

# **INTERMEDIARY TERMS OF BUSINESS AGREEMENT**

1. **SCOPE**

- 1.1 Capitalised terms in this Agreement shall have the meaning given to them in Appendix 1.
- 1.2 This Agreement applies to the Intermediary and sets out the terms on which Benenden Health will accept business from such Intermediary in the Territory. This Agreement shall also apply in respect of business introduced to Benenden Health by any Appointed Representatives of the Intermediary in the Territory, provided that the Intermediary shall (i) notify details of such Appointed Representatives to Benenden Health prior to any introduction of business, (ii) provide any further information and documentation in relation to such Appointed Representatives as Benenden Health may request from time to time and (iii) promptly notify Benenden Health of any changes to such details, information or documentation. The Intermediary shall ensure that members of its Staff and any of its Appointed Representatives are familiar with and comply with the terms of this Agreement.
- 1.3 The types of business which Benenden Health will accept from the Intermediary shall be the introduction, placement and renewal of Corporate Schemes (and the introduction to, and arranging of, Membership Benefits in respect of Corporate Scheme Members thereunder) and/or Individual Memberships as set out in the Commercial Terms Schedule.
- 1.4 The Parties agree that the terms of this Agreement shall apply to the conduct of any business between Benenden Health and the Intermediary which has been or may be transacted between the Parties on or after the Commencement Date. Where a Corporate Scheme or Individual Membership is concluded or renewed with a Client following receipt of this Agreement by or on behalf of the Intermediary, the Intermediary will be deemed to have accepted the terms of this Agreement as applying to that Corporate Scheme or Individual Membership and they will take precedence over and supersede the terms of any other terms of business agreement already in place between the Parties, including any terms of business that the Intermediary may have sent to Benenden Health or which the Intermediary may have entered into with Benenden Health prior to the date of this Agreement, save that existing business accepted under previous terms of business shall be subject to the commission rates and payment terms set out in those terms of business.
- 1.5 Where a Corporate Scheme or Individual Membership is concluded or renewed by Benenden Health at a time when the Intermediary is not acting as the applicable Client's agent for the purpose of dealing with Benenden Health in respect of that Corporate Scheme or Individual Membership, including where such Client was introduced to the Intermediary by any Appointed Representative, Benenden Health will not accept a subsequent request by the Client or the Intermediary to recognise the Intermediary as such an agent unless otherwise agreed. In such cases, Benenden Health shall not deal with the Intermediary and this Agreement shall not apply in relation to that Corporate Scheme or Individual Membership.
- 1.6 In entering into this Agreement, Benenden Health does not undertake to accept business from the Intermediary or any Appointed Representatives and reserves the right at its discretion to refuse any such business without giving a reason. Each proposal for a Corporate Scheme or Individual Membership will be accepted or declined by Benenden Health at its sole discretion.
- 1.7 The Intermediary and any Appointed Representatives are the agents of the Client and the Intermediary and any Appointed Representatives have no authority to act in any way on behalf of Benenden Health. The Intermediary shall not, under any circumstances, purport to on behalf of Benenden Health:
- 1.7.1 conclude or accept a Corporate Scheme or Individual Membership; or
- 1.7.2 vary any of the terms or conditions, premiums or benefits of any product offered by Benenden Health (including the Membership Benefits).

1.8 Save as expressly set out in this Agreement, where there is a conflict between the terms of this Agreement and the terms of the Commercial Terms Schedule, the terms of the Commercial Terms Schedule shall prevail.

## 2. COMPLIANCE

2.1 Benenden Health warrants that it is Authorised by the Regulator to conduct the business to be transacted under this Agreement as may be necessary pursuant to the Act.

2.2 By dealing with Benenden Health on behalf of Clients following receipt of this Agreement, the Intermediary warrants that it is Authorised by the Regulator to conduct the business to be transacted under this Agreement as may be necessary pursuant to the Act. The Intermediary also warrants that its Appointed Representatives are properly exempt from authorisation under the Act and agrees that it shall be responsible to Benenden Health for the acts and omissions of the Appointed Representatives as though they were its own.

2.3 The Intermediary shall inform Benenden Health immediately in writing if at any time during the period of this Agreement:

2.3.1 the Intermediary has any authority or permission granted to it by the Regulator withdrawn or altered by the Regulator in such a manner as materially to affect in any way the Intermediary's ability to conduct the business under this Agreement; or

2.3.2 it terminates its appointed representative agreement with any of its Appointed Representatives; or

2.3.3 the Intermediary or any of its Appointed Representatives become subject to any action by the Regulator; or

2.3.4 the Intermediary or any of its Appointed Representatives become the subject of voluntary or involuntary rehabilitation or liquidation proceedings (save for the purposes of amalgamation or solvent re-organisation) or become the subject of an action in bankruptcy or make or propose any composition with its creditors or otherwise acknowledge its insolvency.

