

**THIS DOCUMENT IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION. IF YOU ARE IN ANY DOUBT AS TO WHAT ACTION YOU SHOULD TAKE, YOU SHOULD CONSULT A PROFESSIONAL ADVISER WITHOUT DELAY. PLEASE READ THE WHOLE OF THIS DOCUMENT.**

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**Proposal in relation to a Scheme of Arrangement under  
Part 26 of the Companies Act 2006**

between

**The Medical and Dental Defence Union of Scotland**

and

**the Scheme Members  
(as defined in the Scheme)**

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**All Members who are entered on the Register of Members prior to the Scheme Record Time are Scheme Members. Scheme Members have been separated into two classes, In-Scope Members and Non-In-Scope Members. To find out if you are an In-Scope Member, or a Non-In-Scope Member, please read page 4 of this document.**

**The Scheme will require the approval of In-Scope Members at the In-Scope Members Court Meeting and Non-In-Scope Members at the Non-In-Scope Members Court Meeting.**

**The action to be taken by you in respect of the Court Meetings is set out on page 6 of this document. Please read this information carefully. It is important that for each Court Meeting as many votes as possible are cast, so that the Court may be satisfied that there is a fair and reasonable representation of the opinion of Scheme Members. You are therefore urged strongly to cast your vote by completing and returning the appropriate Form of Proxy or by appointing a proxy online as soon as possible, even if you intend to attend your Court Meeting in person.**

Notice convening the Court Meetings is set out in Part 4 of this document.

If you have any questions relating to this document, or the action you are being requested to take, please telephone the MDDUS helpline, details of which are set out on page 7 of this document.

Certain words and terms used in this document are defined in Part 3 of this document.

This document is dated 20 January 2020.

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## EXPECTED TIMETABLE OF PRINCIPAL EVENTS

The following indicative timetable sets out the expected dates for implementation of the Scheme.

<i>Event</i>	<i>Time and/or date</i>
Deadline for returning the <b><u>Form of Proxy for In-Scope Members</u></b> and for appointing a proxy online for the In-Scope Members Court Meeting	<b>10:00 a.m. on 7 February 2020<sup>1</sup></b>
Deadline for returning the <b><u>Form of Proxy for Non-In-Scope Members</u></b> and appointing a proxy online for the Non-In-Scope Members Court Meeting	<b>10:30 a.m. on 7 February 2020<sup>2</sup></b>
<i>Court Meetings</i>	
<b>In-Scope Members Court Meeting</b>	<b>10:00 a.m. on 11 February 2020</b>
<b>Non-In-Scope Members Court Meeting</b>	<b>10:30 a.m. on 11 February 2020</b> or as soon as reasonably practicable following the conclusion of the In-Scope Members Court Meeting
<i>The following dates are indicative only and are subject to change; please see note (3) below</i>	
Court Hearing to sanction the Scheme	<b>5 March 2020</b>
First target date for Regulations Condition to be satisfied by	<b>00:01 a.m. on 6 April 2020</b>
Court Order delivered to the Registrar of Companies	<b>6 April 2020</b>
<b>Effective Date</b>	<b>6 April 2020</b>
Long-Stop Date	<b>00:01 a.m. on 1 April 2021<sup>4</sup></b>

### Notes:

- <sup>1</sup> Forms of Proxy may also be handed by In-Scope Members to Civica Election Services, on behalf of the chair of the In-Scope Members Court Meeting, before the start of the In-Scope Members Court Meeting.
- <sup>2</sup> Forms of Proxy may also be handed by Non-In-Scope Members to Civica Election Services, on behalf of the chair of the Non-In-Scope Members Court Meeting, before the start of the Non-In-Scope Members Court Meeting.
- <sup>3</sup> These times and dates are indicative only and will depend, among other things, on the date on which: (i) the Regulations Condition is satisfied, or waived, in accordance with the terms of the Framework Agreement; (ii) the Court sanctions the Scheme; and (iii) the Court Order sanctioning the Scheme is delivered to the Registrar of Companies. Any changes to the above times and dates will be announced by MDDUS on the following website [www.mddus.com/scheme](http://www.mddus.com/scheme).
- <sup>4</sup> This is the last date on which the Scheme may become Effective, unless MDDUS and DHSC agree in writing, and the Court allows, a later date.
- <sup>5</sup> References to time are to time in London, United Kingdom.

## IS THE SCHEME APPLICABLE TO ME?

### 1. Are you a Scheme Member?

Scheme Members are, in summary, members of MDDUS who are entered on its Register of Members prior to the Scheme Record Time.

Scheme Members have been separated into two classes of members for the purposes of the Scheme, In-Scope Members and Non-In-Scope Members.

### 2. How do I know if I am an In-Scope Member?

In-Scope Members are, in summary, those members of MDDUS who have, at any time prior to 1 April 2019 and while a member of MDDUS, worked in general practice providing services as part of the NHS **for England**.

If you have received a Form of Proxy entitled "**Form of Proxy for In-Scope Members**", MDDUS has identified you as an In-Scope Member.

If you believe that this classification is wrong and that you should be classified as a Non-In-Scope Member, please contact the MDDUS helpline on +44 (0) 333 043 4444.

### 3. How do I know if I am a Non-In-Scope Member?

Non-In-Scope Members are all members of MDDUS who have not, at any time prior to 1 April 2019 and while a member of MDDUS, worked in general practice providing services as part of the NHS **for England**.

Therefore, if you are not an In-Scope Member, you will be a **Non-In-Scope Member** for the purposes of the Scheme. You cannot be both an In-Scope Member and a Non-In-Scope Member.

If you have received a Form of Proxy entitled "**Form of Proxy for Non-In-Scope Members**", MDDUS has identified you as a Non-In-Scope Member.

If you believe that this classification is wrong and that you should be classified as an In-Scope Member, please contact the MDDUS helpline on +44 (0) 333 043 4444.

### 4. What action do I need to take?

If you are:

- (i) an **In-Scope Member**, you are requested to cast a vote by proxy, or in person, at the In-Scope Members Court Meeting. Please refer to page 6 of this document for details of the action to be taken by you; or
- (ii) a **Non-In-Scope Member**, you are requested to cast a vote by proxy, or in person, at the Non-In-Scope Members Court Meeting. Please refer to page 6 of this document for details of the action to be taken by you.

5. **What effect will the Scheme have on me?**

If you are:

- (i) an **In-Scope Member**, those benefits which are currently provided to you by MDDUS that relate to:
  - a. access to discretionary indemnity for your clinical negligence liabilities in relation to incidents that occurred while you were a member of MDDUS and were working in general practice providing NHS services in England prior to 1 April 2019; and
  - b. access to the administering, and handling, of claims in relation to those liabilities, will, from the Effective Date, cease to be provided by MDDUS and will be provided by DHSC, under its new clinical negligence scheme, the ELS.All other membership benefits provided by MDDUS will remain unchanged; or
- (ii) a **Non-In-Scope Member**, the Scheme will not affect any of your MDDUS membership benefits.

Please refer to page 11 of this document for further information.

6. **If I am an In-Scope Member with an ongoing clinical negligence claim which MDDUS is currently handling on my behalf, what happens to this claim?**

If your claim relates to an incident that occurred during your period of membership of MDDUS, while you were working in general practice providing NHS services in England prior to 1 April 2019, DHSC will assume responsibility for that claim once the Scheme takes effect.

If you are affected by this, MDDUS will write to you and explain what is happening to your claim. Detailed information regarding claims handling will also be published by DHSC in due course.

Any other claims which MDDUS is currently handling on your behalf or any other assistance which MDDUS is providing will continue to be administered, handled and provided by MDDUS.

## **ACTION TO BE TAKEN BY SCHEME MEMBERS**

### **1. Action to be taken by In-Scope Members:**

**You are requested to cast a vote at the In-Scope Members Court Meeting.**

You can do this:

- (i) by completing and returning the **Form of Proxy for In-Scope Members** in the pre-paid envelope provided so as to be received by Civica Election Services no later than **10:00 a.m. on 7 February 2020**;
- (ii) by going to [www.cesvotes.com/mddus20](http://www.cesvotes.com/mddus20) and appointing a proxy online before **10:00 a.m. on 7 February 2020**; or
- (iii) by voting in person at the In-Scope Members Court Meeting.

**It is important that, for the In-Scope Members Court Meeting, as many votes as possible are cast so that the Court may be satisfied that there is a fair and reasonable representation of In-Scope Members' opinion. You are therefore urged strongly to cast your vote by completing and returning the Form of Proxy for In-Scope Members or by appointing a proxy online as soon as possible, even if you intend to attend the In-Scope Members Court Meeting in person.**

### **2. Action to be taken by Non-In-Scope Members:**

**You are requested to cast a vote at the Non-In-Scope Members Court Meeting.**

You can do this:

- (i) by completing and returning the **Form of Proxy for Non-In-Scope Members** in the pre-paid envelope provided so as to be received by Civica Election Services no later than **10:30 a.m. on 7 February 2020**;
- (ii) by going to [www.cesvotes.com/mddus20](http://www.cesvotes.com/mddus20) and appointing a proxy online before **10:30 a.m. on 7 February 2020**; or
- (iii) by voting in person at the Non-In-Scope Members Court Meeting.

