

MEMBERSHIP AGREEMENT

Made and entered into by and between:

INDEPENDENT CONNECTED AUDIOLOGY NETWORK NPC
Registration number: 2024/098095/08

hereinafter referred to as
“iCAN”

and

hereinafter referred to as
“the Member”

Hereinafter collectively referred to as the
“the Parties”

1. PARTIES

- 1.1. The Parties to this agreement are iCAN and the member.

2. DEFINITIONS

- 2.1. **“Agreement”** means this Agreement including all annexures and schedules thereto, which shall form part of this Agreement;
- 2.2. **“Business day”** means any day which is not a Saturday, Sunday or South African public holiday;
- 2.3. **“Confidential information”** means any information of a party not in the public domain or previously known to a party, including but not limited to, the activities, clients, transactions, systems, products, financial statements, business affairs, business management, member demographics and statistics, personal data of a party or its members and information contained in its member administrative database system, software, software source code, trade secrets and know how, and any other information whatsoever of a confidential nature of a party;
- 2.4. **“The Council”** means the Health Professions Council of South Africa;
- 2.5. **“Effective date”** means the date upon which the Member’s application for membership was approved by iCAN;
- 2.6. **“iCAN”** means Independent Connected Audiology Network NPC, with registration number 2024/098095/08, a non-profit company duly registered as such in terms of the Companies Law of South Africa and with registered address at 5 Vickers Place, Durban North, Kwa-Zulu Natal;
- 2.7. **“Intellectual property”** means all patents, trademarks, service marks, designs, copyright (including all copyright in any designs and computer software), including source codes, formats, inventions, trade secrets and all other incorporeal property which may be the subject-matter of a right whether registered or capable of registration or not;
- 2.8. **“Member”** means the natural person as described on the front page of this Agreement, being registered with the Council as an audiologist or acoustician and practises as same, whilst being the owner or partner of a registered audiology or acoustician practice;
- 2.9. **“Notice”** means a written notice delivered at the chosen address of either party for that purpose, which may include delivery to an email address;
- 2.10. **“Party”** means either of the entities that entered into this agreement as represented by their duly authorised signatories to this agreement and “parties” means both of them collectively and shall be deemed to mean and include their

respective successors and permitted assignees.

3. INTERPRETATION

- 3.1. words importing natural persons shall include a reference to bodies corporate and other legal personae and vice versa;
- 3.2. words importing the masculine shall include a reference to the feminine and other genders;
- 3.3. words importing the singular shall include a reference to the plural and vice versa;
- 3.4. annexes to this Agreement shall be deemed to have been incorporated herein and shall form an integral part hereof;
- 3.5. a reference to a party in a document includes that party's successors and permitted assigns;
- 3.6. any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;
- 3.7. where the day on or by which anything is to be done is not a Business Day, it shall be done on or by the first Business Day thereafter;
- 3.8. when any number of days is prescribed in this Agreement, same shall 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 which case, the last day shall be the next succeeding day which is not a Saturday, Sunday or Public Holiday;
- 3.9. a reference to a document includes an amendment or supplement to, or replacement or novation of that document;
- 3.10. the captions appearing in this Agreement are for reference purposes only and shall not affect the interpretation hereof;
- 3.11. if any provision is a definition (or under this heading "Interpretation" and/or any other heading in this Agreement) and is a substantive provision conferring rights

or imposing obligations on any party, notwithstanding that it is only in the definition (or such other clause) effect shall be given to it as if it were a substantive provision in the body of the Agreement;

- 3.12. where figures are referred to in numerals and words, if there is any conflict between the two, the words shall prevail.

4. PURPOSE

- 4.1. This Agreement establishes the terms and conditions in respect of the Member's membership or proposed membership with iCAN.
- 4.2. It is specifically recorded that membership to iCAN is voluntary.

5. DURATION

- 5.1. This Agreement shall commence on the effective date and shall remain in force until termination of the agreement in terms of the provisions of this Agreement.
- 5.2. Membership in terms of this Agreement is subject to the payment of membership fees being paid on or before the due date in terms of clause 7 of this Agreement.
- 5.3. In the event of the Member failing to make prompt payments in respect of the membership fees, iCAN may by written notice to the Member, revoke the membership and all benefits and rights attached to such membership.