2.4 The Intermediary shall at all times comply with the Regulatory Requirements in all matters to which this Agreement applies.

2.5 Nothing in this Agreement overrides the Intermediary's duty to place the interests of its Client before all other considerations nor shall this Agreement override any Regulatory Requirements which may apply to the Intermediary, Benenden Health, or the introduction or arranging of any Corporate Scheme or Individual Membership.

2.6 The Intermediary shall not be involved in the offering, promising or giving of any financial or other advantage to any person in breach of any law against bribery (including without prejudice to the generality of the foregoing the Bribery Act 2010). The Intermediary shall:

2.6.1 have in place and maintain on an ongoing basis throughout the term of this Agreement its own anti-corruption/bribery policies and procedures, including adequate procedures under the Bribery Act 2010, to prevent corruption/bribery offences and will enforce them where applicable;

2.6.2 not do, nor omit to do anything, nor permit anything to be done by any other party, which is an offence or which may be deemed to be an offence under the Bribery Act 2010; and

- 2.6.3 notify Benenden Health immediately upon becoming aware or upon becoming reasonable suspicious that any activity undertaken in connection with this Agreement has contravened or may contravene the Bribery Act 2010.
- 2.7 The Intermediary shall pay due regard to, and co-operate in respect of the observance of, any applicable international economic financial or trade sanctions legislation which bind the relevant Client, the Intermediary or Benenden Health.
- 2.8 The Parties acknowledge that Benenden Health is the “manufacturer” (as defined in the FCA Rules) of any insurance products offered by Benenden Health pursuant to this Agreement (“**Products**”) for the purposes of chapter 4 of the FCA’s product intervention and product governance sourcebook as contained in the FCA Rules (“**PROD**”) and the Commission Delegated Regulation (EU) 2017/2358 of 21 September 2017 with regard to product oversight and governance requirements for insurance undertakings and insurance distributors as it forms part of the law of the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act of 2018 (“**POG Regulation**”). As such, Benenden Health shall comply with all of the responsibilities of a “manufacturer” under PROD and the POG Regulation in respect of the Products, including making available to the Intermediary (as “distributor” (as defined in the FCA Rules)) all appropriate information on the Products as and when required pursuant to PROD and the POG Regulation. The Intermediary shall comply with the responsibilities of a “distributor” under PROD and the POG Regulation including:
- 2.8.1 providing the appropriate information referred to in this Clause 2.8 to any other person (including any Appointed Representative) in the distribution chain of the relevant Products;
- 2.8.2 notifying Benenden Health if the Intermediary becomes aware that any Product is not in line with the interests, objectives and/or characteristics of the target market; and
- 2.8.3 providing Benenden Health with all information, and in such timescales as Benenden Health may reasonably request to allow Benenden Health to meet its obligations as “manufacturer” of such Products.
3. **COMMISSION AND SET-OFF**
- 3.1 The Commission terms agreed between the Parties are set out in Appendix 2 and the Commercial Terms Schedule. The Parties acknowledge that the Commission Rate (as defined in Appendix 2) may vary depending on the type of business and may be subject to certain exclusions and conditions, details of which are set out in the Commercial Terms Schedule.
- 3.2 The Parties agree that Benenden Health will in no way be liable to pay any compensation payment to the Intermediary in the event that an incorrect amount of Commission is paid to the Intermediary, although Benenden Health will make every effort to remedy any errors or omissions it becomes aware of in relation to the calculation of Commission.
- 3.3 Any and all Commission payments are inclusive of VAT unless otherwise agreed in writing by Benenden Health.
- 3.4 Benenden Health may, at any time, set off any liability of the Intermediary to Benenden Health against any liability of Benenden Health to the Intermediary, whether or not either liability arises under this Agreement or the Commercial Terms Schedule. Any exercise by Benenden Health of its rights under this Clause 3.4 shall not limit or affect any other rights or remedies available to it under this Agreement, the Commercial Terms Schedule or otherwise.

#### 4. **DATA PROTECTION**

The Parties do not anticipate that either Party will Process any Personal Data on behalf of the other Party under this Agreement. Each Party is the Controller for the Personal Data that they may have access to and Process on their own behalf under this Agreement, which means that each Party is responsible for its Processing of Personal Data in accordance with the Data Protection Legislation at any given time. If the Parties are jointly responsible for Personal Data, i.e. Controllers, or if one of the Parties is the Controller for Personal Data and the other Party is the Processor, the Parties will in good faith negotiate and agree on necessary and customary amendments, additions and additional agreements (such as data protection agreements) regarding the responsibilities and Processing of such Personal Data.