**It is important that, for the Non-In-Scope Members Court Meeting, as many votes as possible are cast so that the Court may be satisfied that there is a fair and reasonable representation of Non-In-Scope Members' opinion. You are therefore urged strongly to cast your vote by completing and returning the Form of Proxy for Non-In-Scope Members or by appointing a proxy online as soon as possible, even if you intend to attend the Non-In-Scope Members Court Meeting in person.**

## **MDDUS HELPLINE**

If you have any questions relating to this document, the Scheme, the Court Meetings or the action you are being requested to take, please telephone the MDDUS helpline on +44 (0) 333 043 4444. Calls are charged at the standard geographic rate and will vary by provider. Calls outside the United Kingdom will be charged at the applicable international rate. The helpline is open between 9:00 a.m. to 5:00 p.m., Monday to Friday excluding public holidays in Scotland. Different charges may apply to calls from mobile telephones and calls may be recorded and monitored for security and training purposes. The helpline cannot provide advice on the merits of the Scheme nor give any legal, or other, advice in connection with the Scheme.

**PART 1**  
**EXPLANATORY STATEMENT**  
*(in compliance with section 897 of the Companies Act 2006)*

1. **Background**

1.1 ***Information on MDDUS***

MDDUS is a private company limited by guarantee without share capital which was incorporated in Scotland on 8 May 1902 under the Companies Acts 1862 to 1900, with registered number SC005093. It is a medical defence organisation, offering access to expert advice, assistance, and indemnity to its members, who consist of doctors, dentists and other healthcare professionals. All benefits of membership of MDDUS are discretionary. It is wholly owned by the members, who receive no dividends or profits from MDDUS.

1.2 ***Information on DHSC***

DHSC is a department of Her Majesty's Government which is responsible for government policy on health, and adult social care, matters in England, along with a few elements of the same matters which are not otherwise devolved to the Scottish Government, Welsh Government or Northern Ireland Executive. It oversees the English National Health Service.

1.3 ***Background to the Transaction***

The CNSGP was launched on 1 April 2019 and is a state-backed scheme providing access to discretionary indemnity to healthcare practitioners for their clinical negligence liabilities arising as a result of incidents that occurred on, or after, 1 April 2019 and during the provision of NHS services as part of general practice in England.

The purpose of the Transaction is, under the ELS, to provide a state-backed scheme equivalent to the CNSGP to MDDUS members (including former members) for incidents that occurred prior to 1 April 2019 while they were members of MDDUS.

Accordingly, on 20 September 2019, MDDUS entered into the Transaction Documents with DHSC in relation to the Transaction. Under the terms of the Transaction Documents, DHSC has agreed, subject to the Regulations Condition being satisfied, or waived, to assume responsibility, through the establishment of the ELS, for providing access to discretionary indemnity to MDDUS members and former members for their clinical negligence liabilities arising as a result of incidents which occurred prior to 1 April 2019 (and while they were members of MDDUS) during the provision of NHS services in England as part of general practice. The purpose of the Regulations is to establish the ELS.

MDDUS has made a payment to DHSC in consideration for the assumption by DHSC of the responsibility, under the ELS (once established), to provide In-Scope Members, and In-Scope Former Members, discretionary benefits in respect of In-Scope Benefits and In-Scope Claims. The amount of that payment is not disclosed for reasons of commercial confidentiality.

1.4 ***The Scheme***

Following discussions with EY, MDDUS's legal and financial advisers, the preference of the Board is for MDDUS to implement, to the extent possible, the Transaction with DHSC by way of a court sanctioned (in other words, approved) scheme of arrangement under Part 26 of the Companies Act. While this is not the only way in which the Transaction could be implemented, the Board believes that a scheme of arrangement provides both clarity and transparency that the assumption of responsibility by DHSC for providing discretionary indemnity to English GP members has taken place, and therefore certainty to:



- (i) those members that the discretionary indemnity and assistance in respect of their historic liabilities arising from clinical negligence claims relating to their NHS funded general practice work will be provided by DHSC going forward; and
- (ii) MDDUS that it is no longer responsible for providing these benefits.

Members should be aware that if the Regulations Condition is satisfied, or waived, in accordance with the terms of the Framework Agreement, but the Scheme is for any reason, not sanctioned, the Transaction will still proceed, but in that case without the sanction of the Court. In such circumstances, the Transaction will proceed in accordance with the terms of the Framework Agreement.

## 1.5 ***Conditions to the Transaction***

The Transaction is conditional upon:

- (i) the Transaction Documents not being terminated, in accordance with their terms, before the Long-Stop Date; and
- (ii) the Regulations Condition being satisfied, or waived, on, or before, the Long-Stop Date.

If either the Transaction Documents are terminated in accordance with their terms or the Regulations Condition is not satisfied, or waived, in accordance with the terms of the Framework Agreement, by the Long-Stop Date, then the Transaction will not proceed, even if the Scheme is approved by the Scheme Members and sanctioned by the Court.

In these circumstances, the responsibility for providing In-Scope Benefits to In-Scope Members and In-Scope Former Members will remain with MDDUS.

## 2. **The Transaction**

### 2.1 ***Who does the Transaction affect?***

The Transaction affects “**In-Scope Members**” and “**In-Scope Former Members**”, being those Members, and Former Members, of MDDUS who undertook “**In-Scope Activities**” during their membership of MDDUS and to whom MDDUS may provide “**In-Scope Benefits**”.

### 2.2 ***In-Scope Activities***

In-Scope Activities are, in summary, certain acts or omissions (whether alleged or proven) by an In-Scope Member, or an In-Scope Former Member, in general practice that resulted, or were alleged to have resulted, in harm or loss to a patient and occurred prior to 00:01 a.m. on 1 April 2019, where those acts or omissions occurred, or were alleged to have occurred, in connection with the diagnosis, care or treatment of a patient for the purposes of providing:

- (i) primary medical services, as part of the NHS for England; or
- (ii) other services connected with the delivery of primary medical services, as part of the NHS for England; or
- (iii) any other NHS services in England by, or for, a provider of services whose principal activity on the date of the relevant act was to provide NHS primary medical services.

### 2.3 ***In-Scope Benefits***

In-Scope Benefits are, in summary, the discretionary membership benefits which are provided by MDDUS pursuant to which MDDUS may, at the request of an In-Scope Member, or an In-Scope Former Member, provide assistance (including the handling of claims) or indemnity to that In-Scope Member, or In-Scope Former Member, in respect of any claims, losses, damages, costs, charges or expenses, which arise from their In-Scope Activities.

The discretionary benefits and categories of indemnity provided by MDDUS, which are set out in Appendix 1, do not fall within the definition of In-Scope Benefits and will not therefore be provided by DHSC under the ELS.

### 2.4 ***Effect of the Transaction***

The effect of the Transaction is that DHSC will, with effect from the Effective Date, assume responsibility for:

- (i) providing to In-Scope Members and In-Scope Former Members, under the ELS, discretionary benefits that match the In-Scope Benefits;
- (ii) administering and handling all In-Scope Claims which prior to the Effective Date were (or would have been, had the claim been notified) the responsibility of MDDUS; and
- (iii) exercising discretion, and where discretion is exercised to provide indemnity in respect of In-Scope Claims under the ELS, satisfying all Indemnified Liabilities which prior to the Effective Date would have been the responsibility of MDDUS.

Item (i) will be implemented by DHSC through the establishment of the ELS and by MDDUS through the implementation of the Scheme. Items (ii) and (iii) are outside the scope of the Scheme and will be implemented in accordance with the terms of the Framework Agreement.

If any In-Scope Member, or any In-Scope Former Member, undertook In-Scope Activities, but did so while a member of a medical defence organisation other than MDDUS, then any clinical negligence liabilities arising in relation to those In-Scope Activities will not be covered by the Scheme or the Transaction.

## 3. **The Scheme**

### 3.1 ***The Scheme becoming Effective***

Provided the Transaction Documents have not been terminated in accordance with their terms, and:

- (i) the Scheme is approved at each of the In-Scope Members Court Meeting and the Non-In-Scope Members Court Meeting;
- (ii) the Scheme is sanctioned by the Court; and
- (iii) the Regulations Condition is satisfied, or waived, in accordance with the terms of the Framework Agreement on, or before, the Long-Stop Date,

the Scheme will become Effective as soon as a certified copy of the Court Order has been delivered to the Registrar of Companies for registration.

The effect of the Scheme not becoming Effective in circumstances where the Regulations Condition has been satisfied, or waived, is set out in paragraph 3.5 below.

The effect of the Transaction Documents being terminated in accordance with their terms or the Regulations Condition not being satisfied, or waived, is set out in paragraph 1.5 above.