6. TERMS OF MEMBERSHIP

The right of approval of membership shall be at the exclusive discretion of iCAN, and the terms of membership shall be as follows as may be updated and/or adapted from time to time:

- 6.1. A Member must be a registered independent practising audiologist or acoustician, within the Republic of South Africa;
- 6.2. All Members must agree and adhere to iCAN's code of ethics, as attached in Annexure A hereto;

- 6.3. All Members must be registered with the Health Professions Council of South Africa (the "Council"). iCAN reserves the right to suspend or terminate any membership in the event that a Member is, in respect of the Council:
- 6.3.1. Under investigation by the Council;
 - 6.3.2. Is facing disciplinary action by the Council;
 - 6.3.3. Has been suspended or deregistered by the Council; or
 - 6.3.4. Has a complaint/s against him/her which is, in the sole and exclusive opinion of iCAN, of sufficient gravity to warrant suspension or termination of membership by iCAN.
- 6.4. iCAN reserves the right to suspend or terminate any membership, in the event that any Member engages in or is associated with any activity/practice which is, in the sole and exclusive opinion of iCAN, either unethical or contrary to the best interest of patients.

7. MEMBER OBLIGATIONS

- 7.1. The Member shall pay all fees and charges due to iCAN in terms of the Member's membership.
- 7.2. The Member must inform iCAN as soon as possible of any changes in material information which the Member has previously supplied to iCAN.
- 7.3. The Member shall comply with the terms of this Agreement and all other policies of iCAN, which shall be provided to the Member from time to time.
- 7.4. The Member shall also adhere to all ethical standards, rules and regulations of the Council.
- 7.5. The Member shall at all times maintain the terms of membership as per clause 5 above.
- 7.6. The Member, unless authorised by resolution of the iCAN directors, may not create obligations or contract on behalf of iCAN.
- 7.7. Nothing in this Agreement shall be construed as creating a partnership, joint venture or agency agreement between the parties.

- 7.8. The Member shall not engage in any activity which operates in conflict with the interests of iCAN. All Members are furthermore obliged to notify iCAN of any situation or activity which compromises, prejudices or is a conflict of interest to iCAN.

8. MEMBERSHIP FEES

- 8.1. The Member shall be responsible for the prompt payment of membership fees, due in terms of this Agreement.
- 8.2. Membership fees shall be determined as per Schedule A attached hereto, which amount shall be payable monthly in advance on or before the 1st of every consecutive month with the first payment being due on the effective date.
- 8.3. The method of payment shall be as described in Schedule A and may be changed from time to time. In the event of a change in payment method, iCAN shall give 60 (SIXTY) days' notice in writing to the Member of such proposed change.
- 8.4. iCAN may review the membership fees on from time to time. In the event of any changes in membership fees, iCAN shall inform the Member of such change in membership fee, in writing by giving 60 (SIXTY) days' notice of such change.

9. iCAN'S OBLIGATIONS

- 9.1. The Member shall receive publicity and advertising in and through iCAN on the website and social media platforms of iCAN and through other forms of media from time to time.
- 9.2. The Member shall receive opportunities for ongoing training through multiple annual educational presentations from iCAN and/or its partners, which training shall relate to the practice of audiology.
- 9.3. iCAN endeavours to advocate on behalf of its members for benefits from various suppliers. The Member shall have the opportunity to benefit from iCAN's agreements with suppliers, if any.

10. LIABILITY AND INDEMNITY

- 10.1. The parties acknowledge that all members of iCAN are independent, registered and practising audiologists or acousticians, unless the Member has expressly stipulated that they are a student or a community service audiologist.
- 10.2. All risks associated with the Members' independent practices shall remain with those entities and/or members. No risk arising through or out of any audiology practice or through any member shall pass to iCAN through either association, affiliation, contract or vicarious liability.
- 10.3. The Member hereby indemnifies and hold harmless iCAN against any losses, damages or injury suffered by the Member or the Member's patients, howsoever arising, occurring directly or indirectly from utilising any advice and/or devices on recommendation of iCAN.
- 10.4. All Intellectual property associated with and utilised by iCAN shall remain the exclusive property of iCAN. In the event of a breach or termination of membership by a Member, for whatever reason, the Member shall immediately cease, upon receipt of written notice from iCAN, to utilise or possess any of the intellectual property owned by iCAN.

11. BREACH

- 11.1. In the event of any party committing a breach of this Agreement and failing to remedy same within 7 (SEVEN) days of written notice requiring the breach to be remedied, then the party giving such notice may cancel this agreement vis a vis the breaching party.
- 11.2. iCAN may in its sole discretion terminate a membership, on 7 (SEVEN) days written notice, if iCAN is of the opinion that the Member no longer qualifies in terms of the terms of membership or if the Member has breached any of its obligations, or has compromised any standards, codes, and ethics of the profession.