#### 5. **TERMINATION**

5.1 Either Party may terminate this Agreement at any time by giving the other Party written notice.

5.2 This Agreement shall terminate:

5.2.1 immediately, without notice, should either Party become the subject of voluntary or involuntary rehabilitation or liquidation proceedings (save for the purposes of amalgamation or solvent re-organisation) or become the subject of an action in bankruptcy or make or propose any composition with its creditors or otherwise acknowledge its insolvency; and

5.2.2 immediately, without notice, should the Intermediary have any authority or permission granted to it by the Regulator withdrawn or altered by the Regulator in such a manner as materially to affect in any way the Intermediary's ability to conduct the business under this Agreement.

5.3 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect.

5.4 Benenden Health reserves the right to notify the relevant Regulator in the event that the Agreement is terminated in circumstances where any commission debts of the Intermediary remain unpaid.

#### 6. **ACCESS TO RECORDS**

6.1 The Intermediary will retain all of the Records created, held or by received by it in connection with the business effected pursuant to this Agreement for a minimum of six years and in any event the minimum periods required by law or the Regulator.

6.2 The Intermediary agrees to allow Benenden Health and its authorised representatives, on reasonable notice, to inspect and to take copies of such Records that Benenden Health may require in order to enable it to comply with the Regulatory Requirements or any requirement of the Regulator or to deal with any complaint made against Benenden Health in connection with the business effected pursuant to this Agreement.

6.3 The Intermediary shall grant to the Regulator and any other relevant taxation or regulatory body the same rights as those granted to Benenden Health under this Clause 6.

#### 7. **CONFIDENTIALITY**

7.1 Each Party shall ensure that all Confidential Information of the other Party is kept confidential and shall not make or cause or permit to be made any use or disclosure of any such Confidential Information except to the extent permitted under this Agreement.

- 7.2 Each Party shall be permitted to disclose Confidential Information of the other Party to the extent that it is required to do so by law or by the Regulator or by any legally binding order of any court or tribunal provided in any such case that:
- 7.2.1 the disclosure or use is limited strictly to those parts of the other Party's Confidential Information which are required to be disclosed pursuant to Clause 7.2; and
  - 7.2.2 each Party shall use reasonable endeavours to ensure the recipient of such Confidential Information is made aware that such information is confidential.
- 7.3 The obligations contained in Clauses 7.1 and 7.2 shall not apply to any Confidential Information of either Party:
- 7.3.1 to the extent that such Confidential Information was publicly available or generally known to the public or lawfully in the possession of the other Party at the time of the disclosure; or
  - 7.3.2 to the extent that such Confidential Information becomes publicly available or generally known to the public at any time after such disclosure, except as a result of any breach by the other Party of its obligations hereunder; or
  - 7.3.3 to the extent that the other Party acquires or has acquired such Confidential Information free from any obligation of confidentiality from a third party who is not in breach of any obligation as to confidentiality to either Party.
- 7.4 Each Party may disclose Confidential Information to members of its Group, professional advisors, auditors and insurers who need to know such Confidential Information provided such recipients are bound by substantially similar obligations or duties of confidentiality as those contained in this Clause 7.

## 8. **INTELLECTUAL PROPERTY RIGHTS**

- 8.1 The Parties agree that the Intellectual Property Rights in the "Benenden Health" name or logo, the "Benenden Healthcare Society Limited" name or logo and all Product Documentation and Marketing Materials ("**Benenden IP**") shall remain with and vest in Benenden Health.
- 8.2 Other than as expressly set out in this Clause 8, neither Party shall acquire by virtue of this Agreement any rights in the Intellectual Property Rights of the other Party and all such rights are and shall remain vested in, and any goodwill derived from the use of such rights shall accrue to, the relevant Party.
- 8.3 The Intermediary shall not use Benenden's Intellectual Property Rights, including in the Benenden IP, other than in accordance with and for the purposes of this Agreement unless Benenden Health provides its prior written consent to such use. In addition, the Intermediary shall not use Benenden's Intellectual Property Rights, including in the Benenden IP, in any social media advertising, paid search advertising, banner advertising, online advertising, emails, lead generation activity, price comparisons, television or radio without Benenden Health's specific prior written consent.