### 3.2 ***Effect of the Scheme on In-Scope Members and In-Scope Former Members***

Once the Scheme becomes Effective then, with effect from the Effective Date:

- (i) DHSC will assume responsibility for:
  - (a) providing to In-Scope Members and In-Scope Former Members, under the ELS, discretionary benefits that match the In-Scope Benefits;
  - (b) administering and handling all In-Scope Claims which prior to the Effective Date were (or would have been, had the claim been notified) the responsibility of MDDUS; and
  - (c) exercising discretion, and where discretion is exercised to provide indemnity in respect of In-Scope Claims under the ELS, satisfying all Indemnified Liabilities which prior to the Effective Date would have been the responsibility of MDDUS; and
- (ii) MDDUS's obligations to:
  - (a) provide to In-Scope Members, and In-Scope Former Members, the In-Scope Benefits;
  - (b) administer and handle all In-Scope Claims which prior to the Effective Date were (or would have been, had the claim been notified) the responsibility of MDDUS; and
  - (c) where discretion is exercised to provide indemnity in respect of In-Scope Claims, satisfy all Indemnified Liabilities which prior to the Effective Date were the responsibility of MDDUS,

shall cease.

MDDUS currently provides In-Scope Benefits to In-Scope Members and In-Scope Former Members on a discretionary basis under its Articles and the Membership Agreement. Access to the indemnity to be provided by DHSC under the ELS will also be on a discretionary basis.

As set out in paragraph 2.3 above, the responsibility of MDDUS to provide membership benefits other than In-Scope Benefits to In-Scope Members and In-Scope Former Members will not be affected by the Scheme.

In-Scope Members and In-Scope Former Members requiring benefits, including indemnity, after the Effective Date will be required to contact:

- (i) DHSC (or any ELS Operator appointed by DHSC) in respect of any claims, or clinical negligence liabilities, that arise in relation to In-Scope Activities; and
- (ii) MDDUS in respect of any other MDDUS membership benefits, or categories of indemnity, not falling within the scope of the ELS.

### 3.3 ***Effect of the Scheme on Members and Former Members who are not In-Scope Members or In-Scope Former Members***

The membership benefits provided by MDDUS to Members and Former Members who are neither In-Scope Members nor In-Scope Former Members will not be affected by the Scheme or the Transaction.

### 3.4 ***Effect of the Scheme on MDDUS Directors***

The remuneration of MDDUS Directors is based on a number of factors and there is no formal performance related pay scheme in place. Total remuneration is benchmarked against a range of comparator organisations and adjusted accordingly and decisions on pay are assessed against the totality of performance for each individual. There is provision within MDDUS to make bonus awards, but only in exceptional and unforeseen circumstances.

No employee of MDDUS or MDDUS Director who has been involved in the Scheme or Transaction process, or the process of agreeing the Framework Agreement and Interim Arrangements Deed, has had a specific objective linked to remuneration which relates directly to the outcome of the Scheme or the Transaction process.

None of the MDDUS Directors has a financial interest in the Scheme, other than Dr Joanna Bayley and Dr Jonathan P. Berry, who are both In-Scope Members, as well as MDDUS Directors, and are, therefore, entitled to In-Scope Benefits and to vote on the Scheme at the In-Scope Members Court Meeting.

The remaining MDDUS Directors who are also Members are Non-In-Scope Members and will be entitled to vote on the Scheme at the Non-In-Scope Members Court Meeting.

### 3.5 ***Effect of the Scheme not being either approved by Scheme Members or sanctioned by the Court***

MDDUS and DHSC currently intend that:

- (i) the Regulations Condition is to be satisfied; and
- (ii) the Scheme is to be approved by the relevant Scheme Members at each of the Court Meetings and sanctioned by the Court at the Court Hearing,

by 00:01 a.m. on 6 April 2020.

If, prior to 6 April 2020, MDDUS, or DHSC, do not believe that they can meet that deadline, they can, under the Framework Agreement, agree to extend that date in order to give them more time to satisfy the Regulations Condition and obtain approval for and sanction of the Scheme. They can agree to extend the date up to a maximum of two times, but that date is not permitted to be later than the Long-Stop Date.

If the Regulations Condition is satisfied prior to the target deadline of 00:01 a.m. on 6 April 2020 (or any later date agreed by MDDUS and DHSC) but the Scheme has either not been approved by the relevant Scheme Members at each of the Court Meetings, or, having been so approved, has not been sanctioned by the Court at the Court Hearing, then provided the Transaction Documents have not been terminated in accordance with their terms, the Transaction will still proceed but will be implemented in accordance with the terms of the Framework Agreement.

In certain circumstances under the Framework Agreement, MDDUS may also elect to withdraw the proposal in relation to the Scheme and proceed to implement the Transaction in accordance with the terms of the Framework Agreement.

The practical effect of each of the above scenarios for In-Scope Members and In-Scope Former Members will be the same as set out in paragraph 3.2 above.

#### 4. **Approval of the Scheme**

The Board has approved the Scheme, including this document and the contents of this Explanatory Statement. In recommending the Scheme and this Explanatory Statement, the Board has taken advice from EY.

#### 5. **The Scheme and the Court Meetings**

##### 5.1 ***Amendments to Articles, Membership Agreement and assumption by DHSC***

The purpose of the Scheme is to:

- (i) amend:
  - (a) Articles 1, 2 and 6 of the Articles to remove MDDUS's ability to exercise its discretion to provide any In-Scope Benefits to In-Scope Members and In-Scope Former Members; and
  - (b) the Membership Agreement to remove MDDUS's ability to exercise its discretion to provide any In-Scope Benefits to In-Scope Members and In-Scope Former Members, meaning that MDDUS will no longer provide In-Scope Members and In-Scope Former Members with In-Scope Benefits; and
- (ii) provide for the assumption by DHSC of the responsibility for providing to In-Scope Members and In-Scope Former Members, under the ELS, discretionary benefits that match the In-Scope Benefits.

##### 5.2 ***Court Meetings***

The Scheme will require the approval of:

- (i) the In-Scope Members at the In-Scope Members Court Meeting to be held at Kimpton Blythswood Square Hotel, 11 Blythswood Square, Glasgow G2 4AD on 11 February 2020 commencing at 10:00 a.m.; and
- (ii) the Non-In-Scope Members at the Non-In-Scope Members Court Meeting to be held at Kimpton Blythswood Square Hotel, 11 Blythswood Square, Glasgow G2 4AD on 11 February 2020 commencing at 10:30 a.m. or as soon as reasonably practicable following the conclusion of the In-Scope Members Court Meeting.

The Court Meetings are being held at the direction of the Court and have been convened to enable the Scheme Members to consider and, if thought fit, approve the Scheme. At each Court Meeting, voting will be by poll and each Scheme Member will be entitled to cast one vote, whether present in person or by proxy.

To succeed, the Scheme must be approved by:

- (i) a majority in number of the In-Scope Members representing not less than 75 per cent. in value of the In-Scope Members present and voting, either by proxy or in person, at the In-Scope Members Court Meeting (or any adjournment thereof); and
- (ii) a majority in number of the Non-In-Scope Members representing not less than 75 per cent. in value of the Non-In-Scope Members present and voting, either by proxy or in person, at the Non-In-Scope Members Court Meeting (or any adjournment thereof).

**It is important that for each Court Meeting as many votes as possible are cast, so that the Court may be satisfied that there is a fair and reasonable representation of the opinion of Scheme Members. You are therefore urged strongly to cast your vote by completing and returning the appropriate Form of Proxy or by appointing a proxy online as soon as possible, even if you intend to attend your Court Meeting in person.**

### 5.3 ***Entitlement to vote at the Court Meetings***

Each person whose name appears on the Register of Members as a member at the Voting Record Time and who is an In-Scope Member will be entitled to attend, and cast one vote, at the In-Scope Members Court Meeting.

Each person whose name appears on the Register of Members as a member at the Voting Record Time and who is a Non-In-Scope Member will be entitled to attend, and cast one vote, at the Non-In-Scope Members Court Meeting.

If either Court Meeting is adjourned, only those In-Scope Members (in the case of the In-Scope Members Court Meeting) and Non-In-Scope Members (in the case of the Non-In-Scope Members Court Meeting) on the Register of Members at 5:00 p.m. on the day which is two Business Days before the date of such adjourned meeting will be entitled to attend and vote.

Each Scheme Member is entitled to appoint a proxy to attend and, on a poll, to cast one vote instead of him or her. A proxy need not be a Scheme Member. Please see paragraph 6 of this Part 1 of this document for further information on the action to be taken by you in order to vote at the Court Meetings and to appoint a proxy.

### 5.4 ***Sanction of the Scheme by the Court***

Under the Companies Act, the Scheme also requires the sanction of the Court.

The Court Hearing is expected to be held on 5 March 2020 at the Court of Session, Parliament House, Parliament Square, Edinburgh EH1 1RQ.

Any Scheme Member or any other person who considers that they have an interest in the Scheme (each an **Interested Party**) and who is concerned that the Scheme may adversely affect him or her is entitled to be heard by the Court, as explained below.

