



BROKER

AGREEMENT

Entered into between:

Bestmed Medical Scheme

(Registration Number: 1252)

A registered medical scheme, having its registered office/principal place of business at Block A,
Glenfield Office Park, 361 Oberon Avenue, Faerie Glen Pretoria, 0081, RSA

("The Scheme")

And

_____ (Pty) Ltd

(Registration Number: _____)

A Company incorporated in and according to the laws of South Africa, and having its registered
office/ its principal office at _____

("The Broker")

1. INTERPRETATION AND PRELIMINARY

The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof. In this Agreement, unless a contrary intention clearly appears:

1.1 a reference to:

1.1.1 any particular gender shall include the other gender;

1.1.2 the singular shall include the plural and vice versa;

1.1.3 a natural person shall include a juristic person (whether a corporate or unincorporated created entity) and vice versa;

1.2 the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

1.2.1 **“Beneficiary”** means a member or a person admitted as a dependant of a member;

1.2.2 **“Bestmed Medical Scheme” or “the Scheme” or “the Medical Scheme”** means Bestmed Medical Scheme, a Medical Scheme registered in terms of the Medical Schemes Act (Act 131 of 1998) (the Act) with registration number 1252;

1.2.3 **“Board of Trustees”** means the Board Of Trustees charged with the managing of the affairs of the Scheme, and which has been elected or appointed under its Rules;

1.2.4 **“Broker Services”** means the provision of service or advice in respect of the introduction or admission of Members to the Medical Scheme, or the ongoing provision of service or advice in respect of access to, or benefits or services offered by the Medical Scheme.

1.2.5 **“Broker”** means _____ (Pty) Ltd, a Company, with limited liability, registered under the Laws of South Africa, who has been granted accreditation by the Council to act or offer to act as a Broker;

1.2.6 **“Broker Compensation”** means the compensation paid by the Scheme to the Broker for providing Broker Services;

1.2.7 **“The Act”** means the Medical Schemes Act (131 of 1998) and includes all relevant regulations;

1.2.8 **“Business of Medical Scheme”** means the business of undertaking liability in return for a premium or contribution to make provision for the obtaining of any Relevant Health Service, to grant assistance in defraying expenditure incurred in connection with the rendering of any Relevant Health Service, and where applicable, to render a Relevant Health Service, either by the Scheme itself, or by any supplier or group of suppliers of a Relevant Health Service or by any person, in association with or in terms of an Agreement with the Scheme;

1.2.9 **“Council”** means the Council for Medical Schemes as established in terms of section 3 of the Act;

1.2.10 **“Complaint”** means a complaint against any person required to be registered or accredited in terms of the Act, or any person whose professional activities are regulated by the Act, and alleging that such person has acted, or failed to act, in contravention of the Act; or acted improperly in relation to any matter which falls within the jurisdiction of the Council;

1.2.11 **“Condition-Specific Waiting Period”** means a period during which a beneficiary is not entitled to claim benefits in respect of a condition for which medical advice, diagnosis, care or treatment was recommended or received within the twelve-month period ending on the date on which an application for Membership was made;

1.2.12 **“Consumer Protection Act”** means the Consumer Protection Act, Act 68 of 2008, which came into operation on 1 April 2011, to promote a fair, accessible and sustainable marketplace for consumer

products and services and for that purpose to establish national norms and standards relating to consumer protection, to provide for improved standards of consumer information, to prohibit certain unfair marketing and business practices, to promote responsible consumer behaviour, to promote a consistent legislative and enforcement framework relating to consumer transactions and Agreements, to establish the National Consumer Commission, to make consequential amendments to various other Acts, and to provide for related incidental matters.

- 1.2.13** “**Dependent**” means the spouse or partner, dependent children or other Members of the member’s immediate family in respect of whom the member is liable for family care and support or any other person who, under the rules of the Scheme, is recognized as a dependent of a member;
- 1.2.14** “**FAIS**” means the Financial Advisory and Intermediary Services Act, 37 of 2002
- 1.2.15** “**Financial Year**” means each period of 12 months ending on 31 December of each year;
- 1.2.16** “**General Waiting Period**” means a period in which a beneficiary is not entitled to claim any benefits;
- 1.2.17** “**the Scheme**” means Bestmed Medical Scheme, registered in terms of under section 24 (1) of the Act, with registration number 1252, and having its principal place of business at Block A, Glenfield Office Park, 361 Oberon Avenue, Faerie Glen, Pretoria;
- 1.2.18** “**Member**” means a person who has been enrolled or admitted as a member of the Scheme, or who, in terms of the Rules of the Scheme, is a member of such Medical Scheme;
- 1.2.19** “**Minister**” means the National Minister of Health;
- 1.2.20** “**Officer**” means any member of a board of trustees, any manager, principal officer, treasurer, clerk or other employee of the Scheme, but does not include the auditor of the Scheme;
- 1.2.21** “**personal information**” shall mean as defined in Protection of Personal Information Act, 4 of 2013 (“POPI”) relating specifically to Bestmed members’ and potential members and beneficiaries’ information;
- 1.2.22** “**processing**” shall have the meaning as defined in POPI relating specifically to Bestmed members’ and potential members and beneficiaries’ information;
- 1.2.23** “**Prescribed**” means prescribed by Regulation;
- 1.2.24** “**Principal Officer**” means the principal officer appointed in terms of section 57 (4) (a) of the Act;
- 1.2.25** “**record**” shall have the meaning as defined in POPI relating specifically to Bestmed members’ and potential members’ and beneficiaries’ information;
- 1.2.26** “**responsible party**” shall have the meaning as defined in POPI;
- 1.2.27** “**Registrar**” means the Registrar of Medical Schemes appointed in terms of section 18 of the Act;
- 1.2.28** “**Relevant Health Service**” means any health care treatment of any person by a person registered in terms of any law, which treatment has as its object the physical or mental examination of that person, the diagnosis, treatment or prevention of any physical or mental defect, illness or deficiency, the giving of advice in relation to any such defect, illness or deficiency, the giving of advice in relation to, or treatment of, any condition arising out of a pregnancy, including the termination thereof, the prescribing or supplying of any medicine, appliance or apparatus in relation to any such defect, illness or deficiency or a pregnancy, including the termination thereof, or nursing or midwifery, and includes an ambulance service, and the supply of accommodation in an institution established or registered in terms of any law as a hospital, maternity home, nursing home or similar institution where nursing is practiced, or any other institution where surgical or other medical activities are performed, and such accommodation is necessitated by any physical or mental defect, illness or deficiency or by a pregnancy;
- 1.2.29** “**Rules**” means the rules of the Scheme as registered from time to time, and include the provisions of the law, charter, deed of settlement, memorandum of association or other document by which the Scheme is constituted, the articles of association or other rules for the conduct of the business of the

Scheme and the provisions relating to the benefits which may be granted by and the contributions which may become payable to the Scheme;

