necessarily terminate these Terms. In the event of such termination, I am not entitled to any refund of any premiums or amounts due that was withdrawn by Flexicare whilst this authority and mandate was in force if such premiums or amounts were legally owing to Flexicare in terms of the Terms.
- Acknowledge that by signing this authority and mandate I am bound by the payment terms applicable to these Terms.
- Acknowledgement that this Authority may be assigned to a third party if this Terms is also assigned to a third party.

## Reference number

These Terms reference number: System generated reference number

## Abbreviated name

Abbreviated name: DHFlexicar

Deduction amount – as per application summary

Payment start date – as per application summary

## In addition to the above terms, the account holder agrees to the following

- I confirm that I have the right to give Flexicare the authority to debit such account on a monthly basis. Furthermore, I will be liable for any claims, losses or damages of whatsoever nature arising out of debits made by Flexicare to the account as listed above should this account have insufficient funds, be incorrect or be held in the name of any other person.
- I hereby authorise Flexicare to verify the banking details as provided above for the purpose of setting up a debit order, in need.
- I confirm that the account listed above complies with the Financial Intelligence Centre Act ("FICA").
- I confirm that if I miss a premium collection date, I authorise that Flexicare may deduct a double debit of my premiums the following month.

Note:

Flexicare – the maximum commission payable is up to 20% of the monthly Flexicare premium value; for as long as the policy is active.

## Privacy Statement

When you engage with Discovery, you are entrusting us with your personal information. We are committed to protecting your right to privacy and keeping your information safe. Our Privacy Statement tells you how we collect, use and share your personal information, including personal information about your spouse, employees, dependants, beneficiaries and lives assured, where applicable.

You can view and read our Privacy Statement on our **website** or follow this path: [www.discovery.co.za](http://www.discovery.co.za) and scroll to the bottom of the screen.

Under 'ABOUT US' click on the [Privacy](#) link.

Flexicare is not a medical scheme. The cover is not the same as that of a medical scheme and is not intended to be a substitute for medical scheme membership. Flexicare and Auto & General Accident Cover is administered by Discovery Health (Pty) Ltd, registration number 1997/013480/07 an authorised financial services provider and underwritten by Auto & General Insurance Company Limited, registration number 1973/016880/06, a licensed non-life insurer and financial services provider. Terms, conditions and limits apply.

Discovery Vitality (Proprietary) Limited, registration number: 1999/007736/07. Terms, conditions and limits apply.

Discovery Emergency Cover is administered by Discovery Health (Pty) Ltd, registration number 1997/013480/07 an authorised financial services provider. Terms, conditions and limits apply. Discovery Emergency Cover is a non-life insurance policy, underwritten by Discovery Insure Ltd, registration number 2009/011882/06, a licensed non-life insurer and an authorised financial services provider.

The Funeral Benefit is a life insurance policy, underwritten by Discovery Life Limited. Registration number 1966/003901/06, a licensed life insurer and an authorised financial services and registered credit provider, NCR Reg. No. NCRCP3555. Flexicare is a separate non-life insurance policy and is not conditional on the purchase of a Funeral Benefit policy.