If an Interested Party wishes to raise concerns in relation to the Scheme with the Court, or to appear at the Court Hearing, they should seek independent legal advice and should lodge written answers to the Petition with the Court at Parliament House, Parliament Square, Edinburgh EH1 1RQ within the period of time specified in the advertisement of the Petition (which is currently expected to be published on or around 14 February 2020) and pay the required fee. Written answers are a formal Court document which enables an Interested Party to raise any objections or questions they may have which must comply with the rules of the Court and are normally prepared by Scottish counsel.

The Court will, in accordance with its practice, consider other objections to the Scheme made in person or in writing, which are not in the form of written answers and/or to allow an Interested Party who has not lodged written answers to appear at the Court Hearing. However, this practice is at the discretion of the Court, and the Court may instead require an Interested Party to lodge written answers in order to raise objections to the Scheme and/or appear at the Court Hearing.

MDDUS will undertake to the Court to execute and do or procure to be executed and done all such documents, acts and things as may be necessary or desirable to be executed or done by it for the purpose of giving effect to the Scheme.

As soon as possible following the Court Hearing, MDDUS shall make an announcement on the following website [www.mddus.com/scheme](http://www.mddus.com/scheme) stating the decision of the Court.

## 5.5 ***Effective Date***

Subject to:

- (i) the Transaction Documents not being terminated in accordance with their terms before the Effective Date;
- (ii) the approval by a majority in number representing not less than 75 per cent. in value of the In-Scope Members present and voting, by proxy or in person, at the In-Scope Members Court Meeting (or any adjournment thereof);
- (iii) the approval by a majority in number representing not less than 75 per cent. in value of the Non-In-Scope Members present and voting, by proxy or in person, at the Non-In-Scope Members Court Meeting (or any adjournment thereof);
- (iv) the sanction of the Scheme by the Court (with or without modification but subject to any modification being on terms acceptable to MDDUS); and
- (v) the Regulations Condition having been satisfied, or waived, in accordance with the terms of the Framework Agreement,

the Scheme will become Effective as soon as a certified copy of the Court Order has been delivered to the Registrar of Companies for registration. This is expected to occur on 6 April 2020.

As soon as practicable on the Effective Date, MDDUS shall make an announcement on the following website [www.mddus.com/scheme](http://www.mddus.com/scheme) stating that the Scheme has become Effective. **Upon the Scheme becoming Effective, it will be binding on all Scheme Members.**

If the Scheme is not Effective by the Long-Stop Date, the Scheme will not proceed.

## 5.6 ***Modifications and revision***

The Scheme contains a provision for MDDUS to consent on behalf of all Scheme Members to any modification of, or addition to, the Scheme or to any condition approved or imposed by the Court. The Court would be unlikely to approve any modification of, or addition to, or impose a condition to the Scheme, which might be material to the interests of Scheme Members, unless Scheme Members were informed of the modification, addition or condition. It would be a matter for the Court to decide, in its discretion, whether or not a further meeting of Scheme Members should be held in these circumstances.

## 6. **Action to be taken**

### 6.1 ***In-Scope Members***

**If you are an In-Scope Member you are requested to cast a vote at the In-Scope Members Court Meeting.**

You can do this:

- (i) by completing and returning the **Form of Proxy for In-Scope Members** in the pre-paid envelope provided so as to be received by Civica Election Services no later than **10:00 a.m. on 7 February 2020**;

- (ii) by going to [www.cesvotes.com/mddus20](http://www.cesvotes.com/mddus20) and appointing a proxy online before **10:00 a.m. on 7 February 2020**; or
- (iii) by voting in person at the In-Scope Members Court Meeting.

An In-Scope Member which is a corporation may appoint a corporate representative to attend and vote on its behalf at the In-Scope Members Court Meeting.

**It is important that, for the In-Scope Members Court Meeting, as many votes as possible are cast so that the Court may be satisfied that there is a fair and reasonable representation of the opinion of In-Scope Members. You are therefore urged strongly to cast your vote by completing and returning the Form of Proxy for In-Scope Members or by appointing a proxy online as soon as possible, even if you intend to attend the In-Scope Members Court Meeting in person.**

Completing and returning the **Form of Proxy for In-Scope Members** or appointing a proxy online will not prevent In-Scope Members from attending and voting in person at the In-Scope Members Court Meeting, or any adjournment thereof, if they so wish.

## 6.2 ***Non-In-Scope Members***

**If you are a Non-In-Scope Member you are requested to cast a vote at the Non-In-Scope Members Court Meeting.**

You can do this:

- (i) by completing and returning the **Form of Proxy for Non-In-Scope Members** in the pre-paid envelope provided so as to be received by Civica Election Services no later than **10:30 a.m. on 7 February 2020**;
- (ii) by going to [www.cesvotes.com/mddus20](http://www.cesvotes.com/mddus20) and appointing a proxy online before **10:30 a.m. on 7 February 2020**; or
- (iii) by voting in person at the Non-In-Scope Members Court Meeting.

A Non-In-Scope Member which is a corporation may appoint a corporate representative to attend and vote on its behalf at the Non-In-Scope Members Court Meeting.

**It is important that, for the Non-In-Scope Members Court Meeting, as many votes as possible are cast so that the Court may be satisfied that there is a fair and reasonable representation of the opinion of Non-In-Scope Members. You are therefore urged strongly to cast your vote by completing and returning the Form of Proxy for Non-In-Scope Members or by appointing a proxy online as soon as possible, even if you intend to attend the Non-In-Scope Members Court Meeting in person.**

Completing and returning the **Form of Proxy for Non-In-Scope Members** or appointing a proxy online will not prevent Non-In-Scope Members from attending and voting in person at the Non-In-Scope Members Court Meeting, or any adjournment thereof, if they so wish.

## 7. **Further information**

Your attention is also drawn to the following parts of this document, which are deemed to form part of this Explanatory Statement: Part 2 (The Scheme), Part 3 (Definitions) and Part 4 (Notice of Court Meetings).



8. **Documents on display**

Copies of the following documents will be available to view and download on MDDUS's website at [www.mddus.com/scheme](http://www.mddus.com/scheme) during the course of the Scheme:

- (i) a draft of the Articles as proposed to be amended by the Scheme; and
- (ii) a draft of the Membership Agreement as proposed to be amended by the Scheme.

**PART 2  
THE SCHEME**

**SCHEME OF ARRANGEMENT**  
(under Part 26 of the Companies Act 2006)

between

**THE MEDICAL AND DENTAL DEFENCE UNION OF SCOTLAND**

and

**THE SCHEME MEMBERS**  
(as hereinafter defined)

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**THE SCHEME**

**BACKGROUND**

- (A) MDDUS is a not-for-profit mutual society which, among other things, provides discretionary benefits (including indemnity and other assistance) to its Members and Former Members, including general practice staff providing health care services as part of the NHS for England.
- (B) Under Article 2.2(b) of the Articles and the terms of the Membership Agreement, the Board may, at its absolute discretion, provide advice, assistance and defence to, amongst others, Members and Former Members, in respect of, amongst other things, clinical negligence claims made against such Members and Former Members, arising from their professional practice.
- (C) Under Article 2.2(c) and Article 6 of the Articles and the terms of the Membership Agreement, the Board may, at its absolute discretion, grant or arrange indemnities (to such extent and on such terms and, subject to such conditions, exclusions or limitations as the Board from time to time determines) to, amongst others, any Member or Former Member.
- (D) DHSC has agreed, subject to the Regulations Condition being satisfied, or waived, to assume responsibility, through the establishment of the ELS, for providing to In-Scope Members and In-Scope Former Members, access to discretionary benefits that match the In-Scope Benefits.

**1. Interpretation**

- 1.1 In the Scheme (including the Background), unless the context otherwise requires, the following expressions shall bear the following meanings:

<b>Act</b>	the Companies Act 2006;
<b>Articles</b>	the articles of association of MDDUS;
<b>Board</b>	the board of directors of MDDUS, from time to time;
<b>Business Day</b>	a day other than a Saturday, or Sunday, on which banks are generally open for the transaction of normal banking business in London;

<b>Court</b>	the Court of Session in Edinburgh;
<b>Court Order</b>	the order of the Court, sanctioning the Scheme, under section 899 of the Act;
<b>DHSC</b>	the Secretary of State for Health and Social Care of 39 Victoria Street, Westminster, London SW1H 0EU;
<b>Effective Date</b>	the date on which the Scheme becomes effective in accordance with Clause 4.1;
<b>ELS</b>	the existing liabilities scheme to be established by DHSC pursuant to the Regulations, the purpose of which is to provide access to discretionary indemnity to healthcare practitioners for their clinical negligence liabilities arising as a result of incidents that occurred prior to 1 April 2019 and during the provision of NHS services as part of general practice in England;
<b>Former Member</b>	any former member of MDDUS at the Effective Date, in whose favour MDDUS may exercise its discretion, under the Articles or the Membership Agreement or both, to provide assistance or an indemnity;
<b>Framework Agreement</b>	the framework agreement which was entered into by DHSC and MDDUS on 20 September 2019;
<b>Good Samaritan Act</b>	any act, or omission to act, of a healthcare practitioner during the provision of medical assistance to a member of the public in a bona fide medical emergency, which the healthcare practitioner happens upon in a personal, rather than a professional, context;
<b>In-Scope Activities</b>	<p>any alleged or actual tortious acts or omissions to act (including, but not limited to, such acts or omissions to act which constitute professional negligence) of any Member or Former Member (or any person for whom such Member or Former Member is, or is alleged to be, vicariously or jointly liable, but without prejudice to any right of that Member or Former Member to seek contribution from any other person in respect of such liability) that occurred prior to 00:01 a.m. on 1 April 2019, where those acts or omissions to act were, or were alleged to have been, carried out or occurred or were in connection with the diagnosis, care or treatment of a third party for the purposes of providing:</p> <p>(A) primary medical services pursuant to contractual arrangements made under Part 4 of the National Health Service Act 2006 (including primary medical services which were provided as part of a set of arrangements under which other services</p>

were also provided and integrated urgent care pursuant to Schedule 2L of the NHS England standard contract); or