- 1.2.30** “**Companies Act**” means the Companies Act, 2008 (Act 71 of 2008);
- 1.2.31** “**Close Corporations Act**” means the Close Corporation Act (Act No. 69 of 1984);
- 1.2.32** “**Company**” means a juristic person incorporated in terms of the Companies Act, a domesticated company, or a juristic person that, immediately before the effective date was registered in terms of the:
- 1.2.32.1** Companies Act, 1973 (Act No. 61 of 1973), other than as an external company as defined in that Act; or
- 1.2.32.2** Close Corporations Act, 1984 (Act No. 69 of 1984), if it has subsequently been converted in terms of Schedule 2 of the Companies Act ;
- 1.2.32.3** was in existence and recognised as an “existing company” in terms of the Companies Act, 1973 (Act No. 61 of 1973); or
- 1.2.32.4** was deregistered in terms of the Companies Act, 1973 (Act No. 61 of 1973), and has subsequently been re-registered in terms of this Act.
- 1.2.33** “**Effective Date**” means the date upon which the Broker is activated on the Bestmed Medical Scheme system provided that this is after the date of signature herein;
- 1.2.34** “**Electronic**” includes created, recorded, transmitted or stored in digital or other intangible form of electronic, optical or similar means;
- 1.2.35** “**Signature Date**” means the date of signature of this Agreement by the party last signing;
- 1.2.36** Expressions defined in the Act shall have the meanings so defined;
- 1.2.37** Clause headings are for the purposes of convenience and reference only and shall not be used in the interpretation of this Agreement, nor modify nor modify nor amplify any of its provisions;
- 1.2.38** The Parties shall, wherever necessary or appropriate, be referred to by their defined designations;
- 1.2.39** All the annexes (if any) hereto are incorporated herein and shall have the same force and effect as if they were set out in the body of this Agreement;
- 1.2.40** Words and/ or expressions defined in this Agreement shall bear the same meanings in any annexes hereto which do not contain their own defined words and/ or expressions;
- 1.2.41** Where a period consisting of a number of days is prescribed, it shall be determined by excluding the first and including the last day;
- 1.2.42** Where the day upon or by which any act is required to be performed is a Saturday, Sunday or public holiday in the Republic of South Africa, the Parties shall be deemed to have intended such act to be performed upon or by the first day thereafter which is not a Saturday, Sunday or public holiday;
- 1.2.43** Where an expression has been defined and such definition contains a provision conferring a right or imposing an obligation on any Party, then notwithstanding that it is contained only in a definition, effect shall be given to that provision as if it were a substantive provision contained in the body of this Agreement,
- 1.2.44** If figures are referred to in numerals and words, the words shall prevail in the event of any conflict between the two;
- 1.2.45** Words and/ or expressions defined in any particular clause in the body of this Agreement shall, unless the application of such word and/ or expression is specifically limited to that clause, bear the meaning so assigned to it throughout this Agreement;
- 1.2.46** The *contra preferentem* rule shall not apply and accordingly, none of the provisions hereof shall be construed against or interpreted to the disadvantage of the Party responsible for the drafting or preparation of such provision;
- 1.2.47** The *eiusdem generis* rule shall not apply and accordingly, whenever a provision is followed by the word “including” and specific examples, such examples, shall not be construed so as to limit the ambit of the

- provision concerned;
- 1.2.48** The “*generalia specialibus non derogant*” rule will apply and means general words (rules) do not derogate from special;
- 1.2.49** The “*expressio unius est exclusio alterius*” rule will apply and means expression of one thing is the exclusion of the other;
- 1.2.50** A reference to any statutory enactment (including statutes, ordinances, regulations and by- laws) shall be construed as a reference to that enactment as at the Signature Date and as amended or re-enactment as at the Signature Date and as amended or re-enacted or substituted from time to time thereafter;
- 1.2.51** A reference to any legal principle, doctrine or process under South African law shall include a reference to the equivalent or analogous principle, doctrine or process in any other jurisdiction in which the provisions of this Agreement may apply or to the laws of which a Party may be or become subject;
- 1.2.52** Unless specifically provided to the contrary, all amounts referred to in this Agreement are inclusive of VAT;
- 1.2.53** The termination of this Agreement shall not effect such of its provisions as expressly provide that they will continue to apply after such termination or which of necessity must continue to apply after such termination.
- 1.2.54** It is also hereby understood that the annexure (if any) attached to this document will only become part of this Agreement if and when it is signed in full by both parties hereto on the last page of the said annexure.
- 1.2.55** It is hereby also explicitly stated and guaranteed that the signatory parties hereto have extensively perused the terms of this Agreement and have reconciled themselves therewith, thus accepting it as a true reflection of the full meeting of their minds.

2. INTRODUCTION

WHEREAS no person may act or offer to act as a Broker and be compensated for providing Broker Services unless the Council has granted accreditation to such a person on payment of such fees as may be prescribed, and the Broker has been granted accreditation.

AND WHEREAS the Broker wishes to provide Broker Services to the Scheme and more specifically provide Broker Services pertaining to all benefit options of the Scheme;

AND WHEREAS Scheme wishes to appoint the Broker to be the Scheme’s agent for the purposes and subject to the limitations hereinafter set out

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS ON THE FOLLOWING TERMS AND CONDITIONS

3. APPOINTMENT AS BROKER

3.1 The Scheme appoints the Broker to provide Broker Services on a non-exclusive basis to the Scheme pertaining to all the benefit options of the Scheme for the purposes and subject to the limitations hereinafter set out. The Broker herewith accepts the appointment subject to the limitations hereinafter set out.

3.2 This Agreement is conditional upon the accreditation being granted to the Broker as contemplated in the Act and being licensed as a financial service provider in terms of the Financial Advisory and

Intermediaries Act, 2002.

- 3.3 Failure by the Broker to obtain and maintain such accreditation and being licensed as financial service provider, will render this Agreement void from the date of such failure.
- 3.4 The Broker is appointed as an independent contractor. The services rendered by the Broker are different and separate from the services rendered by the Scheme and as such the two are in no way classified as joint administrative services.

4. **PERIOD OF AGREEMENT**

- 4.1 This Agreement shall commence on the Effective Date and shall, subject to the Termination and Breach clause, endure for an indefinite period.
- 4.2 Notwithstanding clause 4.1 above, this agreement may be terminated by either party, on 3 months' written notice, without having to advance any reasons thereof.

5. **COMPENSATION FOR BROKER SERVICES**

- 5.1 The Medical Scheme agrees that it will pay to the Broker in respect of all Broker Services rendered by the Broker to the Medical Scheme and accepted by the Medical Scheme compensation at the rates set out in Annexure 2 hereto.
- 5.2 Payment shall be made monthly into the Broker's duly nominated bank account, following the month in which services were rendered and following receipt of premiums from Members.
- 5.3 The Broker shall not be entitled to any compensation unless the Broker continues to be officially recognized by the enrolling prospective Members as their appointed Broker.
- 5.4 The Broker shall only be entitled to compensation whilst the Agreement subsists and the Broker continues to be accredited during the period of this Agreement at the Council in the manner prescribed to *inter alia* provide Broker Services to the Medical Scheme.
- 5.5 The Broker shall only be entitled to compensation whilst the Broker is not disqualified in terms of the Medical Schemes Act to provide Broker Services.
- 5.6 The Broker shall only be entitled to compensation if the broker:
 - 5.6.1 continues to meet service levels agreed to between the Parties, and
 - 5.6.2 receives no other direct or indirect compensation in respect of broker services from any source, other than possible direct payments to the broker, of a negotiated professional fee from the Member himself/herself, or the relevant employers in the case of an employer group.

6. **NON-EXCLUSIVE AGREEMENT**

It is agreed that the Broker shall use its best endeavours to provide Broker Services on a non-exclusive basis to the Medical Scheme pertaining to all the benefit options of the Medical Scheme.

7. **ADVICE REGARDING COVER**

The Broker is authorized to advise its clients on benefit cover in any of the benefit options of the Scheme set out in the 4th annexure hereto: provided that the Broker shall advise its clients timeously of the Scheme's rules and

subject to the Scheme's right to amend same from time to time.

8. THE MEDICAL SCHEME NOT BOUND TO ACCEPT POLICY

- 8.1** Save in respect of the cover as provided in clause 7 (SEVEN) hereof, the Medical Scheme shall not be obliged to accept any proposal of Relevant Health Service cover submitted to it by the Broker.
- 8.2** The Broker does not have plenary powers to enter into contracts of Relevant Health Service cover, nor approve applications for Membership which is binding on the Medical Scheme.
- 8.3** The Broker may not vary a prospective member's application for Relevant Health Service cover or medical questionnaire or the Medical Scheme Rules.

9. PREMIUMS

- 9.1** The Broker is NOT authorized to accept ANY premiums on behalf of the Medical Scheme.
- 9.2** Premiums shall be paid directly to the Scheme.

