

CERTIFICATION AGREEMENT
BETWEEN THE PROFESSIONAL GOLFERS ASSOCIATION OF SOUTH AFRICA
AND THE APPLICANT



- A. **WHEREAS** the PGA of SA is a Membership based Association protecting and promoting the interests of professional golfers in the Republic of South Africa.
- B. **AND WHEREAS** the PGA of SA wishes to certify Practitioners (as defined below) to provide the Services (as defined below) in accordance with the Standards (as defined below).
- C. **AND WHEREAS** the PGA of SA has appointed the Lead Auditor to develop the Course (as herein defined) in order to ensure that the Practitioners are able to provide the Services to the highest Standards.
- D. **AND WHEREAS** the Applicant desires to receive certification in the Standards in order to provide the Services to golfers.

NOW THEREFORE IT IS AGREED:

1. DEFINITIONS

- 1.1. In this Agreement, the following expressions shall, unless otherwise stated, or inconsistent with the context in which they appear, bear the following meanings:
 - 1.1.1. “Agreement” means this certification agreement and all attachments hereto;
 - 1.1.2. “Applicant” means the Practitioner whose name appears on the cover sheet and who is making application for the right to receive certification in the Standards to provide the Services;
 - 1.1.3. “Applicant’s Confidential Information” has the meaning set out in clause 8.1 below;
 - 1.1.4. “Certificate” means the certificate of compliance issued in accordance with the provisions of clause 3.1;
 - 1.1.5. “Certification Director” means the Chief Executive of the PGA of SA or such other person (or group of persons) delegated by the Chief Executive of the PGA of SA to conduct the role of “Certification Director”;
 - 1.1.6. “Certification Mark” means the marks of the PGA of SA attached hereto marked Schedule “A”;
 - 1.1.7. “Confidential Information” has the meaning set out in clause 8.2 below;

- 1.1.8. "Contract Effective Date" means the date on which this Agreement is signed by the Applicant;
 - 1.1.9. "Course" means the educational course as is more fully described in Schedule "B" provided by the Lead Auditor on behalf of the PGA of SA which Course will enable Practitioners to properly treat and prevent golf related injuries and golf related physical ailments;
 - 1.1.10. "Lead Auditor" means the individual appointed by the PGA of SA to develop and present the Course, currently Garth Milne;
 - 1.1.11. "PGA of SA" means the Professional Golfers Association of South Africa NPC, a not for profit company duly registered and incorporated with limited liability under the company laws of the Republic of South Africa with registration number 1996/003659/08;
 - 1.1.12. "PGA of SA's Confidential Information" has the meaning set out in clause 8.2 below;
 - 1.1.13. "Practitioner" means the accredited medical practitioner who practices within 1 (one) (or more) of the fields set out in Schedule "C";
 - 1.1.14. "Prime Interest Rate" means the public quoted basic rates of interest (percent, per annum, compounded monthly in arrear and calculated on a 365-day year (irrespective of whether or not the year is a leap year)) from time to time published by First National Bank (or its successor in title) as being its prime overdraft rate as certified by any manager of such bank whose appointment and designation need not be proved;
 - 1.1.15. "Register" means the certification register in which all Practitioners who meet the Standards to provide the Services are recorded;
 - 1.1.16. "SAMA" means the South African Medical Association, a non-profit company registered in terms of the Companies Act No. 71 of 2008 of the Republic of South Africa;
 - 1.1.17. "Services" means the medical related services that will enable the Practitioner to treat and help prevent golf related injuries and golf related physical ailments;
 - 1.1.18. "Standard(s)" means the standards set out in this Agreement in order to enable the Practitioner to receive certification from the PGA of SA to provide the Services.
- 1.2. The headings to the clauses of this Agreement are for reference only and shall not affect the interpretation of this Agreement.
 - 1.3. In this Agreement, unless the context clearly indicates the contrary, any reference to:
 - 1.3.1. The singular shall also include a reference to the plural and vice versa;
 - 1.3.2. Any one gender shall include a reference to the other gender;
 - 1.3.3. A natural person shall include a reference to a legal person and vice versa.
 - 1.4. Any schedules to this Agreement shall form part of this Agreement as set out in the body of this Agreement and any reference to this Agreement shall include the schedules hereto.
 - 1.5. Notwithstanding the fact that they appear in a definition clause, any and all substantive provisions contained in the definition clause 1.1 above, shall be deemed to be incorporated in and form part of this Agreement.

2. TERM

- 2.1. This Agreement shall commence on the Contract Effective Date and shall endure until terminated as provided for herein.