- (B) services, other than primary medical services, which were provided as part of the NHS for England by a person whose principal activity is the provision of primary medical services or provided by a person providing such services under a sub-contract arrangement with that person,

and where the tortious act, or omission to act, resulted, or was alleged to result, in physical or mental harm, or loss to a third party;

### **In-Scope Benefits**

the discretionary benefit which MDDUS may provide, as set out in the memorandum and articles of association of MDDUS (and as further described in the applicable membership information and documentation provided by MDDUS to such Members or Former Members), by way of the provision of assistance, or indemnity, in respect of claims, losses, damages, costs, charges and expenses which arise from In-Scope Activities, but excluding any request for:

- (A) indemnity or assistance, in respect of claims, losses, damages, costs, charges and expenses which arise from In-Scope Activities, and in respect of which the Member or Former Member may request such indemnity, or assistance, from MDDUS as a result of having selected Run-Off Benefits from MDDUS after 00:01 a.m. on 1 April 2020 (or such earlier date as agreed in writing between DHSC and MDDUS);
- (B) indemnity or assistance, in respect of claims, losses, damages, costs, charges and expenses which arise from Good Samaritan Acts;
- (C) indemnity or assistance, in respect of any act or omission to act of a healthcare practitioner during the provision of medical assistance to a member of the public at a public event at which the relevant healthcare practitioner has been engaged to provide assistance on a paid or voluntary basis, and in either case where such engagement is outside the scope of the healthcare professional's duties in providing primary medical services pursuant to contractual arrangements made under Part 4 of the National Health Service Act

2006 (including, for the avoidance of doubt, integrated urgent care pursuant to Schedule 2L of the NHS England standard contract) or of duties ancillary to the provision of such services;

(D) advice in respect of, or professional representation for a Member or Former Member at, criminal, disciplinary, investigatory (including coroners' inquests) or regulatory proceedings; and

(E) the provision of access to general professional advice in respect of ethical, medico-legal and risk-related issues arising out of the professional practice of a Member or Former Member, other than legal advice provided to a Member or Former Member in the context of handling an In-Scope Claim;

**In-Scope Claim**

any claim against a Member or Former Member, or any notification made to MDDUS by, or on behalf of, or in respect of, a Member or Former Member of circumstances that may result in such a claim, which may give rise to In-Scope Benefits;

**In-Scope Former Member**

a Former Member to whom MDDUS may provide In-Scope Benefits;

**In-Scope Member**

a Member to whom MDDUS may provide In-Scope Benefits;

**In-Scope Members Court Meeting**

the meeting of the In-Scope Members which is to be convened by order of the Court under section 896 of the Act to consider and, if thought fit, approve the Scheme (with or without amendment) and any adjournment of that meeting;

**Long-Stop Date**

00:01 a.m. on 1 April 2021, or such later date, if any, as MDDUS and DHSC may agree in writing, and the Court may allow;

**MDDUS**

The Medical and Dental Defence Union of Scotland, a private company limited by guarantee without share capital, incorporated in Scotland with registered number SC005093, with its registered office at Mackintosh House, 120 Blythswood Street, Glasgow G2 4EA;

**Member**

any member of MDDUS, being a person whose name is entered on the Register of Members at the Effective Date;

<b>Membership Agreement</b>	the membership agreement in force at the Effective Date between MDDUS and any Member;
<b>NHS</b>	the National Health Service for England;
<b>Non-In-Scope Member</b>	a Member who is not an In-Scope Member;
<b>Non-In-Scope Members Court Meeting</b>	the meeting of the Non-In-Scope Members which is to be convened by order of the Court under section 896 of the Act to consider and, if thought fit, approve the Scheme (with or without amendment) and any adjournment of that meeting;
<b>Register of Members</b>	the register of members of MDDUS;
<b>Regulations</b>	the regulations proposed to be made by DHSC, with the consent of Her Majesty's Treasury, under section 71(1) of the National Health Service Act 2006, to establish the ELS;
<b>Regulations Condition</b>	the making, under section 71 of the National Health Service Act 2006, and commencement, of the Regulations;
<b>Run-off Benefits</b>	the discretionary benefits which MDDUS may provide, at their request, to Members and Former Members, by way of the provision of assistance, or indemnity, which is on an occurrence basis, and which is in respect of claims, losses, damages, costs, charges and expenses, that arise from acts, or omissions which are In-Scope Activities and constitute professional negligence;
<b>Scheme</b>	this scheme of arrangement in its present form or with or subject to any modification, addition or condition which MDDUS may consent to and, if required, the Court may approve or impose;
<b>Scheme Members</b>	the members of MDDUS, being persons whose names are entered on the Register of Members as its members: <ul style="list-style-type: none"> <li>(A) at 5:00 p.m. on 20 January 2020; or</li> <li>(B) after 5:00 p.m. on 20 January 2020 but prior to the Voting Record Time; or</li> <li>(C) on or after the Voting Record Time, but prior to the Scheme Record Time, upon terms that they shall be bound by the Scheme or having undertaken to be bound by the Scheme;</li> </ul>
<b>Scheme Record Time</b>	5:00 p.m. on the Business Day immediately preceding the Effective Date;

## Transaction Documents

the Framework Agreement and the interim arrangements deed which was entered into by DHSC and MDDUS on 20 September 2019; and

## Voting Record Time

5:00 p.m. on 7 February 2020 or, if either the In-Scope Members Court Meeting and/or the Non-In-Scope Members Court Meeting is adjourned, 5:00 p.m. on the day which is two Business Days before the date of such adjourned meeting.

- 1.2 In the Scheme, unless the context otherwise requires or otherwise expressly provides:
- 1.2.1 references to Clauses and Sub-Clauses are references to the Clauses and Sub-Clauses respectively of the Scheme;
  - 1.2.2 references to a "*person*" include references to an individual, firm, partnership, company, corporation, other legal entity or unincorporated body of persons;
  - 1.2.3 references to a statute or a statutory provision include the same as subsequently modified, amended or re-enacted from time to time;
  - 1.2.4 references to an agreement, deed or document shall be deemed also to refer to such agreement, deed or document as amended, supplemented, restated, verified, replaced and/or novated (in whole or in part) from time to time and to any agreement, deed or document executed pursuant thereto;
  - 1.2.5 the singular includes the plural and vice versa and words importing one gender shall include all genders;
  - 1.2.6 headings to Parts, Clauses and Sub-Clauses are for ease of reference only and shall not affect the interpretation of the Scheme; and
  - 1.2.7 references to time are to time in London, United Kingdom.

## 2. The Scheme

- 2.1. With effect from the Effective Date, Article 1.1 of the Articles shall be amended by adding the following definition, namely:

"(q)(A) "**The Scheme**" means the scheme of arrangement which is between MDDUS and the Scheme Members, who are defined in it, which was sanctioned by order of the Court of Session in Edinburgh made on [date to be inserted] 2020 and which became effective, in accordance with section 899(4) of the 2006 Act, on [date to be inserted] 2020;"

- 2.2. With effect from the Effective Date, Article 2.2 of the Articles shall be amended by inserting after the words "*Article 2.1 above*" the following, namely:

"and subject to Articles 2.3 to 2.4 (inclusive) below, which limit Articles 2.2(b) and (c);"

- 2.3. With effect from the Effective Date, Article 2 of the Articles shall be amended by adding the following new Articles 2.3 to 2.4, namely:

"2.3 Article 2.2(b) shall not apply to any advice, assistance or defence which would be given to a Member who is an "In-Scope Member", or to a "Former Member" who is an "In-Scope Former Member", each as defined in the Scheme, and which would constitute "In-Scope Benefits", as also defined in the Scheme.

2.4 *Article 2.2(c) shall not apply to any indemnity which would be given to a Member who is an "In-Scope Member", or to a "Former Member" who is an "In-Scope Former Member", each as defined in the Scheme, and which would constitute "In-Scope Benefits", as also defined in the Scheme."*

2.4. With effect from the Effective Date, Article 6 of the Articles shall be amended by adding the following new Article 6.6, namely:

*"6.6 This Article 6 shall not apply to any indemnity which would be given to a Member who is an "In-Scope Member", or to a "Former Member" who is an "In-Scope Former Member", each as defined in the Scheme, and which would constitute "In-Scope Benefits", as also defined in the Scheme."*

2.5. With effect from the Effective Date, the Membership Agreement shall be amended to the effect that MDDUS shall not exercise its discretion to provide any In-Scope Benefits to In-Scope Members or In-Scope Former Members.