10. DUTIES AND BROKER SERVICES OF BROKER

The Broker shall, at its own expense, during the period of this Agreement be responsible for the following duties, responsibilities and Broker Services:

- 10.1** Completion of initial training as well as attendance and completion of ongoing training, so provided by the Medical Scheme. Venues, times and attendees shall be agreed to between the parties on an ad hoc basis.
- 10.2** Be responsible and remain liable to all third party service providers so contracted by the Broker for services pertaining to this Agreement.
- 10.3** The Broker may not under any circumstances use, utilize directly or indirectly any material or information regarding the Medical Scheme's products or services with the intention of granting any advantage of any kind (competitive or otherwise) to any competitor of the Medical Scheme.
- 10.4** The Broker herewith irrevocably agrees and undertakes:
 - 10.4.1** to keep the Medical Scheme indemnified and to hold the Medical Scheme harmless against all loss or damage, from any cause arising, which the Medical Scheme may sustain as a result of the Broker's failure to discharge its responsibilities in terms of this Agreement.
 - 10.4.2** To pay the Medical Scheme on demand whatever sum, (including but not limited to all legal fees on attorney and own client scale) shall be owing to the Medical Scheme as a result of the Broker's failure to discharge its responsibilities in terms of this Agreement during the period of this indemnity.
 - 10.4.3** A certificate reflecting the indebtedness of the Broker to the Medical Scheme, signed by the auditors for the time being of the Medical Scheme shall be *prima facie* proof of the said indebtedness; and shall entitle the Medical Scheme to obtain judgment against the Broker in the amount thereof in any court of competent jurisdiction. The Broker waives the benefit of the exceptions *non causae debiti*, *non numeratae pecuniae*, and *excussionis*.
 - 10.4.4** The Broker's liability under this indemnity shall commence on the effective date and shall cease and terminate on termination of this Agreement, provided that any liability that arose prior to termination shall remain enforceable.

- 10.4.5** The Broker shall procure and maintain any individual or entities employed by the Broker with professional indemnity insurance or suitable guarantees or fidelity insurance in terms of the FAIS and any such other insurance in respect of the fulfillment of its obligations in terms of this Agreement, as may be necessary.
- 10.5** Solicit enrolment of prospective Members with the Medical Scheme, which shall *inter alia* include but not be limited to:
- 10.5.1** Submission of proposal letter to prospective Members in a form and only upon such terms as approved in advance in writing by the Scheme, it being expressly agreed that no terms of such proposal of Relevant Health Service cover, including premium amounts may be altered without prior written approval of the Medical Scheme;
- 10.5.2** The accurate and complete recording of information required by the Scheme for prospective enrolling Members under a proposal of Relevant Health Service cover and the absolute compliance with policies and procedures established by the Scheme in this regard from time to time;
- 10.5.3** The delivery and explanation of initial administrative forms to prospective enrolling Members such as billing and enrolling materials and subsequent renewal forms as approved in writing by the Medical Scheme;
- 10.5.4** The delivery of the Relevant Health Service cover benefit contract to prospective enrolling Members for signature and the return of such signed documents to the Medical Scheme's head office;
- 10.5.5** The presentation of services, proposals of Relevant Health Service cover and products to be provided to prospective Members, which presentation must be approved beforehand by the Medical Scheme;
- 10.5.6** Self-procurement of approved marketing material pertaining to the benefit options of the Medical Scheme for the purposes of delivering the Broker Services in terms of this Agreement. Approval must be obtained from the Medical Scheme in writing before it may be used.
- 10.5.7** The Broker must keep concise and accurate records related to the Broker Services rendered, to which the Medical Scheme must have reasonable access to at all reasonable times.
- 10.6** Adherence to and information to be disclosed by broker in accordance with FAIS and the general code of conduct for authorized financial services providers and representatives: The Broker will adhere to the provisions as set out in FAIS and the General Code of Conduct for Authorized FSP and representatives.
- 10.7** A Broker must take all reasonable steps to keep all records and documentation safe from destruction, and must if records are lost or destroyed, make a statement under oath or affirmation explaining the reasons for or the circumstances of the loss or the destruction.
- 10.8** A Broker may keep records in an appropriate electronic or recorded format, which must be easily accessible and readily reducible to written or printed form.
- 10.9** Notwithstanding the aforesaid, the Broker irrevocably herewith undertakes and agrees to adhere to the CPA in its entirety, without exception, and indemnifies the Scheme *in toto*, should the Broker fail and /or neglect and /or refuse to adhere to the CPA or any of its provisions, whereby the Scheme suffers any damages whatsoever as a result thereof. *See in this regard clause 10.4 supra and 16 infra.*

11. UNDERTAKINGS OF THE MEDICAL SCHEME

The Medical Scheme herewith undertakes, during the subsistence of this Agreement to:

- 11.1 Provide continued support and assistance to the Broker with prospective Members;
- 11.2 Make available to the Broker a broker consultant/key account executive who will assist the Broker with all operational issues and ongoing Broker Services;
- 11.3 Without any undue delay, inform the Broker in writing of any changes to the benefit structure, Scheme Rules and/or any other policies that may impact on the effective implementation of this Agreement and delivery of Broker Services.

12. WARRANTIES

The Broker hereby warrants:

- 12.1 That it is accredited and will remain accredited during the period of this Agreement at the Council in the manner prescribed to *inter alia* provide Broker Services to the Medical Scheme.
- 12.2 That it is and will remain fit and proper at all times, as required by FAIS.
- 12.3 That it has in place and will continue to have valid fidelity and indemnity insurance.
- 12.4 That it is not disqualified in terms of the Act to provide Broker Services.
- 12.5 That it is willing and able and irrevocably undertakes and agrees to adhere to the Act, the terms and conditions hereof and the rules of the Scheme.
- 12.6 Each such warranty is:
 - 12.6.1 a separate warranty and is in no way limited or restricted by inference from the terms of any other warranty;
 - 12.6.2 continues and remains in force notwithstanding the completion of any or all the transactions contemplated in this Agreement;
 - 12.6.3 is deemed to be material and to be a material representation inducing the Medical Scheme to enter into this Agreement;
 - 12.6.4 Save for those warranties and representations expressly given or made in this clause, no warranties or representations are given or made, whether express or implied.

13. DISPUTES AND ARBITRATION

- 13.1 Any disputes arising out of or relating to this Agreement, may first be resolved by the parties through bona fide discussion within 7 (SEVEN) days of such dispute having been declared by any of this parties. Should they fail to resolve the dispute, it may then be referred to arbitration by either party. The provision of paragraph 13.2 relating to the notice, will also apply to this sub clause.
- 13.2 Should the PARTIES agree to follow arbitration as a manner of dispute resolution, then the following rules shall apply:
 - 13.2.1 Subject to 13.1 being exhausted, any dispute may then be referred to arbitration. Either party to the dispute will be entitled to require, by written notice addressed to the other party to this Agreement to which notice particulars of the nature of the dispute be given, be submitted to arbitration in terms to this clause.
 - 13.2.2 Subject to the provisions of this paragraph, the arbitration will be held under the provisions of the arbitration laws for the time being in force in South Africa (as it is constituted from time to time).
 - 13.2.3 The arbitrator will be an independent person agreed upon by the parties to the dispute and, failing such

Agreements within 5 (five) days after the date on which the arbitration is requested by a party to the Agreement, will be appointed by the chairman and, failing him, any competent officer for the time being of the Arbitration Foundation of South Africa who may be requested on notice by either party to make the appointment at any time after the expiry of that five-day period.

- 13.2.4** Immediately after the arbitrator has been agreed upon or appointed, the party who has given the notice shall request the arbitrator to fix a date and place when and where the arbitration proceedings will be held and to settle the procedure and manner in which the arbitration proceedings will be held.
- 13.2.5** The arbitration will be held in PRETORIA in accordance with the formalities and procedure settled by the arbitrator, and may be held in an informal and summary manner, on the basis that it will not be necessary to observe or carry out the usual formalities or procedures, pleadings and discovery or the strict rules of evidence.
- 13.2.6** In the absence of an Agreement between the parties or a ruling by the arbitrator, a party wishing to use any document, photograph, audio or video tape recording, or any other exhibit of a like nature (referred to in this clause as “the exhibits”) must furnish particulars thereof to the arbitrator and the other party to the arbitration no later than 10 (ten) days prior to the hearing fixed for the arbitration. The notice giving particulars must include an address at which the exhibits may be inspected and the party giving notice must, if requested to do so by the other party, provide a copy of any of the exhibits. The cost of making such copy will be costs in the arbitration.
- 13.2.7** The arbitration will be held as soon as possible after it is requested with a view to it being completed within 30 (thirty) days if possible, after it has been so requested.
- 13.2.8** The arbitrator will be entitled to make such award, including an award for specific performance, an interdict, damages or otherwise as he in his sole discretion may deem fit and appropriate and to deal as he deems fit with the question of costs, including, if applicable, legal costs and his own fees.
- 13.2.9** Any award made by the arbitrator: -
 - 13.2.9.1** will be final and binding on the parties to the Agreement; and
 - 13.2.9.2** may be made an order of any court to whose jurisdiction the parties are subject.
- 13.3** None of the above clauses will preclude either party from approaching a court of competent jurisdiction for an order, pending the decision of the arbitrator or pending the finalization of the arbitration proceedings or under any other circumstances.