3. CERTIFICATION PROCESS

- 3.1. When the Lead Auditor is satisfied that the Applicant has completed the Course and meets the applicable Standard, a recommendation will be made by the Lead Auditor to the PGA of SA for the PGA of SA to issue a certificate of compliance (“the Certificate”). On approval by the Certification Director, in his sole and absolute discretion, a Certificate will be issued with respect to the applicable Standard and the Register will be updated with the Applicant’s name and the details and scope of the Applicant’s certification.
- 3.2. A Certificate is valid for 3 (three) years subject to the Applicant receiving a satisfactory report from any ongoing surveillance audits which the PGA of SA is entitled to conduct in its sole and absolute discretion.
- 3.3. Prior to the expiration of a Certificate, the PGA of SA or its duly appointed representative may, should the Applicant wish to extend his/her Certificate, perform a re-certification audit of the Applicant which may require, amongst others, the Applicant to undergo the latest Course.

A successful re-assessment will result in renewal of the Applicant’s Certificate for an additional 3 (three) year term.

In the event that the re-certification audit cannot be conducted or completed prior to the expiry of the Applicant’s Certificate, and on motivation by the Applicant, the PGA of SA may, in its sole and absolute discretion, grant the Applicant a reasonable extension of the Certificate until the Course and/or re-evaluation process can be successfully completed.
- 3.4. The Applicant acknowledges that the requirements for the Certificate and the granting of a Certificate are determined by the PGA of SA in its sole and absolute discretion and may be changed at any time.

4. SUSPENSION OR WITHDRAWAL OF CERTIFICATION

- 4.1. The PGA of SA reserves the right to suspend or withdraw the Certificate and thus the certification of any individual including without limitation the Applicant at any time. The Certificate may, in the sole and absolute discretion of the PGA of SA, be suspended should the Applicant:
 - 4.1.1. fail to complete corrective actions required by the PGA of SA within a specified time frame;
 - 4.1.2. misuse the Certification Mark(s) in any way whatsoever;
 - 4.1.3. commit any breach of this Agreement which shall include, without limitation, the failure to timeously pay any amounts due to the PGA of SA;
 - 4.1.4. fail to remain a member in good standing with SAMA and/or the Applicant’s controlling body; and/or
 - 4.1.5. bring the PGA of SA or any of its members into disrepute in any way.
- 4.2. The Applicant may request withdrawal of the Certificate at any time. In such event, the Applicant shall not be entitled to be reimbursed by the PGA of SA for any amounts paid by the Applicant to the PGA of SA in terms of this Agreement.
- 4.3. Where a withdrawal of a Certificate occurs, the PGA of SA will update its Register to reflect such withdrawal. Upon withdrawal of certification Certificate, the Applicant shall immediately return to the PGA of SA the Certificate and shall discontinue the use of the Certification Mark(s) in any way whatsoever. The PGA of SA reiterates that, notwithstanding the obligation on the part of the Applicant to comply with the provisions of this clause 4.3,

the Applicant will not be entitled to be reimbursed for any amounts paid by the Applicant to the PGA of SA in terms of this Agreement or otherwise.

5. COMPLAINTS AND APPEALS PROCEDURE

- 5.1. The Applicant may appeal any application or certification-related decision, or submit a complaint regarding the staff of the PGA of SA or its activities related to the auditing or certification process. In addition, applicants may file complaints to the PGA of SA regarding the certification of any individual or company. All complaints and appeals shall be handled by the Certification Director whose determination and decision shall be final and binding.

6. FEES

- 6.1. The Applicant shall pay all fees and charges described on the fee schedule sheet attached as Schedule "D". The fees include, amongst others, all fees and charges for subsequent surveillance and re-certification and the PGA of SA's management fees at the PGA of SA's standard rates then in effect. The PGA of SA reserves the right to adjust its standard fee schedule upon 90 (ninety) days' prior written notice to the Applicant.

In addition, the applicable fees may include, amongst others, an application fee, pre-assessment fee, audit fee, travel time fee, report writing fee, accreditation fee and an annual management fee or such other fee that the PGA of SA may in its sole and absolute discretion from time to time determine. The PGA of SA requires that the application and pre-assessment fees will have been paid by the Applicant prior to the commencement of the Course. All fees and charges are non-refundable.