### 3. **Further documentation**

Insofar as any act or thing needs to be done, or document executed, to give effect to Clause 2, each Scheme Member hereby irrevocably, and unconditionally, appoints any one of the directors of MDDUS for the time being to be their agent to do such acts and things, and execute such deeds and documents, as may be required for that purpose.

### 4. **The Scheme becoming effective**

4.1. Subject to:

4.1.1. the Transaction Documents not being terminated in accordance with their terms before the Effective Date; and

4.1.2. the Regulations Condition having been satisfied, or waived, in accordance with the terms of the Framework Agreement,

the Scheme shall become effective as soon as a certified copy of the Court Order has been delivered to the Registrar of Companies in Scotland for registration.

4.2. Unless the Scheme has become effective on, or before, the Long-Stop Date, the Scheme shall never become effective.

### 5. **Modification**

MDDUS may, at any hearing by the Court to sanction the Scheme, consent on behalf of the Scheme Members to any modification of, or addition to, the Scheme or to any condition which the Court may think fit to approve, or impose, and which would not directly, or indirectly, have a materially adverse effect on the interest of the Scheme Member under the Scheme.

### 6. **Governing law and jurisdiction**

The Scheme shall be governed by Scottish law and is subject to the jurisdiction of the Court.

Dated: 20 January 2020



### **PART 3 DEFINITIONS**

The following definitions apply throughout this document, other than in Parts 2 and 4 of this document, unless the context requires otherwise.

<b>Articles</b>	the articles of association of MDDUS;
<b>Board</b>	the board of directors of MDDUS from time to time;
<b>Business Day</b>	a day other than a Saturday, or Sunday, on which banks are generally open for the transaction of normal banking business in London;
<b>Civica Election Services</b>	the trading name of Electoral Reform Services Limited, a private limited company, incorporated in England with registered number 02263092, with its registered office at Southbank Central, 30 Stamford Street, London SE1 9LQ;
<b>CNSGP</b>	The Clinical Negligence Scheme for General Practice, which commenced on 1 April 2019 pursuant to The National Health Service (Clinical Negligence Scheme for General Practice) Regulations 2019 the purpose of which is to provide access to discretionary indemnity to healthcare practitioners for their clinical negligence liabilities arising as a result of incidents that occurred on, or after, 1 April 2019 and during the provision of NHS services as part of general practice in England;
<b>Companies Act</b>	the Companies Act 2006;
<b>Court</b>	the Court of Session in Edinburgh;
<b>Court Hearing</b>	the hearing of the Court to sanction the Scheme;
<b>Court Meetings</b>	the In-Scope Members Court Meeting and the Non-In-Scope Members Court Meeting;
<b>Court Order</b>	the order of the Court, sanctioning the Scheme under section 899 of the Companies Act;
<b>DHSC</b>	the Secretary of State for Health and Social Care of 39 Victoria Street, Westminster, London SW1H 0EU;
<b>Effective</b>	the Scheme having become effective in accordance with its terms;
<b>Effective Date</b>	the date on which the Scheme becomes Effective;
<b>ELS</b>	the existing liabilities scheme to be established by DHSC pursuant to the Regulations, the purpose of which is to provide access to discretionary indemnity to healthcare practitioners for their clinical negligence liabilities arising as a result of incidents that occurred prior to 1 April 2019

	and during the provision of NHS services as part of general practice in England;
<b>ELS Operator</b>	such person(s) as DHSC may appoint to act as operator in respect of the ELS;
<b>EY</b>	Ernst & Young LLP of 1 More London Place, London SE1 2AF;
<b>Form of Proxy</b>	either the form of proxy entitled: <ul style="list-style-type: none"> <li>(A) "Form of Proxy for In-Scope Members" for use by In-Scope Members in connection with the In-Scope Members Court Meeting; or</li> <li>(B) "Form of Proxy for Non-In-Scope Members" for use by Non-In-Scope Members in connection with the Non-In-Scope Members Court Meeting</li> </ul> <p>(as the context requires);</p>
<b>Former Member</b>	any former member of MDDUS at the Effective Date, in whose favour MDDUS may exercise its discretion, under the Articles or the Membership Agreement or both, to provide assistance or indemnity;
<b>Framework Agreement</b>	the framework agreement which was entered into by DHSC and MDDUS on 20 September 2019;
<b>Good Samaritan Act</b>	any act, or omission to act, of a healthcare practitioner during the provision of medical assistance to a member of the public in a bona fide medical emergency, which the healthcare practitioner happens upon in a personal, rather than a professional, context;
<b>In-Scope Activities</b>	any alleged or actual tortious acts or omissions to act (including, but not limited to, such acts or omissions to act which constitute professional negligence) of any Member or Former Member (or any person for whom such Member or Former Member is, or is alleged to be, vicariously or jointly liable, but without prejudice to any right of that Member or Former Member to seek contribution from any other person in respect of such liability) that occurred prior to 00:01 a.m. on 1 April 2019, where those acts or omissions to act were, or were alleged to have been, carried out or occurred or were in connection with the diagnosis, care or treatment of a third party for the purposes of providing: <ul style="list-style-type: none"> <li>(A) primary medical services pursuant to contractual arrangements made under Part 4 of the National Health Service Act 2006 (including primary medical services which were provided as part of a set of arrangements under which other services were also provided and integrated urgent care</li> </ul>

pursuant to Schedule 2L of the NHS England standard contract); or

- (B) services, other than primary medical services, which were provided as part of the NHS for England by a person whose principal activity is the provision of primary medical services or provided by a person providing such services under a sub-contract arrangement with that person,

and where the tortious act, or omission to act, resulted, or was alleged to result, in physical or mental harm, or loss to a third party;

### **In-Scope Benefits**

the discretionary benefit which MDDUS may provide, as set out in the memorandum and articles of association of MDDUS (and as further described in the applicable membership information and documentation provided by MDDUS to such Members or Former Members), by way of the provision of assistance, or indemnity, in respect of claims, losses, damages, costs, charges and expenses which arise from In-Scope Activities, but excluding any request for:

- (A) indemnity or assistance, in respect of claims, losses, damages, costs, charges and expenses which arise from In-Scope Activities, and in respect of which the Member or Former Member may request such indemnity, or assistance, from MDDUS as a result of having selected Run-Off Benefits from MDDUS after 00:01 a.m. on 1 April 2020 (or such earlier date as agreed in writing between DHSC and MDDUS);
- (B) indemnity or assistance, in respect of claims, losses, damages, costs, charges and expenses which arise from Good Samaritan Acts;
- (C) indemnity or assistance, in respect of any act or omission to act of a healthcare practitioner during the provision of medical assistance to a member of the public at a public event at which the relevant healthcare practitioner has been engaged to provide assistance on a paid or voluntary basis, and in either case where such engagement is outside the scope of the healthcare professional's duties in providing primary medical services pursuant to contractual arrangements made under Part 4 of the National Health Service Act 2006 (including, for the avoidance of doubt, integrated urgent care pursuant to Schedule 2L of the NHS England

standard contract) or of duties ancillary to the provision of such services;

- (D) advice in respect of, or professional representation for a Member or Former Member at, criminal, disciplinary, investigatory (including coroners' inquests) or regulatory proceedings; and
- (E) the provision of access to general professional advice in respect of ethical, medico-legal and risk-related issues arising out of the professional practice of a Member or Former Member, other than legal advice provided to a Member or Former Member in the context of handling an In-Scope Claim;

**In-Scope Claim**

any claim against a Member or Former Member, or any notification made to MDDUS by, or on behalf of, or in respect of, a Member or Former Member of circumstances that may result in such a claim, which may give rise to In-Scope Benefits;

**In-Scope Former Member**

a Former Member to whom MDDUS may provide In-Scope Benefits;

**In-Scope Member**

a Member to whom MDDUS may provide In-Scope Benefits;

**In-Scope Members Court Meeting**

the meeting of the In-Scope Members which is to be convened by order of the Court under section 896 of the Companies Act to consider and, if thought fit, approve the Scheme (with or without amendment) and any adjournment of that meeting;

**Indemnified Liabilities**

all liabilities, losses, claims, settlements, compromises, returns, commissions, administration expenses, premiums, costs and other amounts settled or incurred, but not yet paid by the Effective Date, by or on behalf of MDDUS arising under In-Scope Claims, including any legal or other expenses of the relevant claimant under an In-Scope Claim, but excluding any internal costs, expenses (whether internal or external, and including any fees of professional advisers engaged on MDDUS's behalf) and charges of MDDUS incurred in administering the In-Scope Claims;

**Interim Arrangements Deed**

the interim arrangements deed which was entered into by DHSC and MDDUS on 20 September 2019;

**Long-Stop Date**

00:01 a.m. on 1 April 2021, or such later date, if any, as MDDUS and DHSC may agree in writing, and the Court may allow;