12. CONFIDENTIALITY

- 12.1. All information provided to iCAN by Members will be treated with the utmost confidentiality and shall be utilised solely for the purposes indicated herein.

- 12.2. Reciprocally, Members shall treat all information about iCAN as confidential and shall not disseminate or utilise such information, other than for purposes directly associated with the spirit and purport of this Agreement.
- 12.3. For the purposes of this paragraph, Confidential Information shall include, but not be limited to, details of and information pertaining to: fellow Members (including applicants for membership), suppliers, distributors, marketing information, the content of all agreements of which iCAN is a party, pricing structures within iCAN as well as the suppliers' pricing to iCAN, education and training material;
- 12.4. The Member undertakes not to disseminate and/or distribute any information or communication received from iCAN and/or its representatives without prior written consent from iCAN.
- 12.5. The only information which iCAN is entitled to extrapolate and utilise, without prior approval, are the Members' total purchases from iCAN suppliers. The foregoing being subject to:
- 12.5.1. The information pertaining to the total purchases by Members from iCAN suppliers may only be extrapolated and utilised by a predetermined designated Member/employee. No other Members or Shareholders shall be entitled to access this information.
- 12.5.2. All information pertaining to the purchasers by Members (from iCAN suppliers) is to be used exclusively in the furtherance of the objectives of iCAN. No one individual or Member may utilise or disseminate this information without the express written consent of iCAN. Such written consent shall take the form of a general resolution of the Board of Directors.
- 12.5.3. The designated person who shall have access to and process all information in relation to the purchasers made by iCAN members from iCAN suppliers, shall be appointed by general resolution on the specific condition that the person agrees to abide by the strict condition of confidentiality.

13. DOMICILIUM CITANDI ET EXECUTANDI

13.1. The parties choose as their domicilium citandi et executandi for all purposes under this agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature the following addresses:

13.1.1. iCAN

Unit 1A Oude Westhof Village Square,
Van Riebeeckshof Road,
Oude Westhof,
Western Cape.
P O BOX 6750,
Welgemoed,
Western Cape,
7538.
Email: madelein@bcattorneys.co.za

13.1.2. The Member

Address: _____

Email: _____

13.2. Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing, but it shall be competent to give notice by electronic mail.

13.3. Any party may by notice to any other party change the physical address chosen as its *domicilium citandi et executandi* vis-à-vis that party to another physical address in the Republic of South Africa or its email address: Provided that the change shall become effective vis-à-vis that addressee on the 3rd business day from the deemed receipt of the notice by the addressee.

13.4. Any notice to a party:

13.4.1. sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at *its domicilium citandi et executandi* shall be deemed to have been received on the 3rd business day after posting (unless the contrary is proved);

- 13.4.2. delivered by hand to a responsible person during ordinary business hours at its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or
- 13.4.3. sent by email to its chosen email address stipulated in Clause 13.1, shall be deemed to have been received when there is acknowledgement of receipt of that email, per return email.
- 13.5. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

14. DISPUTE RESOLUTION

- 14.1. Prior to the initiation of formal arbitration procedures, the Parties shall, within 5 (five) business days after the arise of any dispute, first attempt to resolve their dispute informally.
- 14.2. Any dispute, question and difference arising at any time between the parties to this Agreement (save in respect of any decision or determination made or certificate issued by any person who acts as an expert and whose decision as such is final and binding on the parties in terms of the provisions of this Agreement) out of or in regard to:
- 14.2.1. any matters arising out of; or
 - 14.2.2. the rights and duties of any of the parties hereto; or
 - 14.2.3. the interpretation of; or
 - 14.2.4. the termination of; or
 - 14.2.5. any matter arising out of the termination of; or
 - 14.2.6. the rectification of;

this Agreement shall be submitted to and decided by arbitration on notice given by either party to the other parties in terms of this Clause;