- 6.2. The Applicant shall only incur certification fees in the event that the Applicant is accepted to the Course.
- 6.3. The PGA of SA will charge the accreditation fee on signing of the Agreement and thereafter on or before the commencement of the financial year of the PGA, being 1 April annually. It is however specifically recorded that accreditation fees will only be charged in the event that the Applicant continues to pursue or maintain certification from the PGA of SA.
- 6.4. The Applicant shall pay all amounts due to the PGA of SA within 14 (fourteen) days of the date of invoice.
- 6.5. The invoice will be sent by email to the email address referred to on the front page of this Agreement and which email address the Applicant may amend in writing. The Applicant will be deemed to have received the invoice on dispatch of the invoice by or on behalf of the PGA of SA.
- 6.6. In the event of late payment by the Applicant, interest will be charged on the outstanding balance at the Prime Interest Rate.
- 6.7. In the event that the Applicant postpones or cancels an arranged audit, the Applicant shall pay all expenses incurred by the PGA of SA as a result of such postponement or cancellation.
- 6.8. All amounts payable by the Applicant to the PGA of SA shall be paid into the bank account set out below or such other bank account advised of by the PGA of SA in writing:

Account Name:	PGA of South Africa
Account Number:	50360055716
Bank:	First National Bank
Branch:	Bedford Centre
Branch Code:	252155

7. APPLICANT'S OBLIGATIONS, REPRESENTATIONS AND WARRANTIES

- 7.1. The Applicant hereby represents and warrants that all documents and information supplied to the PGA of SA for the purposes of this Agreement and/or the certification are complete and accurate in all material respects and do not omit any material facts. The Applicant also warrants that it will notify the PGA of SA in writing of any conditions which would or could negatively affect the PGA of SA's decision to issue or maintain the Applicant's certification which shall include, amongst others, a complaint of any nature by a patient or any other person to SAMA or to any other professional body of which the Applicant is a member.
- 7.2. The Applicant agrees that the PGA of SA shall also be given access to all material whether written, oral or otherwise, in relation to such complaint and the Applicant hereby authorises the disclosure of such material to the PGA of SA.
- 7.3. The Applicant hereby warrants to the PGA of SA that the Applicant will, at all times during the subsistence of this Agreement, comply with all requirements necessary for the issuance and maintenance of the Certificate which shall include, without limitation, all statutes, rules, regulations issued by any government authority; all recommendations, codes or similar matters issued by the SAMA or any other professional body of which the Applicant is a member; or all other requirements as are necessary to enable the Certificate to be issued and maintained.
- 7.4. The Applicant shall provide the PGA of SA with all documents, information and facilities as is in the sole and absolute discretion of the PGA of SA necessary to enable the PGA of SA to satisfy itself (in its sole and absolute discretion) that the Applicant is indeed a Practitioner registered with the SAMA and entitled to practice as a Practitioner.
- 7.5. The PGA of SA shall not be liable in any respect should the PGA of SA be prevented from discharging any obligations as a result of any matter beyond the control of the PGA of SA.
- 7.6. The Applicant must immediately on becoming aware of the possibility that there may be change to the Applicant; Practitioner standing or qualification, notify the PGA of SA in writing thereof in order to discuss the consequences of any change to the Applicant's Practitioner standing or qualification.

8. CONFIDENTIALITY AND INTELLECTUAL PROPERTY OWNERSHIP

- 8.1. All information and documentation obtained from or provided by the Applicant during the audit and/or certification process ("Applicant's Confidential Information") shall be treated by the PGA of SA and its employees and agents as confidential and shall not be disclosed to any third party without the Applicant's prior written consent. Unless authorised by the Applicant in writing, details of applications for certification are treated as confidential provided, however, that the Applicant agrees that, upon certification, the PGA of SA will make the scope of the certification and the fact of the certification public.
- 8.2. Any information and documentation obtained from or provided by the PGA of SA that is designated as "confidential" or which the Applicant ought reasonably to understand as being confidential ("PGA of SA's Confidential Information" and which together with "Applicant's Confidential Information" shall be referred to as the "Confidential Information") shall be treated by the Applicant and its employees and agents as confidential and shall not be disclosed to any third party without the prior written consent of the PGA of SA.
- 8.3. The receiving party may disclose Confidential Information to its employees or agents solely on a "need to know" basis in connection with the purpose of this Agreement. The receiving party shall be permitted to disclose Confidential Information pursuant to statutory or governmental regulations or requirements and/or subpoenas or other legal process provided that the receiving party provides the disclosing party with prior written notice to the extent

permitted by applicable law; and provided further that the receiving party reasonably cooperates with the disclosing party in its attempts to seek a protective order or otherwise to limit or restrict disclosure of the Confidential Information should the disclosing party so wish. In the event that the disclosing party is unable to obtain a protective order or to otherwise limit or restrict disclosure of its Confidential Information, the receiving party shall be permitted to disclose the disclosing party's Confidential Information but only to the extent legally required.