## 9. **COMPLAINTS**

- 9.1 Each Party will notify the other promptly upon receipt of any complaint concerning the other Party relating to this Agreement and provide full details of such complaint and copies of any relevant documentation.
- 9.2 The Parties acknowledge:

9.2.1 Benenden Health is responsible for handling complaints relating to any Corporate Scheme, Individual Membership and the Membership Benefits; and

9.2.2 the Intermediary is responsible for handling complaints relating to the introduction and arranging activities it carries out on behalf of Clients in connection with its Agreement.

## 10. **INSURANCE**

10.1 The Intermediary shall at all times maintain in full force and effect an appropriate professional indemnity policy adequate to cover the Intermediary's liability in relation to its dealings with Benenden Health and its Clients pursuant to this Agreement.

10.2 The Intermediary shall at any time at Benenden Health's request provide Benenden Health with such evidence as Benenden Health shall reasonably require to demonstrate that the insurance required under Clause 10.1 is in force.

## 11. **DOCUMENTATION AND MARKETING MATERIALS**

11.1 The Intermediary shall not display, distribute or otherwise use, or permit or cause to be displayed, distributed or otherwise used, any Product Documentation or Marketing Materials for the purposes of introducing and arranging Corporate Schemes and Individual Memberships in connection with this Agreement without the prior written approval of Benenden Health.

11.2 Benenden Health shall be responsible for (at its own cost):

11.2.1 creating the form of the Product Documentation and the Marketing Materials, including any changes and additions to the same; and

11.2.2 ensuring the compliance of the Product Documentation and the Marketing Materials with the Regulatory Requirements.

11.3 Benenden Health shall provide the Intermediary with copies of all Product Documentation and Marketing Materials and any changes to the Product Documentation and the Marketing Materials for distribution to Clients, and the Intermediary shall, at its own cost, make such Product Documentation and Marketing Materials immediately available to its Appointed Representatives, relevant Staff and its Clients during the term of this Agreement.

11.4 The Intermediary shall indemnify, and keep indemnified, Benenden Health against any and all loss, liability, claims, damages, costs and expenses incurred or suffered by it as a result of or in connection with the display, distribution or use by the Intermediary of any Product Documentation and Marketing Materials for the purposes of introducing and arranging Corporate Schemes and Individual Memberships in connection with this Agreement which are not approved in advance by Benenden Health.

11.5 The Intermediary shall not make any public statements or announcements which relate to a Corporate Scheme, Individual Membership or the Membership Benefits other than with the prior written consent of Benenden Health.

11.6 Benenden Health shall not produce any Marketing Materials or other documentation that represents or refers to the Intermediary without the Intermediary's prior written consent.

11.7 The Intermediary shall (and shall procure that its Staff and any Staff of its Appointed Representatives shall) maintain competence and knowledge of Benenden Health and the Membership Benefits to enable them to appropriately and competently introduce and arrange



Corporate Schemes and Individual Memberships to Clients in connection with this Agreement, and comply with all reasonable requirements of Benenden Health in relation to the same.

- 11.8 The Intermediary shall maintain and comply with appropriate systems and controls in order to effectively and adequately monitor the activities of its Staff and its Appointed Representatives in accordance with this Agreement.

## 12. CLIENT CONTACT AND CLIENT DATA

- 12.1 The Intermediary shall provide Benenden Health with full and accurate Client Data at the point of Corporate Scheme application or Individual Membership application and update Benenden Health promptly where such Client Data changes.

- 12.2 Benenden Health reserves the right to contact any Client directly for any reason relating to their actual or potential Corporate Scheme or Individual Membership or where the Intermediary is being investigated by any Regulator (including in relation to the payment of premiums or other routine administration). Benenden Health shall keep the Intermediary informed of any direct contact with Clients.

- 12.3 Benenden Health reserves the right to contact any Member directly at any time.

- 12.4 Benenden Health and the Intermediary shall cooperate with respect to any Corporate Scheme or Individual Membership, including to develop tripartite meetings to review the performance, effectiveness and renewal of such Corporate Scheme and/or Individual Membership. The Intermediary shall (and shall procure that any Appointed Representatives shall) facilitate meetings with the Client upon reasonable written notice from Benenden Health.

- 12.5 The Intermediary shall notify Benenden Health immediately in writing in the event that any Client wishes to cancel its Corporate Scheme or Individual Membership (as applicable).

## 13. CONFLICTS OF INTEREST

The Parties will adopt and/or maintain procedures to ensure that each has in place arrangements for the identification and management of any conflicts of interest that may arise in relation to the business conducted under this Agreement.

## 14. DISCLOSURE

The Intermediary will comply with relevant regulatory, fiduciary and legal requirements regarding disclosure of all forms of remuneration from any arrangements it may have for remuneration in relation to the business conducted under this Agreement.