14 BREACH OF CONTRACT

Should either party-

- 14.1** fail to make payment of any sum required in terms of this Agreement; or
- 14.2** fail to observe any provision or perform any other term or condition of this Agreement; or
- 14.3** suffer any default judgment against it to remain unsatisfied for 14 (fourteen) days, or
- 14.4** be refused rescission of any judgment and fail to lodge an appeal against such judgment within 21 (twenty-one) days and thereafter prosecute such appeal diligently, or
- 14.5** be placed under judicial management or be wound up, whether compulsorily or voluntarily, or
- 14.6** compromise with its creditors, or attempt to do so, or
- 14.7** commit any act of insolvency as defined in the Insolvency Act 24 of 1936, as amended, and in the event of either the Scheme or the Broker fail to remedy such breach or failure within a period of 7 (SEVEN)

days of notice to it to remedy such breach or failure, then the other party will have the right, without prejudice to such rights as the aggrieved party may have at law, including the right to claim damages –

14.8 to enforce the relevant provisions of this Agreement, or

14.9 Cancel the contract by means of written notice to the Broker, to claim damages, and to retain all moneys to be paid in respect of the Broker Services as damages.

15 ***DOMICILIUM CITANDI ET EXECUTANDI***

The parties choose as their *domicilium* address for all purposes including the service of court process the following:

15.1 MEDICAL SCHEME

15.1.1 Address:

Block A, Glenfield Office Park,
361 Oberon Avenue,
Faerie Glen Pretoria, 0081, RSA

15.1.2 Postal address:

P.O Box 2297,
Pretoria,
0001,
South Africa

15.1.3 Telephone number: +086 000 2378

15.1.4 Fax number: +27 12 472 6500

15.2 BROKER at

15.2.1 Address:

15.2.2. Postal Address:

15.2.3. Telephone number: _____

15.2.4. Fax number: _____

15.3 A party may change its *domicilium* address by 30 (thirty) days' written notice to the other party.

15.4 All notices in terms of this Agreement and all legal proceedings must be delivered or served, as the case may be, at these addresses.

16 INDEMNITIES

The Broker indemnifies the Medical Scheme and holds it harmless against any claim by any third party in respect of any liability relating to or arising out of the Broker Services, the cause of action of which is attributable to the conduct of the Broker (whether by commission or omission). Should any such claim be made against the Medical Scheme, the Broker will be obliged immediately to settle or defend such claim together with all costs connected therewith.

17 COSTS

The costs for drawing this contract, including consultations, shall be borne by the Scheme. In the event that the Broker shall obtain independent legal advice pertaining to the contract, the Broker shall be solely responsible for its legal costs so incurred.

18 NOTICES

Every notice, consent or other communication required or permitted hereunder from either party shall be in writing. It shall be sufficiently given or transmitted if and when:

- 18.1 hand-delivered to the other party at its *domicilium* address, or at such other address as the party may have designated in writing;
- 18.2 transmitted by means of a telefax to the addressee's telefax number and in respect of which telefax an acknowledgement has been received; or
- 18.3 Deposited in the mail, duly registered with postage prepaid for prompt delivery and addressed to the other party at its *domicilium* address, or at such other address as the addressee may have designated in writing. A notice deposited in the mail in terms of this sub-clause shall be deemed to have been delivered on the fourth business day after the date of posting.

19 GENERAL

- 19.1 No waiver by a party of any breach, failure or default in performance by the other party, and no failure, refusal or neglect by a party to exercise any right hereunder or to insist upon strict compliance with or performance of the other party's obligations under this Agreement, shall constitute a waiver of the provisions of this Agreement and a party may at any time require strict compliance with the provisions of this Agreement.
- 19.2 This Agreement constitutes the entire Agreement between the parties who acknowledge that there are no other oral or written understandings or Agreements between them relating to the subject matter of this Agreement. No amendment or other modification of this Agreement shall be valid or binding on a party hereto unless reduced to writing and executed by both parties hereto.
- 19.3 This Agreement shall be deemed to have been made in the Republic of South Africa and the construction, validity and performance of this Agreement shall be governed in all respects by the law of the Republic of South Africa.
- 19.4 The parties accedes by agreement to the jurisdiction of the High Court of South Africa, **NORTH GAUTENG PROVINCIAL DIVISION** alternatively the Magistrates Court Jurisdiction, for the **DISTRICT OF PRETORIA**, whichever may be applicable, keeping in mind the amount sued for, or relief requested.
- 19.5 All the provisions of this Agreement shall be severable and no provision shall be affected by the invalidity of any other provision of this Agreement.

- 19.6 In the event that any provision of this Agreement shall be declared invalid or null and void, such declaration shall not affect the validity of any other provisions of this Agreement.
- 19.7 The Parties shall replace the invalid provision(s) with other provision(s) which differ as little as possible from the valid one(s) taking into account the object and purpose of this Agreement.
- 19.8 The Broker agrees that the Medical Scheme is not bound by any warranties, representations, undertakings or the like, express or implied, with regard to the Broker Services or any other matter affecting the Scheme. The Broker acknowledges that it is fully acquainted with all of the affairs of the Medical Scheme.
- 19.9 Neither party may cede, transfer or assign any of its rights, duties and obligations in terms of this Agreement without the express written consent of the other party.

SIGNED at _____ on this _____ in the presence of the undersigned witnesses

Witnesses:

1. Print name	Signature
2. Print name	Signature
3. <i>o.b.o</i> BROKER	Signature

Full names _____ Designation _____

SIGNED at _____ on this _____ in the presence of the undersigned witnesses:

Witnesses:

1. Print name	Signature
2. Print name	Signature
3. Madelein Barkhuizen o.b.o Bestmed	Signature

Full names _____ Designation _____

ANNEXURES:

- 1. CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT;
- 2. COMMISSION STRUCTURE;
- 3. BROKER INFORMATION SHEET REQUIRED DOCUMENTATION;
- 4. BENEFIT OPTIONS OF THE SCHEME;
- 5. ADDENDUM TO BROKER AGREEMENT;
- 6. SERVICE LEVEL AGREEMENT

ANNEXURE 1

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

Bestmed Medical Scheme

(registration number: 1252)

A registered medical scheme and having its registered office/principal place of business at Block A,
Glenfield Office Park, 361 Oberon Avenue, Faerie Glen Pretoria, 0081, RSA.

("The Scheme")

And

Registration number: _____

("The Broker")

The Parties agree as follows:

1. INTRODUCTION

WHEREAS both the Scheme and the Broker is in possession of a substantial amount of sensitive and protectable information;

AND WHEREAS the Scheme and the Broker have entered into a Broker Agreement and the parties have agreed *inter alia* to make available and to provide the other party with sensitive and protectable information during the Agreement period;

AND WHEREAS the parties are by common law prohibited, in addition to this agreement's terms and conditions, from disclosing any /all trade secrets, confidential information of any kind or other sensitive materials/information to any third party, competitor of the Scheme or the Broker or any unauthorized person either directly or indirectly;

NOW THEREFORE the parties agree as follows on the following terms and conditions

For the purpose of this agreement and the Broker agreement to which this agreement is attached, the parties disclosing such information shall referred to as "**the disclosing party**" and the party receiving such information shall be referred to as "**the receiving party**". All associates, colleagues, employees, agents, partners, or others associated either directly and/or indirectly with the parties shall be bound to the terms of this agreement.