- 14.3. Such arbitration shall be held in Cape Town in accordance with the provisions of the Arbitrations Act No 42 of 1965 (as amended or replaced from time to time) save that:
- 14.3.1. the arbitration shall be informal;
 - 14.3.2. the arbitration shall have the fullest and freest discretion to determine the procedure to be adopted;
 - 14.3.3. it being the agreed intention that, if possible, the arbitration shall be held and concluded within 30 (THIRTY) days after it has been demanded.
- 14.4. Save as otherwise specifically provided in this Agreement, the arbitrator shall be if the question in dispute is:
- 14.4.1. primarily an accounting matter – an independent accountant of not less than 10 (TEN) year standing;
 - 14.4.2. primarily a legal matter – a practicing advocate or attorney of not less than 10 (TEN) years standing;
 - 14.4.3. any other matter – an independent and suitably qualified person, as may be agreed upon between the parties.
- 14.5. If Agreement cannot be reached on whether the question in dispute falls under Clauses 14.3.1, 14.3.2 or 14.4.3 above or upon a particular arbitrator in terms of Clause 14 within 3 (THREE) days after the arbitration has been demanded, then the Chairperson for the time being of the Legal Practice Council shall:
- 14.5.1. determine whether the question in dispute falls under Clauses 14.3.1, 14.3.2 or 14.3.3;
 - 14.5.2. nominate the arbitrator in terms of the relevant sub-Clause;
 - 14.5.3. within 7 (SEVEN) days after the parties have failed to agree, so that the arbitration can be held and concluded as soon as possible within the 30 (THIRTY) days referred to in this Clause 14;
- 14.6. This Clause shall constitute each party's irrevocable consent to the arbitration proceedings, and no party shall be entitled to withdraw herefrom or to claim at such arbitration proceedings that it is not bound by this Clause;
- 14.7. Each of the parties hereby irrevocably agrees that the decision of the arbitrator in the arbitration proceedings:
- 14.7.1. shall be final and binding on each of them; and
 - 14.7.2. will be carried into effect; and

- 14.7.3. can be made an Order of any Court to whose jurisdiction the parties are subject.
- 14.8. The parties undertake that they shall not disclose to any third party or make public any information relating to the arbitration or the outcome thereof, save to the extent required by law or for the enforcement of any award of the arbitration, it being recorded that it is the intention of the parties that the proceeding shall be and remain confidential.
- 14.9. Anything herein contained or implied shall not preclude any party from applying to Court for a temporary interdict or other relief of an urgent and temporary nature, pending the decision or award of the Arbitrator hereunder.
- 14.10. The provisions of Clause 14 are severable from the rest of this Agreement and will remain in effect notwithstanding the termination or invalidity of, or any reason, this Agreement.

15. CONSENT TO PROCESS PERSONAL INFORMATION

- 15.1. The Member consents that iCAN may collect, process and distribute his/her personal information where iCAN is legally required to do so.
- 15.2. The Member acknowledges his/her right to privacy and the right to have his/her personal information processed in accordance with the conditions for the lawful processing of personal information.
- 15.3. The Member acknowledges that he/she understands the purposes for which his/her personal information is required and for which it will be used.
- 15.4. The Member hereby consents to third parties having access to his/her personal information.
- 15.5. The Member acknowledges that, should he/she refuse to provide iCAN with the required consent and/ or information, iCAN will be unable to provide him/her with access to the membership in terms of this agreement.

- 15.6. The Member acknowledges that all his/her personal information which is provided to iCAN will be held and/ or stored securely for the purpose for which it was collected.
- 15.7. The Member declares that all his/her personal information supplied to iCAN is accurate, up-to-date, is not misleading and that it is complete in all respects.
- 15.8. The Member undertakes to immediately advise iCAN of any changes to his/her Personal Information should any of these details change

16. DATA PROTECTION

- 16.1. For purposes of this agreement, "Personal Information" shall mean any data which relates to, or from which it is practical to directly determine, the identity of an individual, whether natural or juristic, as defined in Section 1 of the Protection of Personal Information Act, 4 of 2013 (POPI Act).
- 16.2. The parties acknowledge that insofar as data processing of personal information is concerned and/or applicable to this agreement, the conditions to be complied with by a responsible party in terms of the POPI Act, section 3, will be adhered to by both parties.
- 16.3. The parties acknowledge that appropriate safeguards for the protection of Personal Data as prescribed by the POPI Act will be implemented by and adhered to by both parties, in addition to complying with other provisions of this agreement requiring the protection of confidential information.
- 16.4. The parties warrant that all of their operations are compliant with all applicable legislation, rules and regulations pertaining to privacy and/or security of personal data.

17. FORCE MAJEURE

- 17.1. Neither party shall be liable for any loss suffered by the other or be in default for any delays or failures in performance if the delay or failure was due to any acts or causes beyond its reasonable control, or, without prejudice to the generality of the foregoing, from any Acts of God, acts or regulations of any governmental or local authority, war or national emergency, national disaster, pandemic, accident, fire,

flood, tempest, riots, strikes, lock-outs, third party delay, labour troubles or failure or fluctuation of electric power and internet services.

17.2. The performance of the obligations of the affected party shall be suspended for the duration of the Force Majeure, which shall be deemed to commence only upon the date of written notice by the affected party to the other party. Upon cessation of the Force Majeure, this agreement shall again become fully operative and the affected party shall immediately resume its performance.