<b>MDDUS</b>	The Medical and Dental Defence Union of Scotland, a private company limited by guarantee without share capital, incorporated in Scotland with registered number SC005093, with its registered office at Mackintosh House, 120 Blythswood Street, Glasgow G2 4EA;
<b>MDDUS Directors</b>	the members of the Board;
<b>Member</b>	any member of MDDUS, being a person whose name is entered on the Register of Members;
<b>Membership Agreement</b>	the membership agreement in force at the Effective Date between MDDUS and any Member;
<b>NHS</b>	the National Health Service for England;
<b>Non-In-Scope Member</b>	a Member who is not an In-Scope Member;
<b>Non-In-Scope Members Court Meeting</b>	the meeting of the Non-In-Scope Members which is to be convened by order of the Court under section 896 of the Companies Act to consider and, if thought fit, approve the Scheme (with or without amendment) and any adjournment of that meeting;
<b>Petition</b>	the application to the Court for it to sanction the Scheme;
<b>Register of Members</b>	the register of members of MDDUS;
<b>Registrar of Companies</b>	the Registrar of Companies in Scotland;
<b>Regulations</b>	the regulations proposed to be made by DHSC, with the consent of Her Majesty's Treasury, under section 71(1) of the National Health Service Act 2006, to establish the ELS;
<b>Regulations Condition</b>	the making, under section 71 of the National Health Service Act 2006, and commencement, of the Regulations;
<b>Run-off Benefits</b>	the discretionary benefits which MDDUS may provide, at their request, to Members and Former Members, by way of the provision of assistance, or indemnity, which is on an occurrence basis, and which is in respect of claims, losses, damages, costs, charges and expenses, that arise from acts, or omissions which are In-Scope Activities and constitute professional negligence;
<b>Scheme</b>	the scheme of arrangement between MDDUS and the Scheme Members under Part 26 of the Companies Act to effect certain amendments to the Articles and Membership Agreement in connection with the Transaction, the full terms of which are set out in Part 2 of this document, with or subject to any modification, addition or condition which MDDUS may consent to and, if required, the Court may approve or impose;

**Scheme Members**

the members of MDDUS, being persons whose names are entered on the Register of Members as its members:

- (A) at 5:00 p.m. on 20 January 2020; or
- (B) after 5:00 p.m. on 20 January 2020 but prior to the Voting Record Time; or
- (C) on or after the Voting Record Time, but prior to the Scheme Record Time, upon terms that they shall be bound by the Scheme or having undertaken to be bound by the Scheme;

**Scheme Record Time**

5:00 p.m. on the Business Day immediately preceding the Effective Date;

**Transaction**

the agreement reached between MDDUS and DHSC under the Transaction Documents, whereby DHSC assumes responsibility to:

- (A) provide to In-Scope Members and In-Scope Former Members, under the ELS, discretionary benefits that match the In-Scope Benefits;
- (B) administer and handle all In-Scope Claims which prior to the Effective Date were (or would have been, had the claim been notified) the responsibility of MDDUS; and
- (C) exercise discretion and, where discretion is exercised to provide indemnity in respect of In-Scope Claims under the ELS, satisfying all Indemnified Liabilities which prior to the Effective Date were the responsibility of MDDUS;

**Transaction Documents**

the Framework Agreement and the Interim Arrangements Deed;

**United Kingdom**

the United Kingdom of Great Britain and Northern Ireland; and

**Voting Record Time**

5:00 p.m. on 7 February 2020 or, if a Court Meeting is adjourned, 5:00 p.m. on the day which is two Business Days before the date of such adjourned meeting.

References to an enactment include references to that enactment as amended, replaced, consolidated or re-enacted by or under any other enactment before or after the date of this document.

References to a "person" include references to an individual, firm, partnership, company, corporation, other legal entity or unincorporated body of persons.

All the times referred to in this document are to times in London, United Kingdom unless otherwise stated.

References to the singular include the plural and vice versa.

**PART 4**  
**NOTICE OF THE COURT MEETINGS**

**THE MEDICAL AND DENTAL DEFENCE UNION OF SCOTLAND**

**NOTICE IS HEREBY GIVEN** that, by an order dated 16 January 2020 (the **Order**), the Court of Session in Edinburgh (the **Court**) has directed separate meetings to be convened of the In-Scope Members (as defined in the Scheme of Arrangement referred to below) (the **In-Scope Members Court Meeting**) and the Non-In-Scope Members (as defined in the Scheme of Arrangement) (the **Non-In-Scope Members Court Meeting**), for the purpose of considering and, if thought fit, approving (with or without modification) a scheme of arrangement under Part 26 of the Companies Act 2006 (**Companies Act**) and which is proposed to be made between The Medical and Dental Defence Union of Scotland (**MDDUS**) and the Scheme Members (as defined in the Scheme of Arrangement) (the **Scheme of Arrangement**).

**IN-SCOPE MEMBERS COURT MEETING**

**The In-Scope Members Court Meeting shall be held at Kimpton Blythswood Square Hotel, 11 Blythswood Square, Glasgow G2 4AD on 11 February 2020 commencing at 10:00 a.m.**

At the In-Scope Members Court Meeting, the following resolution will be proposed:

*"That the scheme of arrangement dated 20 January 2020 (the **Scheme of Arrangement**), between The Medical and Dental Defence Union of Scotland (**MDDUS**) and the Scheme Members (as defined in the Scheme of Arrangement), a print of which has been produced to this meeting and, for the purposes of identification, signed by the chair hereof, in its original form or with or subject to any modification, addition or condition approved or imposed by the Court of Session in Edinburgh, and consented to by MDDUS, be approved and the directors of MDDUS be authorised to take all such actions as they consider necessary or appropriate for carrying the Scheme of Arrangement into effect".*

Entitlement to attend and cast one vote at the In-Scope Members Court Meeting, or any adjournment thereof, shall be determined by reference to those members identified by MDDUS as In-Scope Members on its register of members (**Register of Members**) at 5:00 p.m. on 7 February 2020, or if the meeting is adjourned, on the day which is two Business Days (as defined in the Scheme of Arrangement) before the date of that adjourned meeting. In each case, changes to the Register of Members after that time shall be disregarded.

Voting at the In-Scope Members Court Meeting will be by poll, which may be conducted as the chair of the In-Scope Members Court Meeting shall determine.

For the In-Scope Members Court Meeting (or any adjournment thereof) to be properly convened, a quorum of six In-Scope Members entitled to vote on the resolution proposed, each being an In-Scope Member or, where the In-Scope Member is a corporation, a duly authorised corporate representative, must be present in person or by proxy.

By the Order, the Court has appointed Dr Jonathan P. Berry or, failing him, Dr Joanna Bayley or, failing her, Christopher Kenny, to act as chair of the In-Scope Members Court Meeting and has directed the chair to report the result of the In-Scope Members Court Meeting to the Court.

## **NON-IN-SCOPE MEMBERS COURT MEETING**

**The Non-In-Scope Members Court Meeting shall be held at Kimpton Blythswood Square Hotel, 11 Blythswood Square, Glasgow G2 4AD on 11 February 2020 commencing at 10:30 a.m. or as soon as reasonably practicable following the conclusion of the In-Scope Members Court Meeting.**

At the Non-In-Scope Members Court Meeting, the following resolution will be proposed:

*"That the scheme of arrangement dated 20 January 2020 (the **Scheme of Arrangement**), between The Medical and Dental Defence Union of Scotland (**MDDUS**) and the Scheme Members (as defined in the Scheme of Arrangement), a print of which has been produced to this meeting and, for the purposes of identification, signed by the chair hereof, in its original form or with or subject to any modification, addition or condition approved or imposed by the Court of Session in Edinburgh, and consented to by MDDUS, be approved and the directors of MDDUS be authorised to take all such actions as they consider necessary or appropriate for carrying the Scheme of Arrangement into effect".*

Entitlement to attend and cast one vote at the Non-In-Scope Members Court Meeting, or any adjournment thereof, shall be determined by reference to those members identified by MDDUS as Non-In-Scope Members on the Register of Members at 5:00 p.m. on 7 February 2020 or, if the meeting is adjourned, on the day which is two Business Days before the date of that adjourned meeting. In each case, changes to the Register of Members after that time shall be disregarded.

Voting at the Non-In-Scope Members Court Meeting will be by poll, which may be conducted as the chair of the Non-In-Scope Members Court Meeting shall determine.

For the Non-In-Scope Members Court Meeting (or any adjournment thereof) to be properly convened, a quorum of six Non-In-Scope Members entitled to vote on the resolution proposed, each being a Non-In-Scope Member or, where the Non-In-Scope Member is a corporation, a duly authorised corporate representative, must be present in person or by proxy.

By the Order, the Court has appointed Dr Jonathan P. Berry or, failing him, Dr Joanna Bayley or, failing her, Christopher Kenny, to act as chair of the Non-In-Scope Members Court Meeting and has directed the chair to report the result of the Non-In-Scope Members Court Meeting to the Court.