2. INTERPRETATION AND DEFINITIONS

In this agreement:-

- 2.1 clause headings are for the purposes of convenience and reference only and shall not be used in the interpretation of this Agreement, nor modify nor modify nor amplify any of its provisions;
- 2.2 the Parties shall, wherever necessary or appropriate, be referred to by their defined designations;
- 2.3 a reference to:-
 - 2.3.1 any particular gender shall include the other gender;
 - 2.3.2 the singular shall include the plural and *vice versa*;
 - 2.3.3 a natural person shall include a juristic person (whether a corporate or unincorporated created entity) and vice versa;
- 2.4 all the annexes (if any) hereto are incorporated herein and shall have the same force and effect as if they were set out in the body of this Agreement;
- 2.5 words and/ or expressions defined in this Agreement shall bear the same meanings in any annexes hereto which do not contain their own defined words and/ or expressions;
- 2.6 where a period consisting of a number of days is prescribed, it shall be determined by excluding the first and including the last day;
- 2.7 where the day upon or by which any act is required to be performed is a Saturday, Sunday or public holiday in the Republic of South Africa, the Parties shall be deemed to have intended such act to be performed upon or by the first day thereafter which is not a Saturday, Sunday or public holiday;
- 2.8 where an expression has been defined and such definition contains a provision conferring a right or imposing an obligation on any Party, then notwithstanding that it is contained only in a definition, effect

- shall be given to that provision as if it were a substantive provision contained in the body of this Agreement,
- 2.9** if figures are referred to in numerals and words, the words shall prevail in the event of any conflict between the two;
- 2.10** words and/ or expressions defined in any particular clause in the body of this Agreement shall, unless the application of such word and/ or expression is specifically limited to that clause, bear the meaning so assigned to it throughout this Agreement;
- 2.11** the terms “holding” and “subsidiary” in relation to any company shall bear the meanings assigned to them in the COMPANIES ACT NO 61 1973 and COMPANIES ACT, NO. 71 OF 2008 respectively;
- 2.12** the *contra preferentem* rule shall not apply and accordingly, none of the provisions hereof shall be construed against or interpreted to the disadvantage of the Party responsible for the drafting or preparation of such provision;
- 2.13** the *eiusdem generis* rule shall not apply and accordingly, whenever a provision is followed by the word “including” and specific examples, such examples, shall not be construed so as to limit the ambit of the provision concerned;
- 2.14** a reference to any statutory enactment (including statutes, ordinances, regulations and by- laws) shall be construed as a reference to that enactment as at the Signature Date and as amended or re-enactment as at the Signature Date and as amended or re-enacted or substituted from time to time thereafter;
- 2.15** a reference to any legal principle, doctrine or process under South African law shall include a reference to the equivalent or analogous principle, doctrine or process in any other jurisdiction in which the provisions of this Agreement may apply or to the laws of which a Party may be or become subject;
- 2.16** the expiration or termination of this Agreement shall not effect such of its provisions as expressly provide that they will continue to apply after such expiration or termination or which of necessity must continue to apply after such expiration or termination.
- 2.17** Related party means- a corporation, firm, or other entity with which, or individual with whom, any party to this agreement (or any of their stockholders, subsidiaries, affiliates, or joint ventures) have an agreement, undertaking or arrangement (for example, but not by way of limitation, an option to purchase stock or other equity interest, or an arrangement involving a division of revenue, profits, discounts, rebates or allowances) and related to the Transfer or exploitation of the information provided.
- 2.18** Affiliate- the affiliate of any party means any entity which, directly, or indirectly, controls such party, is controlled by such party, or is under common control with such party.
- 2.19** Control means- (i) having the actual, present capacity to elect a majority of the directors of such Affiliate or, (ii) having the power to direct at least 40% (forty percent) after voting rights entitled to elect directors.
- 2.20** Upon the initialing of every page and the full signature on the last page of this document by both mentioned parties, the parties unconditionally accepts the contents of this agreement as a true reflection of their intentions, thereby making the terms of this document legally binding on both parties.
- 2.21** It is also hereby understood that the annexure (if any) attached to this document will only become part of this Agreement if and when it is signed in full by both parties hereto on the last page of the said annexure.
- 2.22** It is hereby also explicitly stated and guaranteed that both signatory parties hereto have extensively perused the terms of this Agreement and have reconciled themselves therewith, thus accepting it as a true reflection of the full meeting of their minds.

2.23 Both parties (and their authorized Representatives), by signing this agreement confirms his authority to do so.

The parties wish to record the terms and the conditions upon which are prepared to disclose such information to one another.

3. THE INFORMATION

“Information” shall, for the purpose of this agreement and the Broker Agreement include, without limitation, know-how, trade secrets, trademarks, service marks, domain names, registered designs, utility models, design rights, moral rights, topography rights, inventions, the *sui generis* rights of extraction relating to databases, business or trade names, get up, processes, machinery, designs, drawings, technical specifications, benefit plans/options, rules, policies, marketing material or application for membership and data in whatever form, operating manual, client lists (including *inter alia*, but not limited to current and potential client(s), clients’ personal information as defined in the Protection of Personal Information Act, 4 of 2013), and all other intellectual property and neighboring rights and rights of a similar or corresponding character in any part of the world (whether or not registered or capable of registration) and all applications and rights to apply for or for the protection of any of the foregoing whether communicated to the receiving party or acquired by the receiving party from the disclosing party during the course of the negotiations and any subsequent agreement or arrangement or contract, which may be concluded after completion of the negotiations, including the information disclosed by either party prior to this agreement which is not public knowledge.

4. DISCLOSURE OF INFORMATION

4.1 The parties agree to disclose the information to one another, to the extent deemed necessary or desirable by each of them in their sole discretion.

4.2 The parties acknowledge that the information is a valuable, special and unique asset proprietary to the disclosing party.

4.3 The parties agree that they will not, during the course of this contractual relationship and discussions with one another or, thereafter, disclose the information to any third party for any reason or purpose whatsoever, with the provisions of this agreement.

4.4 Notwithstanding anything to the contrary contained in this agreement the parties agree that the information may be disclosed by the receiving party to its professional brokers, agents and consultants on a need-to-know basis: provided that the receiving party takes whatever steps are necessary to procure that such professional brokers, agents and consultants agree to abide by the terms of this agreement to prevent the unauthorized disclosure of the information to third parties.

4.5 The receiving party agrees:

4.5.1 not to utilize, employ, exploit or in any other manner whatsoever use the information disclosed pursuant to the provisions of this agreement for any purpose whatsoever without the prior written consent of the disclosing party;

4.5.2 That the unauthorized disclosure of the information to a third party may cause irreparable loss, harm and damage to the disclosing party. Accordingly, the receiving party indemnifies and holds the disclosing party harmless from and against any loss, action, expense, claim, harm or damage, of whatever nature, suffered or sustained by the disclosing party pursuant to a breach by the receiving party of the provisions of the agreement.

5. TITLE

All information disclosed by the disclosing party to the receiving party is acknowledged by the receiving party:

- 5.1** to be proprietary to the disclosing party; and
- 5.2** Not to confer any rights of whatever nature in such information to the receiving party.

6. RESTRICTIONS ON DISCLOSURE AND USE OF THE INFORMATION

The receiving party undertakes not to use the information for any purpose other than:

- 6.1** that for which it is disclosed; and
- 6.2** In accordance with the provisions of this agreement.

7. STANDARD OF CARE

The parties agree that they shall protect the information disclosed pursuant to the provisions of this agreement using the same standard of care that each party applies to safeguard its own proprietary, secret or confidential information and that the information shall be stored and handled in such a way as to prevent any unauthorized disclosure thereof.

8. RETURN OF INFORMATION

- 8.1** The disclosing party may, at any time, request the receiving party to return any material containing, pertaining to or relating to information disclosed pursuant to the terms of this agreement and may, in addition request the receiving party to furnish a written statement to the effect that, upon such return, the receiving party has not retained in its possession, or under its control, either directly or indirectly, any such material.
- 8.2** As an alternative to the return of the material contemplated in 8.1 *supra*, the receiving party shall, at the instance of the disclosing party, destroy such material and furnish the disclosing party with a written statement to the effect that all such material has been destroyed.
- 8.3** The receiving party shall comply with a request, in terms of this clause within 7 (seven) days of receipt of such a request.