## 15. ASSIGNMENT

Unless this Agreement expressly states otherwise, no right, authority or obligation arising under it may be assigned, transferred, sub-contracted or otherwise disposed of, in whole or in part, by any Party without the prior written agreement of the other Party.

## 16. VARIATION

Subject to the terms of the Commercial Terms Schedule, Benenden Health reserves the right to vary this Agreement by giving one (1) months' notice to the Intermediary except in circumstances where changes in the Regulatory Requirements are required to take immediate effect, in which case no notice will be required.



## 17. **RIGHTS OF THIRD PARTIES**

A person who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This Clause 17 shall not affect any right or remedy of a third party which exists or is available apart from that Act.

## 18. **RELATIONSHIP**

18.1 Except insofar as specified in this Agreement, nothing in this Agreement:

18.1.1 will create any partnership or joint venture between the Parties or any of their respective employees or agents; or

18.1.2 is intended to constitute the creation of a principal/agent relationship between the Parties and not of employer/employee.

18.2 Each Party does not have authority to contract on behalf of the other, and each Party must not make any representations or give any warranties for or on behalf of the other and must not amend (or try to amend) any of the terms and conditions on which the other Party contracts with third parties.

## 19. **ENTIRE AGREEMENT**

This Agreement (together with all documents to be entered into pursuant to it and referenced within it) sets out the entire agreement and understanding between the Parties, and supersedes all proposals and prior agreements, terms of business agreements, arrangements and understandings between the Parties, relating to its subject matter.

## 20. **FURTHER ASSURANCE**

Each Party will do and execute, or arrange for the doing and executing of, any other act and document reasonably requested of it by the other Party to implement and give full effect to the terms of this Agreement.

## 21. **ENFORCEABILITY**

In the event any portion of this Agreement is found to be invalid or unenforceable, the remainder will remain in full force and effect.

## 22. **WAIVER**

The failure to exercise or delay in exercising a right or remedy under this Agreement or at law does not constitute a waiver of such right or remedy or of any other rights or remedies. Further, no single or partial exercise of a right or remedy provided by this Agreement or by law prevents further exercise of such right or remedy or of other rights or remedies.

## 23. **NOTICES**

23.1 Any notice given by one Party to another under the Agreement shall be in writing, delivered by hand or by prepaid first class or special delivery post to the address given at the start of the Agreement and in all cases marked for the attention of the Company Secretary in relation to the Intermediary and the Senior Commercial Solicitor in relation to Benenden Health.

- 23.2 Notices delivered by hand shall be deemed to have been served on the day of receipt (unless received after 5.00 pm in which case they shall be given on the next Working Day). Notices sent by prepaid first-class post or special delivery shall be deemed to have been given 2 Business Days after the date of posting.
- 23.3 Notices under the Agreement shall not be validly served by email.
- 23.4 Either Party may vary its address, and/or contact for notices by giving notice to the other. The notice must expressly state that the new address is the address for notices and/or the new contact is the contact to whose attention all future notices should be brought, as the case may be.

#### 24. **FORCE MAJEURE**

No Party to this Agreement will be liable for any delay nor non-performance of its obligations under this Agreement caused by national emergency, war, prohibitive governmental regulations or any other event beyond its control (a "**Force Majeure Event**") provided that the non-performing Party gives prompt notice in writing to the other Party of such Force Majeure Event and uses all reasonable endeavours to continue to perform its obligations under the Agreement. Any non-performing or affected Party may terminate this Agreement if such Force Majeure Event continues for more than three months.

#### 25. **GOVERNING LAW AND JURISDICTION**

- 25.1 This Agreement (including any non-contractual obligations arising out of or in connection with it) is governed by, and interpreted in accordance with, English law.
- 25.2 The Parties irrevocably agree that the English courts have exclusive jurisdiction to settle any claim or dispute (howsoever arising) out of or in connection with this Agreement in respect of any claim against any Party and accordingly submit to the jurisdiction of the English courts in relation to any matter arising in connection with this Agreement.