17.3. Any Party invoking Force Majeure shall upon termination of such Force Majeure give prompt written notice thereof to the other Parties. Should Force Majeure continue for a period of more than 90 (ninety) days, then either Party shall be entitled forthwith to cancel this agreement.

18. CESSION AND ASSIGNMENT

18.1. Neither party shall have the right to cede, assign or otherwise transfer all or any of its rights, obligations or duties under this agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

19. GOVERNING LAW

19.1. The law governing this agreement, including without limitation its interpretation and all disputes arising out of this agreement, is the law of the Republic of South Africa and the parties submit to the exclusive jurisdiction of the South African courts in respect of any matter arising from or in connection with this agreement, including its termination.

20. WHOLE AGREEMENT

20.1. This Agreement constitutes the whole Agreement between the parties relating to the subject matter hereof.

20.2. No amendment or consensual cancellation of this Agreement or any provision or term thereof, including this clause, shall be binding unless recorded in a written document signed by the parties. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.

20.3. No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement shall operate as an *estoppel* against any party in respect of its rights under this Agreement, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with this Agreement.

20.4. No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

21. SEVERABILITY

21.1. If any part or parts of this Agreement shall be held unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect. If any provision of this Agreement is deemed invalid or unenforceable by any court of competent jurisdiction, and if limiting such provision would make the provision valid, then such provision shall be deemed to be construed as so limited.

22. RELAXATION

22.1. No latitude, extension of time or other indulgence which may be given or allowed by any party to the other parties in respect of the performance of any obligation hereunder, and no delay in the enforcement of any right of any party arising from this agreement, and no single or partial exercise of any right by either party under this agreement, shall in any circumstances be construed to be an implied consent or election by such party or operate as a waiver or a novation of or otherwise affect any of the party's rights in terms of or arising from this agreement or estop or preclude any such party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

23. VARIATION

23.1. No addition to or variation, consensual cancellation or novation of this agreement and no waiver of any right arising from this agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the parties or their duly authorised representatives.

24. COUNTERPARTS

24.1. This agreement and any addenda or other attachments to this agreement may be executed in two or more counterparts, all of which when taken together shall constitute one and the same instrument. This agreement may be executed by

electronic signature. A single counterpart or a set of counterparts taken together which, in either case, are executed by the parties, shall constitute a full original of this agreement for all purposes.

SIGNED AT _____ ON THE _____ OF _____ 20_____.

SIGNATURE

NAME

For and on behalf of **iCAN**, being duly authorised thereto.

AS WITNESSES:

1. _____

2. _____

SIGNED AT _____ ON THE _____ OF _____ 20_____.

SIGNATURE

NAME OF MEMBER

AS WITNESSES:

1. _____

2. _____

SCHEDULE A

- i. The below table is to be used to determine the monthly membership fee payable by the Member:

<u>CATEGORY</u>	<u>TYPE OF MEMBERSHIP</u>	<u>MONTHLY MEMBERSHIP FEE</u>
1	Primary Full Member	R700.00
2	Secondary Full Member	R350.00
3	Employed Member	R200.00
4	Community Service Audiologist	R350.00
5	Student	FREE

- ii. The requisite criteria for defining the type of membership shall be as follows:
- a. Category 1 shall be a Primary Full Member. A Primary Full Member is defined as the nominated primary audiologist or acoustician representing an independent private practice being either an owner, shareholder or partner;
 - b. Category 2 shall be a Secondary Full Member. A Secondary Full Member is defined as a an audiologist or acoustician being a co-owner, partner or shareholder of the independent practice who has a nominated Primary Full Member;
 - c. Category 3 shall be an Employed Member. An Employed Member is defined as a registered audiologist or acoustician who is employed by an independent practice who has a Primary Full Member, where the Employed Member holds no shareholding within the independent practice or any independent practice being represented by a Member with iCAN;
 - d. Category 4 shall be a Community Service Audiologist. A Community Service Audiologist shall mean a registered audiologist who renders his/her service at an approved community service centre and who does not render the services of a registered audiologist within an independent private practice;
 - e. Category 5 shall be a student, studying towards qualification as an audiologist or acoustician.

- iii. Payment of membership fees shall be done via the iCAN website's payment portal and subscription, the details of which shall be communicated by iCAN to the Member either on the website or in writing from time to time. It shall be the sole obligation of the Member to ensure that the details provided for the processing of payments are correct and up to date. Any changes to the required method of payment, shall be communicated in accordance with clause 8.3 of the Agreement.