9. EXCLUDED INFORMATION

The obligations of the parties pursuant to the provisions of this agreement shall not apply to any information that:

- 9.1** Is or becomes lawfully known or available from a source other than the disclosing party, or which is or becomes in the public domain, and without breach of this agreement by either party;
- 9.2** Is developed independently of the disclosing party by the receiving party in circumstances that do not amount to a breach of the provisions of this agreement;
- 9.3** Is disclosed by the receiving party to satisfy the order of a court of competent jurisdiction or to comply with the provisions of any law or regulation in force from time to time; provided that in these circumstances, the receiving party shall advise the disclosing party in writing prior to such disclosure to enable the disclosing party to take whatever steps it deems necessary to protect its interests in this regard; provided further that the receiving party will disclose only that portion of the information which it is legally required to disclose and the receiving party will use its reasonable endeavors to protect the confidentiality of such information to the widest extent possible in the circumstances;
- 9.4** Is disclosed to a third party pursuant to the prior written authorization from the disclosing party;

9.5 Is received from a third party in circumstances that do not result in a breach of the provisions of the agreement.

10. TERM

The Agreement shall commence on the Effective Date of the Broker Agreement and shall continue for an indefinite period thereafter.

11. DISPUTES AND ARBITRATION

11.1 Any disputes arising out of or relating to this agreement, may first be resolved by the parties through bona fide discussion within 15 days of such dispute having been declared by any of this parties. Should they fail to resolve the dispute, it may then be referred to arbitration by either party. The provision of paragraph 11.2 relating to the notice, will also apply to this sub clause.

11.2 Should the PARTIES agree to follow arbitration as a manner of dispute resolution, then the following rules shall apply:

11.2.1 Subject to 11.1.being exhausted, any dispute may then be referred to arbitration. Either party to the dispute will be entitled to require, by written notice addressed to the other party to this agreement to which notice particulars of the nature of the dispute be given, be submitted to arbitration in terms to this clause.

11.2.2 Subject to the provisions of this paragraph, the arbitration will be held under the provisions of the arbitration laws for the time being in force in South Africa (as it is constituted from time to time).

11.2.3 The arbitrator will be an independent person agreed upon by the parties to the dispute and, failing such agreements within 5 (five) days after the date on which the arbitration is requested by a party to the agreement, will be appointed by the chairman and, failing him, any competent officer for the time being of the Arbitration Foundation of South Africa who may be requested on notice by either by either party to make the appointment at any time after the expiry of that five-day period.

11.2.4 Immediately after the arbitrator has been agreed upon or appointed, the party who has given the notice shall request the arbitrator to fix a date and place when and where the arbitration proceedings will be held and to settle the procedure and manner in which the arbitration proceedings will be held.

11.2.5 The arbitration will be held in Pretoria (Gauteng) in accordance with the formalities and procedure settled by the arbitrator, and may be held in an informal and summary manner, on the basis that it will not be necessary to observe or carry out the usual formalities or procedures, pleadings and discovery or the strict rules of evidence.

11.2.6 In the absence of an agreement between the parties or a ruling by the arbitrator, a party wishing to use any document, photograph, audio or video tape recording, or any other exhibit of a like nature (referred to in this clause as "the exhibits") must furnish particulars thereof to the arbitrator and the other party to the arbitration no later than 10 (ten) days prior to the hearing fixed for the arbitration. The notice giving particulars must include an address at which the exhibits may be inspected and the party giving notice must, if requested to do so by the other party, provide a copy of any of the exhibits. The cost of making such copy will be costs in the arbitration.

11.2.7 The arbitration will be held as soon as possible after it is requested with a view to it being completed within 30 (thirty) days if possible, after it has been so requested.

11.2.8 The arbitrator will be entitled to make such award, including an award for specific performance, an interdict, damages or otherwise as he in his sole discretion may deem fit and appropriate and to deal as he deems fit with the question of costs, including, if applicable, legal costs and his own fees.

11.2.9 Any award made by the arbitrator: -

11.2.9.1 will be final and binding on the parties to the agreement; and

11.2.9.2 May be made an order of any court to whose jurisdiction the parties are subject.

11.3 None of the above clauses will preclude either party from approaching a court of competent jurisdiction for an order, pending the decision of the arbitrator or pending the finalization of the arbitration proceedings or under any other circumstances.

12. REPRESENTATIONS AND WARRANTIES

12.1 Each party represents and warrants that it has the authority necessary to enter into this agreement and to do all things necessary to procure the fulfillment of its obligations in terms of this agreement.

12.2 The disclosing party warrants that: disclosure of the information to the receiving party

12.2.1 will not result in a breach of any other agreement to which it is a party;

12.2.2 will, to the best of its knowledge and belief, not infringe the rights of any third party; and the disclosing party hereby indemnifies and holds the receiving party harmless against any liability for third party claims on such a basis.

13. ADDITIONAL ACTION

Each party to this agreement shall execute and deliver such other documents and so such other acts and things as may be necessary or desirable to give effect to the terms and provisions of the agreement.

14. AMENDMENTS

No amendment, interpretation or waiver of any of the provisions of this agreement shall be effective unless reduced in writing and signed by both the parties.

15. ENFORCEMENT

The failure to enforce or to require the performance at any time of any of the provisions of this agreement shall not affect either the validity of this agreement or any part hereof or the right of any party to enforce the provisions of this agreement.

16. HEADINGS

The headings of the clauses in this agreement are used for convenience only and shall not affect the meaning or construction of the contents of this agreement.

17. ENTIRE AGREEMENT

This agreement contains the entire agreement of the parties with respect to the subject matter of this agreement and supersedes all prior agreements between the parties, whether written or oral, with respect to the subject matter of this agreement.

18. GOVERNING LAW

This agreement and the relationship of the parties in connection with the subject matter of this agreement shall be governed and determined in accordance with the laws of the Republic of South Africa.

19. SUBMISSION

The parties accedes by agreement to the jurisdiction of the High Court of South Africa, **NORTH GAUTENG PROVINCIAL DIVISION** alternatively the Magistrates Court Jurisdiction, for the **DISTRICT OF PRETORIA**, whichever may be applicable, keeping in mind the amount sued for, or relief requested.

20. DOMICILIUM CITANDI ET EXECUTANDI

The parties choose as their *domicilium* address for all purposes including the service of court process the following:

20.1 Medical Scheme

20.1.1 Address:

Block A, Glenfield Office Park,
361 Oberon Avenue,
Faerie Glen Pretoria, 0081, RSA

20.1.2 Postal address:

P.O Box 2297,
Pretoria,
0001,
South Africa

20.1.3 Telephone number: +086 000 2378

20.1.4 Fax number: +27 12 472 6500

20.2 The Broker at

20.2.1 Address:

_____.

20.2.2. Postal Address:

20.3 A party may change its *domicilium* address by 30 (thirty) days' written notice to the other party.

21. NOTICES

Every notice, consent or other communication required or permitted hereunder from either party shall be in writing. It shall be sufficiently given or transmitted if and when:

21.1 hand-delivered to the other party at its *domicilium* address, or at such other address as the party may have designated in writing;

- 21.2 transmitted by means of a telefax to the addressee's telefax number and in respect of which telefax an acknowledgement has been received; or
- 21.3 Deposited in the mail, duly registered with postage prepaid for prompt delivery and addressed to the other party at its *domicilium* address, or at such other address as the addressee may have designated in writing. A notice deposited in the mail in terms of this sub-clause shall be deemed to have been delivered on the fourth business day after the date of posting.

22. COSTS

- 22.1 The costs for drawing this contract, including consultations, shall be borne by the Scheme. In the event that the Broker shall obtain independent legal advice pertaining to the contract, the Broker shall be solely responsible for its legal costs so incurred.
- 22.2 Any costs, including attorney and own client costs, incurred by either party arising out of the breach by the other party of any of the provisions of this agreement shall be borne by the party in breach on attorney and own client scale.

23. SEVERABILITY

In the event of any one or more of the provisions of this agreement being held for any reason to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this agreement, and this agreement shall be construed as if such invalid, illegal or unenforceable provision was not a part of this agreement, and the agreement shall be carried out as nearly as possible in accordance with its original terms and intent.