## APPENDIX 1

### DEFINITIONS

“Act”	means the Financial Services and Markets Act 2000 and the rules and regulations made or having effect thereunder
“Agreement”	means this Agreement
“Appointed Representative”	has the meaning given to it in the Act and includes an Introducer Appointed Representative
“Authorisation”	any authorisation from the Regulator which may be necessary pursuant to the Act to undertake the activities envisaged by this Agreement, and “ <b>Authorised</b> ” shall be construed accordingly
“Benenden Health”	the Benenden Healthcare Society Limited, an incorporated friendly society registered under the Friendly Societies Act 1992 with registered number 480F, whose registered office is at Holgate Park Drive, York, North Yorkshire, YO26 4GG
“Client”	means a Corporate Client or an Individual Client (as applicable)
“Client Data”	means the Client’s forename and surname (in the case of an Individual Client) or full company, partnership or association name (in the case of a Corporate Client), address and contact details and all other information relevant to the administration of a Corporate Scheme or Individual Membership
“Commencement Date”	means the date of this Agreement
“Commercial Terms Schedule”	means the document agreed in writing between the Parties which outlines, amongst other things, the Intermediary and the amount(s) of Commission to be paid to the Intermediary
“Commission”	means commission payable to the Intermediary at the rates and times set out in the Commercial Terms Schedule and Appendix 2 to this Agreement in respect of the business transacted between the Parties under this Agreement
“Confidential Information”	means any information and/or material relating to the business, affairs, finances, systems, process and/or methods of operation of either Party which is disclosed by one Party to the other in connection with the operation of this Agreement (whether oral or in writing and whether or not such information is expressly stated to be confidential or marked as such)

“Corporate Client”	means a body corporate or association which is a client of the Intermediary
“Corporate Scheme”	means an arrangement whereby a Corporate Client contracts with Benenden Health for the provision of the Membership Benefits to a group of individuals who are eligible to participate in the Membership Benefits by virtue of their common employment, membership or other connection with the Corporate Client
“Corporate Scheme Member”	means a natural person who participates in Membership Benefits through a Corporate Scheme
“Data Protection Legislation”	Data Protection Legislation” means (a) the Data Protection Act 2018, (b) the General Data Protection Regulation 2016/679 as incorporated into the law of the United Kingdom by virtue of the EU (Withdrawal) Act 2018 (“ <b>UK GDPR</b> ”); and (c) such other legislation, rule or other binding orders, decisions and judgments of a competent court or authority which relates to the protection of individuals with regards to the processing of personal data in each case as may be updated or replaced from time to time; and “ <b>Controller</b> ”, “ <b>Personal Data</b> ”, “ <b>Process</b> ”, “ <b>Processor</b> ” and “ <b>Processing</b> ” shall have the meanings given in the UK GDPR
“FCA”	means the Financial Conduct Authority and its successors
“FCA Rules”	means the FCA Handbook of rules and guidance made by the FCA under the Act, and all other rules, directions, sourcebooks, statements of principle, guidance and codes of practice issued by the FCA
“Group”	has the meaning given to it either in section 421 of the Act or section 474 of the Companies Act 2006 (as applicable)
“ICOBS”	means the Insurance Conduct of Business Rules sourcebook issued from time to time by the Regulator
“Individual Client”	means a natural person who is a client of the Intermediary
“Individual Member”	means an Individual Client who participates in Membership Benefits other than through a Corporate Scheme
“Individual Membership”	means a membership issued to an Individual Client other than under a Corporate Scheme through which Benenden Health provides the Membership Benefits

“Intellectual Property Rights”	means any current and future intellectual property rights and interests including patents, utility models, designs, design rights, copyright (including rights in software), decryption rights, database rights, trade marks, rights pursuant to passing off, service marks, business and trade names, domain names, know-how, topography rights, inventions, rights in confidential information (including technical and commercial trade secrets) and image rights, and rights of a similar or corresponding character in any part of the world, in each case whether registered or not and including any application for registration and renewals or extensions of such rights in any country in the world
“Introducer Appointed Representative”	has the meaning given to it in the FCA Rules
“Marketing Materials”	means any sales, advertising and marketing literature and material displayed, distributed or otherwise used in connection with promoting the Corporate Schemes, Individual Memberships and the Membership Benefits
“Member”	means an Individual Member or a Corporate Scheme Member (as applicable)
“Membership Benefits”	means the benefits and entitlements available to Members, as set out in Benenden Health’s ‘Guide for Services’ and the rules of Benenden Health (as may be updated by Benenden Health from time to time)
“PRA”	means the Prudential Regulation Authority and its successors
“Product Documentation”	means the content, format, layout and wording of any documentation relating to the Membership Benefits
“Records”	means anything on which any information of any description is recorded
“Regulator”	means the FCA and/or the PRA and/or any other person having regulatory or supervisory authority under any applicable law over any part of the business to be transacted under this Agreement
“Regulatory Requirements”	means the requirements of the Act and the FCA Rules, and requirements under any other applicable statutory and other rules, regulations, instruments, codes of conduct or practice, or directions of a Regulator
“Staff”	means in respect of a Party, any individual engaged by such Party under a contract of service or for services or otherwise including employees, workers, agents and independent contractors
“Territory”	United Kingdom, Channel Island or the Isle of Man