- 8.4. Upon certification, the fact that the Applicant achieved certification and the scope of the Applicant's certification will be included in the Register. If the Applicant is unsuccessful in its certification application the fact of such attempt will not be made available by the PGA of SA.
- 8.5. Upon termination or expiration of this Agreement, the Applicant acknowledges that the PGA of SA may retain any and all information received from the Applicant including the Applicant's Confidential Information for its official records. All such Applicant's Confidential Information retained by the PGA of SA shall be kept and maintained as Confidential Information in accordance with this clause 8.
- 8.6. The parties acknowledge and agree that in the event of a breach or anticipated breach of this clause 8, the non-breaching party will suffer irreparable injury and damage without an adequate remedy at law. Accordingly, the parties agree that, in the event of a breach or anticipated breach of this clause 8, the non-breaching party shall be entitled, in addition to any and all other rights and remedies at law or in equity to specific performance and interdictory relief (whether temporary or permanent) without the posting of security and without objection from the party in breach of this clause 8. The parties acknowledge and agree that the receiving party is not granted and shall not receive any right, title or interest in and to any of the disclosing party's Confidential Information and/or any intellectual property of the disclosing party and no such right, title or interest shall be inferred or implied.

9. LIMITATION OF LIABILITY OR INDEMNIFICATION

- 9.1. The issue of a Certificate or the licence of any Certification Mark by the PGA of SA for use by the Applicant in no way suggests or implies that any certified activity, process, product or service is endorsed by the PGA of SA.
- 9.2. The PGA of SA makes and the Applicant receives no representations or warranties of any kind, expressed, implied or statutory relating to or arising in any way out of any certification examination, any PGA of SA certification programme (which shall include, without limitation, the Course) or this Agreement. The PGA of SA specifically disclaims any implied warranty of merchantability, fitness for a particular purpose and non-infringement of any third-party rights. The Applicant acknowledges and agrees that the PGA of SA has made no representation, warranty or guarantee as to the benefits if any to be received by the Applicant from third parties as a result of receiving certification.
- 9.3. In no event shall either party be liable for any indirect, consequential or incidental damages (including damages for loss of profits, revenue, data or use) arising out of this Agreement, any PGA of SA certification programme (which shall include, without limitation, the Course) or incurred by any party whether in contract or delict even if it has been advised of the possibility of such damages.
- 9.4. The PGA of SA's liability for damages, if any, relating to any certification assessment, any PGA of SA certification programme (which shall include, without limitation, the Course) or this Agreement shall in no event exceed the amount of charges and fees actually paid to the PGA of SA by the Applicant save in the event of gross negligence on the part of the PGA of SA.
- 9.5. The Applicant agrees to indemnify and hold harmless the PGA of SA and its officers, agents, employees and sub-contractors against all claims against them for damages caused by:

- 9.5.1. the services provided by the PGA of SA under this Agreement save to the extent that such claims are caused by the PGA of SA's negligence;
- 9.5.2. the use or misuse by the Applicant of any Certificate or Certification Mark provided by the PGA of SA in accordance with this Agreement;
- 9.5.3. any breach of this Agreement; or
- 9.5.4. the provision of any services including without limitation the Services by the Applicant.

10. USE OF THE CERTIFICATION MARK

- 10.1. Subject to the terms of this Agreement, the PGA of SA grants to the Applicant a non-exclusive and non-transferable licence to use the Certification Mark relating to the certification that the Applicant has earned in accordance with the guidelines set out in Schedule "E". The Applicant may not use any Certification Mark until the PGA of SA has notified the Applicant in writing that the Applicant has achieved a Certificate in accordance with the applicable Standards.