24. GENERAL

- 24.1 The Parties acknowledge and agree that:
 - 24.1.1 This agreement constitutes the entire contract between them and that no provisions, terms, conditions, stipulations, warranties or representations of whatsoever nature, whether express or implied have been made by any of the Parties or on their behalf except as are stated herein.
 - 24.1.2 No relaxation, extension of time, latitude or indulgence which any Party ("the grantor") may show, grant or allow to another ("the grantee") shall in any way constitute a waiver by the grantor of any of the grantor's rights in terms of this Agreement and the grantor shall not thereby be prejudiced or estopped from exercising any of its rights against the grantee which may have then already arisen or which may arise thereafter;
 - 24.1.3 No alteration, variation, amendment or purported consensual cancellation of this Agreement or any deletion there from shall be of any force or effect unless reduced to writing and signed by or on behalf of the Parties;
 - 24.1.4 The Parties have undertaken to each other to do all such things, take all such steps and to procure the doing of all such things and the taking of all such steps as may be necessary, incidental or conducive to the implementation of the provisions, terms, and conditions hereof.
 - 24.1.5 No Party shall be entitled to cede, assign or otherwise transfer any of its rights, interests or obligations under and in terms of this Agreement without the prior written consent of all of the other Parties;
 - 24.1.6 This agreement may be executed in one or more counterparts, all of which shall be collectively considered as one and the same agreement;
 - 24.1.7 Nothing in this agreement shall create a partnership or joint venture between the Parties hereto and save as expressly provided in this Agreement neither party shall enter into or have authority to enter into any

engagement or make any representation or warranty on behalf of or pledge the credit of or otherwise bind or oblige the other party hereto.

25 FORCE MAJEURE

Notwithstanding anything to the contrary contained in this agreement the Parties agree that in the event of any of them failing to perform its obligations hereunder, excepting the obligation to pay money when due, the same shall not constitute a breach of this agreement when and while, and to the extent that such failure shall be caused by act of nature fire, riot, insurrection, civil disturbance, war, accidents, labour disturbance, compliance with acts or requests of any government authorities (foreign or domestic), or by any cause beyond reasonable control, or risk of non-performing party, whether or not similar to any of the foregoing events.

SIGNED at _____ on this _____ in the presence of the undersigned witnesses:

Witnesses:

1. Print name	Signature
<hr/>	
2. Print name	Signature
<hr/>	
3. <i>o.b.o</i> BROKER	Signature
<hr/>	

Full names _____

Designation _____

SIGNED at _____ on this _____ in the presence of the undersigned witnesses:

Witnesses:

1. Print name	Signature
<hr/>	
2. Print name	Signature
<hr/>	
3. Madeleing Barkhuizen o.b.o Bestmed	Signature
<hr/>	

Full names _____

Designation _____

ANNEXURE 2

COMMISSION STRUCTURE

1. Payment of commission of 3% (three percent), exclusive of VAT, of the monthly contributions for any Prospective client who joins *The Scheme*, or such amounts as proclaimed from time to time by the Minister of Health, whichever is the lesser.
2. Payment of Commission will occur within 30 (thirty) days of receipt on reconciliation of the monthly contribution of the member.
3. All Commission is payable at the sole discretion of The Scheme, and may at any stage be subject to an audit by its nominated auditors, the findings of which will be binding on the Broker.
4. Commissions are payable on a monthly basis.

ANNEXURE 3

BROKER INFORMATION SHEET REQUIRED DOCUMENTATION

BROKER INFORMATION SHEET

CONTACT PERSON:

TITLE:

FIRST NAME/S:

SURNAME:

COMPANY/CC/TRUST:

POSTAL ADDRESS:

PHYSICAL ADDRESS:

(DOMICILIUM

CITANDI ET EXECUTANDI)

FAX NUMBER:

CELL NUMBER:

TELEPHONE NUMBER:

e-MAIL ADDRESS:

BANKING DETAILS:

BANK:

BRANCH CODE:

ACCOUNT NUMBER:

TYPE OF ACCOUNT:

FSP NUMBER:

CMS NUMBER:

CMS EXPIRY DATE:

RESPONSIBLE BROKER CONSULTANT: _____

KEY INDIVIDUAL DETAILS

Name:	
ID Number:	
Position:	
Contact details landline:	
Contact details mobile phone:	
E-mail address:	
Physical address:	
Name:	
ID number:	
Position:	
Contact details landline:	
Contact details mobile phone:	
E-mail address:	
Physical address:	
Name:	
ID Number:	
Position Held:	
Contact details landline:	
Contact details mobile phone:	
E-mail address:	
Physical address:	

Kindly attach the required documentation to the signed contract to insure speedy finalisation:

- | | |
|--|--------------------------|
| <p>1. Proof of Broker and Brokerage accreditation with the Council for Medical Schemes (CMS)</p> <ul style="list-style-type: none"> • Brokerage <input type="checkbox"/> • Broker <input type="checkbox"/> | <input type="checkbox"/> |
| <p>2. For Sub-codes: completed sub-code application (for each Broker) together with a copy of the valid CMS Certificate and ID document</p> | <input type="checkbox"/> |
| <p>3. Proof of FSCA licensing in terms of FAIS</p> | <input type="checkbox"/> |
| <p>4. FAIS Representative register</p> | <input type="checkbox"/> |
| <p>5. Proof of VAT registration (if applicable)</p> <ul style="list-style-type: none"> • Not VAT registered <input type="checkbox"/> | <input type="checkbox"/> |
| <p>6. Identity Documents of Broker</p> | <input type="checkbox"/> |
| <p>7. Proof of Registration documents (if legal entity)</p> | <input type="checkbox"/> |
| <p>8. Proof of Physical address</p> | <input type="checkbox"/> |
| <p>9. Proof of Bank details not older than 3 months</p> | <input type="checkbox"/> |
| <p>10. Agreement must be signed on pages 13, 23 and 35</p> | <input type="checkbox"/> |
| <p>11. Each page must be initialled by the signatory</p> | <input type="checkbox"/> |
| <p>12. The details of two witnesses must be completed on pages 13, 23 and 35</p> | <input type="checkbox"/> |
| <p>13. The 2 witnesses and must initial every page of the agreement</p> | <input type="checkbox"/> |

ANNEXURE 4

BENEFIT OPTIONS OF THE SCHEME

- | | |
|-----|----------------|
| 1. | PACE 4 |
| 2. | PACE 3 |
| 3. | PACE 2 |
| 4. | PACE 1 |
| 5. | BEAT 4 |
| 6. | BEAT 3 |
| 7. | BEAT 2 |
| 8. | BEAT 1 |
| 9. | PULSE 2 |
| 10. | PULSE 1 |

ANNEXURE 5

SERVICE LEVEL AGREEMENT

1. All words and expressions defined in the Agreement shall bear the same meaning in this annexure, unless otherwise stipulated.

2. **PART A: ADMINISTRATIVE, SALES AND MARKETING SERVICES**

_____ shall, during the course of this agreement, at its sole expense solicit the enrolment of prospective Members for the Scheme, which solicitation and enrolment shall include *inter alia*

- 2.1 Confirm the terms and conditions that the Scheme will accept the prospective Members, it being expressly agreed that no terms of such proposal may be altered without the prior written approval of The Scheme.
- 2.2 The accurate and complete recordal of information required by The Scheme for enrolment of prospective Members under a benefit option plan.
- 2.3 The delivery and explanation of initial administrative forms to enrolling Members such as billing and enrolling materials and subsequent renewal forms as approved by The Scheme.
- 2.4 The presentation of services and products to be provided to the prospective Members.
- 2.5 The procurement of such marketing and enrolment materials as may in the discretion of The Scheme be adequate for solicitation of enrolment in terms of this agreement.