“VAT” means value added tax

In this Agreement, unless the context requires otherwise:

- references to **Clauses** are to clauses of this Agreement;
- references to **this Agreement** or any other document are to this Agreement or that document as in force and amended from time to time;
- headings in this Agreement are for convenience only and do not affect its interpretation;
- the singular includes the plural and vice versa;
- a reference to "**in writing**" or "**written**" includes email; and
- references to a person includes a natural person, partnership, corporate, unincorporated body and all other legal persons (whether or not having separate legal personality);
- a reference to a time of the day is to the time in London (United Kingdom) and references to a day are to a period of 24 hours running from midnight to midnight;
- any reference to any legislation, including to any statute, statutory provision or subordinate legislation, includes a reference to such legislation as from time to time amended or re-enacted, whether before, on, or after the date of this Agreement;
- any words following the terms "**including**", "**include**" or any similar expression must be construed as illustrative and will not limit the sense of the words, description, definition, phrase or term preceding those terms; and
- any obligation on a Party not to do something includes an obligation to procure that such Party's employees, agents and authorised representatives will not do the same.

## APPENDIX 2 - COMMISSION

### PART A: Corporate Scheme

. Where the Commercial Terms Schedule refers to the appointment of the Intermediary for the introduction of Corporate Schemes the following terms and definitions shall apply to the payment of Commission

<b>“Commission”</b>	means the Initial Commission or the Renewal Commission (as applicable)
<b>“Commission Rate”</b>	means the applicable Initial Commission Rate and Renewal Commission Rate as set out in the Commercial Terms Schedule (and subject to the conditions or exclusions set out therein) or as otherwise varied by Benenden Health in accordance with paragraph 5 below
<b>“Corporate Scheme Commencement Date”</b>	means the commencement date of the relevant Corporate Scheme, as agreed between Benenden Health and the Intermediary (acting on behalf of the Corporate Client)
<b>“Corporate Scheme Renewal Date”</b>	means the annual anniversary date of the relevant Corporate Scheme where the Corporate Scheme continues for a further annual period
<b>“Initial Annualised Premium”</b>	means the annual rate of premium payable by the relevant Corporate Client in respect of each Corporate Scheme Member under the relevant Corporate Scheme as at the Corporate Scheme Commencement Date, as calculated by Benenden Health and notified to the Intermediary
<b>“Initial Commission”</b>	means the Initial Annualised Premium x Initial Total Participants x Initial Commission Rate
<b>“Initial Total Participants”</b>	means the total number of Corporate Scheme Members in the relevant Corporate Scheme as at the Corporate Scheme Commencement Date
<b>“Renewal Annualised Premium”</b>	means the annual rate of premium payable by the relevant Corporate Client in respect of the relevant Corporate Scheme as at the relevant Corporate Scheme Renewal Date, as calculated by Benenden Health and notified to the Intermediary
<b>“Renewal Commission”</b>	means the Renewal Annualised Premium x Renewal Total Participants x Renewal Commission Rate
<b>“Renewal Total Participants”</b>	means the total number of Corporate Scheme Members in the relevant Corporate Scheme as the relevant Corporate Scheme Renewal Date

1. Benenden Health shall pay to the Intermediary the Initial Commission and the Renewal Commission in respect of each Corporate Scheme which the Intermediary or its Appointed



Representative concludes or renews (as applicable) on behalf of a Corporate Client during the term of, and in accordance with, this Agreement and the Commercial Terms Schedule.