11. ADDRESSES AND NOTICES

- 11.1. Postal address – any written notice in connection with this Agreement may be addressed:
 - 11.1.1. In the case of the PGA of SA to:

P O Box 949, Bedfordview, 2008, Gauteng, Republic of South Africa

Attention: Ivano Ficalbi

Tel: +27 11 485 1370

Email: ampdirector@pga.co.za
 - 11.1.2. In the case of the Applicant to:

The postal address, telephone and fax number; and email address as set out on the cover page of this Agreement.
- 11.2. Notice shall be deemed to have been duly given:
 - 11.2.1. 7 (seven) days after posting, if posted by registered post to the party's address;
 - 11.2.2. on delivery, if delivered to the party's physical address signed for by a responsible person;
 - 11.2.3. if sent by telefax to the telefax number specified above, on the day of successful transmission thereof;
 - 11.2.4. if sent by e-mail to the e-mail address specified above, on the day of successful transmission thereof.
- 11.3. The parties choose the following physical address at which documents in legal proceedings in connection with this Agreement may be served (their domicilia citandi et executandi):
 - 11.3.1. In the case of the PGA of SA to:

PGA Head Office, Royal Johannesburg & Kensington Golf Club, 1 Fairway Avenue, Linksfield, Johannesburg, Gauteng, 2192.
 - 11.3.2. In the case of the Applicant to:

The physical address as set out on the cover page of this Agreement.

11.4. A party may change that party's address for this purpose to any other postal or physical address (as the case may be) in the Republic of South Africa, by giving notice in writing to the other party.

12. CESSION

12.1. The parties shall, save as set out in this Agreement, not be entitled to cede any of their rights nor delegate any of their obligations arising out of or relating to this Agreement without the prior written consent of the other party.

13. ENTIRE CONTRACT

13.1. This Agreement contains all the express provisions agreed to by the parties with regard to the subject matter of the Agreement and the parties waive the right to rely on any alleged express provision not contained in the Agreement.

14. NO REPRESENTATIONS

14.1. No party may rely on any representation which allegedly induced that party to enter into this Agreement, unless the representation is recorded in this Agreement.

15. VARIATION, CANCELLATION AND WAIVER

15.1. No contract varying, adding to, deleting from or cancelling this Agreement, and no waiver of any right under this Agreement, shall be effective unless reduced to writing and signed by or on behalf of the parties.

16. INDULGENCES

16.1. No relaxation or indulgence which may be granted by any party to the other shall be construed as a waiver by any party of any of that party's rights arising out of this Agreement, nor shall it in any way prejudice that party's rights or preclude that party from exercising any of its rights in the future.

17. SEVERABILITY

17.1. If any undertaking is or becomes unenforceable for any reason, it shall be severable from, and not affect any of, the other undertakings or the rest of this Agreement.

18. APPLICABLE LAW

18.1. This Agreement shall be interpreted and implemented in accordance with the law of the Republic of South Africa.

19. RELATIONSHIP OF THE PARTIES

19.1. This Agreement does not authorise any party to act as the agent of the other, nor does it create a partnership, joint venture or similar relationship between the parties.

SCHEDULE A

CERTIFICATION MARK



SCHEDULE C

PRACTITIONERS

Physiotherapists

Biokineticists

Chiropractors

SCHEDULE D

CONSIDERATION SHEET

1. Application Fee:

R750 excluding VAT per application.

2. Audit Fee:

R750 excluding VAT per audit.

3. Travel Time Fee:

The rate per kilometre will be equal to the SARS rate as legislated from time to time.

Travel will be charged at R375 excluding VAT per hour.

4. Report Writing Fee:

R450 excluding VAT per hour.

5. Accreditation Fee:

The Annual Accreditation fee for the period 1 April 2019 to 31 March 2020 will be R6850 inclusive of VAT. The fee will be increased on an annual basis by the minimum of CPI plus 2% and the maximum of CPI plus 5%.

SCHEDULE E

GUIDELINES

WHO CAN USE THE SEAL?

- The Professional Golfers Association Head Office
- Accredited Medical Professionals in good standing (annual membership fee paid in full) with the PGA of South Africa.
- The use of any PGA of South Africa Seals is prohibited by Accredited Medical Professionals.
- The use of the AMP logos are prohibited by any PGA of South Africa member that is not also a registered AMP in good standing.

HOW TO ACCESS THE AMP LOGO:

Please contact Lauren – lauren@pga.co.za for the logo that you would like to use.

COLOURS:



THE LOGO CAN BE USED FOR:

- Email signatures
- Business cards
- Signage
- Business website branding

THE LOGO CANNOT BE USED FOR:

- Merchandising of any description
- Letterheads

NOTES:

- In all uses of the AMP logo, your name must appear in conjunction with the logo. The logo may not stand alone.
- It may not state that AMP supports or endorses any company, event etc. It is a personal certification.
- Please send proof of all intended uses to Lauren- lauren@pga.co.za if unsure of correct use.
- The colours and design of the logo are protected by Trademark law and cannot be altered or amended in anyway.