3. **PART B: ONGOING SERVICES**

SERVICES TO BE RENDERED BY _____

1. Handling enquiries on Products and Services of THE SCHEME:
--

- | |
|---|
| <ol style="list-style-type: none">a. Regarding:<ol style="list-style-type: none">i. Benefit structures offered and furnish advice on best suited choice.ii. Premiums to be paid on each product/or parts thereofiii. Exclusions related to specific circumstancesiv. Enrolment conditions applying to specific situationv. Service provider details where necessaryvi. Rules of Medical Schemevii. Administrative procedures to be followed |
|---|

	<ul style="list-style-type: none"> b. Continuous updating on <ul style="list-style-type: none"> i. The Scheme's products and benefits ii. The Scheme's Rules and where applicable, procedures
2.	Membership Registration
	<ul style="list-style-type: none"> a. Status on membership application <p>Including feedback when process is awaiting information</p>
	<ul style="list-style-type: none"> b. Membership confirmation
	<ul style="list-style-type: none"> c. When appropriate, delivery of membership card and welcome pack,
3.	The Financial Services Provider (Brokerage) has full responsibility for compliance with Financial Advisory and Intermediary Services Act 37 of 2002 and the Prudential and Financial Sector Conduct Authorities.
	<ul style="list-style-type: none"> a. Comply with all requirements set out in the Act, General Code of Conduct and Fit and Proper requirements b. Specific compliance obligation as set out in Board Notice 194 of 2017 Determination of Fit and Proper Requirements and confirmation of the fit and proper status of all brokers c. Comply with all requirements as set out by the Financial Intelligence Centre Act 38 of 2001.

SERVICES TO BE RENDERED TO <u>BESTMED</u>	
4.	Membership Assistance
	<ul style="list-style-type: none"> a. In exceptional circumstances, confirm membership information <ul style="list-style-type: none"> i. Principal member(-ship) details ii. Dependant details iii. Benefits applicable, including savings balance iv. Benefit suspension v. Debit order status
	<ul style="list-style-type: none"> b. Advice of any change of contact details of an employer (not the individual Member)
	<ul style="list-style-type: none"> c. In exceptional circumstances and upon specific request, confirmation of the following: <ul style="list-style-type: none"> i. Underwriting individual/groups ii. Claims received iii. Claims status iv. Claims paid v. Claims payment date

<p>5. Enquiries on additional products and of the scheme</p> <ul style="list-style-type: none"> i. Facilitate broker training on Bestmed products on an annual basis ii. Facilitate the accreditation process iii. Provide product specific training iv. Provide brokers with certificates upon successful completion of tests
<p>6. Other services</p>
<p>a. Facilitate “registration of principal member” – and submit form (electronically)</p>
<p>b. Facilitate changes between options – and submit form (electronically)</p>
<p>c. Although the employer will remain responsible to advise the scheme or its administrator of any new, or a change to the dependants status of their employees (as principal Members), in exceptional cases however _____ may facilitate “registration of dependant(s)” – and submit the form (electronically).</p>
<p>d. Billing reconciliations</p>
<p>e. Query debtor issues in respect of member suspensions</p>

ANNEXURE 6

ADDENDUM TO BROKER AGREEMENT

Between:

And

BESTMED MEDICAL SCHEME

IT IS AGREED AS FOLLOWS:

Definitions

In this addendum unless clearly inconsistent with the text and meaning hereof: -

- 1.1 The Effective Date shall mean - _____, notwithstanding the date upon which this addendum is signed;
- 1.2 The Main Agreement shall mean - the main Broker agreement between _____ and Bestmed Medical Scheme to which this addendum constitutes the first addendum;
- 1.3 POPI shall mean - the Protection of Personal Information Act No. 4 of 2013;
- 1.3 “personal information” shall mean - as defined in POPI relating specifically to Bestmed members’ and beneficiaries’ information;
- 1.4 “processing” shall mean - as defined in POPI relating specifically to Bestmed members’ and beneficiaries’ information;
- 1.5 “record” shall mean - as defined in POPI relating specifically to Bestmed members’ and beneficiaries’ information;
- 1.6 “responsible party” shall mean - as defined in POPI;

2 Recordals

The parties record that: -

- 2.1 this addendum constitutes the first addendum to the Main Agreement;
- 2.2 save for the amendments contained in this addendum, all the terms and conditions contained in the Main Agreement shall take precedence and shall remain binding on the parties.

3 POPI

3.1 This addendum deals mainly with the provisions contemplated in POPI.

3.2 In addition to this addendum, the Parties agree to adhere to the provisions as stipulated in POPI as far as same is applicable to them respectively.

3.3 The purpose of this addendum is to *inter alia*—

3.3.1 give effect to the constitutional right to privacy, by safeguarding personal information of Bestmed members when processed by a responsible party;

3.3.2 regulate the manner in which Bestmed members' personal information may be processed;

3.3.3 provide Bestmed members with rights and remedies to protect their personal information from processing that is not in accordance with POPI.

3.4 In this addendum both Bestmed Medical Scheme and _____ (the "Parties") will be regarded as responsible parties with regards to Bestmed members' personal information recording and processing,

3.5 The Parties agree to undertake a complete audit ("initial audit") of its own systems to secure the integrity and safekeeping of Bestmed members' personal information currently under its control or in its possession. The initial audit will be conducted individually and will be completed by no later than _____, where after the results of such initial individual audits will be discussed between the Parties. In the event where the initial individual audit's results identify shortcomings, breaches, safety issues or integrity risks, each Party hereto irrevocably undertakes to put measures in place to eliminate such identified shortcomings, breaches, safety issues or integrity risks, and will also commit to an end date, at which date the measures will be put into place. A final audit of each Party's systems will be completed by no later than _____ in which no shortcomings, breaches, safety issues or integrity risks may be present.

3.6 The parties furthermore undertake that any personal information collected will be specific for the following lawful purpose which relates to the function or activity as stipulated herein. Take note that, although the services rendered in terms of the Main Agreement has been defined and agreed upon, the following relates to the specific and lawful purpose as prescribed in POPI:

3.6.1 _____

3.6.2 _____

3.7 The parties agree that the lawful processing of Bestmed members' personal information will not be excessive given the purpose for which it is processed as per 3.5 *supra*.

3.8 Bestmed undertakes to inform its members and provide complete details of _____ who needs to process their personal information. This notice will confirm the mandatory nature of allowing _____ access to the personal information for the purpose as alluded to *supra*.

3.9 Bestmed further undertakes to make sure that the personal information is complete, accurate, up to date and in no way misleading.

3.10 _____ undertakes to secure confirmation, which must be provided to Bestmed in writing as soon as possible after having received a request to that effect, of any third party it utilizes in the processing of Bestmed members' personal information which confirmation must *inter alia* confirm that such third party's systems have no shortcomings, breaches, safety issues or integrity risks present.

3.11 _____ furthermore undertakes to provide, free of charge, and as soon as reasonably possible after having received such a request, a complete record of all third parties which have access to the personal information of Bestmed members, as well as a complete record of all the information concerned.

3.12 Bestmed may request _____ to provide written rationale for it to allow access to Bestmed members' personal information.

3.13 The Parties irrevocably undertake, to inform the Protection Regulator, once appointed, of its actions in accordance with POPI.

3.14 The Parties agree to destroy alternatively de-identify the personal information as soon as the purpose as set out in 3.5 *supra* has been achieved. Notwithstanding the aforesaid, the Parties agree to retain, for a period of _____ a record of the information, in the event where the Parties have effectively made any decision based on such personal information.

3.15 _____ agrees not to transfer any personal information across the border of South Africa, without the necessary written approval of Bestmed, which approval will not be unreasonably be withheld.

3.16 Once the final audit has been completed as stipulated in 3.5 *supra*, the Parties herewith agree to negotiate in good faith in amending, where necessary, the Main Agreement, to secure adherence to the provisions of POPI in lieu of the findings of the final audit.

4 Sole agreement

This addendum constitutes the sole agreement between the parties with regard to the amendment of the Main Agreement and no variation of this addendum shall be binding on the parties unless reduced to writing and signed by both parties.

SIGNED at _____ on this _____ in the presence of the undersigned witnesses

Witnesses:

4. Print name	Signature
<hr/>	
5. Print name	Signature
<hr/>	
6. <i>o.b.o BROKER</i>	Signature
<hr/>	

Full names _____ Designation _____

SIGNED at _____ on this _____ in the presence of the undersigned witnesses

Witnesses:

4. Print name	Signature
<hr/>	
5. Print name	Signature
<hr/>	
6. <i>Madelein Barkhuizen o.b.o Bestmed</i>	Signature
<hr/>	

Full names _____ Designation _____