2. Commission shall become payable only if:
  - a) the Intermediary (or its Appointed Representative) acts as the Corporate Client's agent for the purposes of dealing with Benenden Health in respect of that Corporate Scheme as at the Corporate Scheme Commencement Date or the relevant Corporate Scheme Renewal Date (as applicable). In the event of any dispute as to whether the Intermediary (or its Appointed Representative) has acted as the Corporate Client's agent at the relevant time, the Intermediary shall produce evidence to confirm this and Benenden Health's decision as to whether such confirmation is acceptable shall be final;
  - b) this Agreement and the Commercial Terms Schedule is in force and has not been terminated as at the Corporate Scheme Commencement Date or the relevant Corporate Scheme Renewal Date (as applicable); and
  - c) the Intermediary is Authorised by the Regulator to conduct the business to be transacted under this Agreement as may be necessary pursuant to the Act as at the Corporate Scheme Commencement Date or the relevant Corporate Scheme Renewal Date (as applicable). For the avoidance of doubt, Commission shall not be paid in the event that the Intermediary has any authority or permission granted to it by the Regulator withdrawn or altered by the Regulator in such a manner as materially to affect in any way the Intermediary's ability to conduct the business under this Agreement.
3. Benenden Health will pay the applicable Commission to the Intermediary within thirty (30) days from the Corporate Scheme Commencement Date or the relevant Corporate Scheme Renewal Date (as applicable). No Commission will be paid to any Appointed Representative of the Intermediary. The Parties agree that no interest shall be payable by Benenden Health to the Intermediary in the event of any late payment of Commission.
4. Benenden Health reserves the right to, in its sole discretion, vary the Commission Rate at any time by providing one (1) month's written notice to the Intermediary. For the avoidance of doubt the revised Commission Rate shall take effect in relation to any Corporate Scheme having a Corporate Scheme Commencement Date on or after the end of such notice period.
5. Where a Corporate Client transfers from the Intermediary to another intermediary who has been granted terms of business by Benenden Health which remain in full force and effect ("**Incoming Intermediary**"), and Benenden Health receives confirmation of such transfer in writing from the Corporate Client, then at the next Corporate Scheme Renewal Date Benenden Health will pay the Renewal Commission to the Incoming Intermediary and not the Intermediary.
6. Where a Corporate Client transfers to the Intermediary from another intermediary who has been granted terms of business by Benenden Health which remain in full force and effect ("**Outgoing Intermediary**"), and Benenden Health receives confirmation in writing of such transfer from the Corporate Client, then at the next Corporate Scheme Renewal Date Benenden Health will pay the Renewal Commission to the Intermediary and not the Outgoing Intermediary.
7. The Intermediary agrees to immediately repay 100% of the Commission to Benenden Health in the event that the warranties given by the Intermediary in clause 2.2 of the Agreement were not true and accurate as at the date of the relevant Commission payment.
8. Benenden Health may, at its sole discretion, pay the Intermediary an additional commission payment where the total number of Corporate Scheme Members in the relevant Corporate Scheme has increased by 20% or more in the six (6) months after the relevant Corporate Scheme Commencement Date.

## **PART B: Individual Memberships**

**Where the Commercial Terms Schedule refers to the appointment of the Intermediary for the introduction of Individual Memberships the following terms and definitions shall apply to the payment of Commission.**

<b>“Annualised Premium”</b>	means the annual rate of premium payable by the relevant Individual Member as at the Membership Commencement Date, as calculated by Benenden Health and notified to the Intermediary
<b>“Commission”</b>	means the Annualised Premium x Commission Rate
<b>“Commission Rate”</b>	means the applicable commission rate(s) as set out in the Commercial Terms Schedule (and subject to the conditions or exclusions set out therein) or as otherwise varied by Benenden Health in accordance with paragraph 4 below
<b>“Membership Commencement Date”</b>	means the commencement date of the relevant Individual Membership, as agreed between Benenden Health and the Intermediary (acting on behalf of the Individual Member)

1. Benenden Health shall pay to the Intermediary Commission in respect of each Individual Membership which the Intermediary or its Appointed Representative concludes on behalf of an Individual Member during the term of, and in accordance with, this Agreement and the Commercial Terms Schedule.
2. Commission shall become payable only if:
  - a) the Intermediary (or its Appointed Representative) acts as the Individual Member’s agent for the purposes of dealing with Benenden Health in respect of that Individual Membership as at the Membership Commencement Date. In the event of any dispute as to whether the Intermediary (or its Appointed Representative) has acted as the Individual Member’s agent, the Intermediary shall produce evidence to confirm this and Benenden Health’s decision as to whether such confirmation is acceptable shall be final;
  - b) this Agreement and the Commercial Terms Schedule is in force and has not been terminated as at the Membership Commencement Date;
  - c) the Intermediary is Authorised by the Regulator to conduct the business to be transacted under this Agreement as may be necessary pursuant to the Act as at the Membership Commencement Date. For the avoidance of doubt, Commission shall not be paid in the event that the Intermediary has any authority or permission granted to it by the Regulator withdrawn or altered by the Regulator in such a manner as materially to affect in any way the Intermediary’s ability to conduct the business under this Agreement.
3. Benenden Health will pay the applicable Commission to the Intermediary within thirty (30) days from the Membership Commencement Date. No Commission will be paid to any Appointed Representative of the Intermediary. The Parties agree that no interest shall be payable by Benenden Health to the Intermediary in the event of any late payment of Commission.
4. Benenden Health reserves the right to, in its sole discretion, vary the Commission Rate at any time by providing one (1) month’s written notice to the Intermediary. For the avoidance of doubt the revised Commission Rate shall take effect in relation to any Commission payable in relation

to any Individual Membership having a Membership Commencement Date on or after the end of such notice period.