## **GENERAL**

A copy of the circular (the **Circular**) incorporating the Scheme of Arrangement and the explanatory statement which is required to be furnished under section 897 of the Companies Act, has been published and is available for Scheme Members to view, and download, on the website of MDDUS, [www.mddus.com/scheme](http://www.mddus.com/scheme). In accordance with section 897(4) of the Companies Act, a hard copy of the Circular can also be obtained by Scheme Members, free of charge, by contacting Civica Election Services during business hours on +44 (0) 20 8889 9203 or by submitting a request in writing to Civica Election Services at The Election Centre, 33 Clarendon Road, London N8 0NW.

The Scheme of Arrangement shall be subject to the subsequent sanction of the Court.

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*Solicitors for MDDUS*

*Solicitors for MDDUS*

Dated: 20 January 2020



## Notes:

- (1) A form of proxy for use by In-Scope Members at the In-Scope Members Court Meeting (the **Form of Proxy for In-Scope Members**) is enclosed with this notice for In-Scope Members. To be valid, the Form of Proxy for In-Scope Members should be completed, signed and returned to Civica Election Services in accordance with the instructions on the form. It is requested that the Form of Proxy for In-Scope Members be received by Civica Election Services not less than two Business Days before the time of the In-Scope Members Court Meeting (in other words, by 10:00 a.m. on 7 February 2020) or, as the case may be, the adjourned In-Scope Members Court Meeting. A pre-paid envelope has been provided for this purpose. Forms of Proxy for In-Scope Members not returned by that time may be handed to Civica Election Services, on behalf of the chair of the In-Scope Members Court Meeting, before the start of the In-Scope Members Court Meeting (or, as the case may be, the adjourned In-Scope Members Court Meeting) and will still be valid. In-Scope Members may also appoint a proxy online by going to [www.cesvotes.com/mddus20](http://www.cesvotes.com/mddus20) (such appointment to be made by 10:00 a.m. on 7 February 2020).
- (2) A form of proxy for use by Non-In-Scope Members at the Non-In-Scope Members Court Meeting (the **Form of Proxy for Non-In-Scope Members**) is enclosed with this notice for Non-In-Scope Members. To be valid, the Form of Proxy for Non-In-Scope Members should be completed, signed and returned to Civica Election Services in accordance with the instructions on the form. It is requested that the Form of Proxy for Non-In-Scope Members be received by Civica Election Services not less than two Business Days before the time of the Non-In-Scope Members Court Meeting (in other words, by 10:30 a.m. on 7 February 2020) or, as the case may be, the adjourned Non-In-Scope Members Court Meeting. A pre-paid envelope has been provided for this purpose. Forms of Proxy for Non-In-Scope Members not returned by that time may be handed to Civica Election Services, on behalf of the chair of the Non-In-Scope Members Court Meeting, before the start of the Non-In-Scope Members Court Meeting (or, as the case may be, the adjourned Non-In-Scope Members Court Meeting) and will still be valid. Non-In-Scope Members may also appoint a proxy online by going to [www.cesvotes.com/mddus20](http://www.cesvotes.com/mddus20) (such appointment to be made by 10:30 a.m. on 7 February 2020).
- (3) If you are in any doubt about completing either the Form of Proxy for In-Scope Members or the Form of Proxy for Non-In-Scope Members, please telephone the MDDUS helpline on +44 (0) 333 043 4444. Calls are charged at the standard geographic rate and will vary by provider. Calls outside the United Kingdom will be charged at the applicable international rate. Lines will be open between 9:00 a.m. to 5:00 p.m., Monday to Friday excluding public holidays in Scotland. Different charges may apply to calls from mobile telephones. Calls may be recorded and randomly monitored for security and training purposes. The helpline cannot provide advice on the merits of the Scheme of Arrangement nor give any legal or other professional advice.
- (4) Completion of the Form of Proxy for In-Scope Members or the appointment of a proxy online will not prevent an In-Scope Member from attending and voting in person at the In-Scope Members Court Meeting, or any adjournment thereof, if they so wish. If an In-Scope Member appoints a proxy and then decides to attend the In-Scope Members Court Meeting in person and vote using their poll card, then their vote in person will override the proxy vote.
- (5) Completion of the Form of Proxy for Non-In-Scope Members or the appointment of a proxy online will not prevent a Non-In-Scope Member from attending and voting in person at the Non-In-Scope Members Court Meeting, or any adjournment thereof, if they so wish. If a Non-In-Scope Member appoints a proxy and then decides to attend the Non-In-Scope Members Court Meeting in person and vote using their poll card, then their vote in person will override the proxy vote.
- (6) An In-Scope Member which is a company (a corporation) and which wishes to be represented at the In-Scope Members Court Meeting, has the right to appoint in writing a corporate representative to attend and vote at the meeting. Corporate representatives have the same powers on behalf of the corporation which they represent as that corporation could exercise as if it were an individual In-Scope Member. A corporate representative may be required to produce to Civica Election Services, on behalf of the chair of the In-Scope Members Court Meeting, the written authority to attend and vote at the relevant meeting at any time before the start of the meeting.
- (7) A Non-In-Scope Member which is a company (a corporation) and which wishes to be represented at the Non-In-Scope Members Court Meeting, has the right to appoint in writing a corporate representative to attend and vote at the meeting. Corporate representatives have the same powers on behalf of the corporation which they represent as that corporation could exercise as if it were an individual Non-In-Scope Member. A corporate representative may be required to produce to Civica Election Services, on behalf of the chair of the Non-In-Scope Members Court Meeting, the written authority to attend and vote at the relevant meeting at any time before the start of the meeting.
- (8) If you have any questions about appointing a proxy online, please telephone the Civica Election Services helpline on +44 (0) 20 8889 9203. Calls are charged at the standard geographic rate and will vary by provider. Calls outside the United Kingdom will be charged at the applicable international rate. Lines will be open between 9:00 a.m. to 5:00 p.m., Monday to Friday excluding public holidays in England. Different charges may apply to calls from mobile telephones. Calls may be recorded and randomly monitored for security and training purposes. The helpline cannot provide advice on the merits of the Scheme of Arrangement nor give any legal or other professional advice.

## NOTICES

### Statements

The statements, opinions and information contained in this document are made, held or given respectively as at the date of this document, unless some other time is specified in relation to them, and reflect the circumstances existing, and the information of which the MDDUS Directors are aware, at that time.

The summary of the principal provisions of the Scheme and related matters in Part 1 of this document is qualified in its entirety by reference to the Scheme itself, the full text of which is set out in Part 2 of this document. Each Scheme Member is advised to read and consider carefully the whole of this document. Reading individual sections or parts in isolation may be misleading.

The statements made in Part 1 of this document (the **Explanatory Statement**) are made to comply with Section 897 of the Companies Act 2006 and the Explanatory Statement includes information that the MDDUS Directors must provide Scheme Members with under the terms of the Companies Act 2006. Scheme Members should not consider the contents of the Explanatory Statement or this document to provide legal or other professional advice. Scheme Members should read and consider carefully the whole of this document before deciding on how to vote on the resolution to be considered at the Court Meetings.

No person has been authorised by MDDUS to make any representations, whether verbal, written, express or implied, concerning the Scheme, which are inconsistent with the statements contained in this document and, if made, such representations may not be relied upon as having been so authorised.

### Forward-looking statements

This document contains statements about MDDUS that are or may be forward-looking and which are prospective in nature. You should not place undue reliance on such statements in deciding what action to take in connection with the Scheme. Forward-looking statements can be identified by the use of forward-looking words such as "targets", "plans", "believes", "expects", "aims", "intends", "will", "should", "could", "would", "may", "anticipates", "strategy" or words or terms of similar substance or the negative thereof.

### Publication on website and availability of hard copies

This document will be available free of charge on the following website during the course of the Scheme: [www.mddus.com/scheme](http://www.mddus.com/scheme).

Scheme Members may request a hard copy of this document by contacting Civica Election Services during business hours on +44 (0) 20 8889 9203 or by submitting a request in writing to Civica Election Services at The Election Centre, 33 Clarendon Road, London N8 0NW. Calls are charged at the standard geographic rate and will vary by provider. Calls outside the United Kingdom will be charged at the applicable international rate. Lines will be open between 9:00 a.m. to 5:00 p.m., Monday to Friday, excluding public holidays in England. Unless such a person makes such a request, a hard copy of this document will not be sent to that person. Such persons may also request that all future documents, announcements and information to be sent to them in relation to the Scheme be in hard copy form.

## **APPENDIX 1**

### **MDDUS MEMBERSHIP BENEFITS NOT COVERED BY THE SCHEME**

The discretionary benefits and categories of indemnity protection provided by MDDUS, set out below, do not fall within the definition of In-Scope Benefits and will not therefore be provided by DHSC under the ELS:

- (i) indemnity for private clinical work within the United Kingdom;
- (ii) indemnity to GPs for non-NHS work undertaken to practice registered patients not covered by primary care NHS contracts - General Medical Services, Personal Medical Services and Alternative Provider Medical Services;
- (iii) indemnity for non-NHS work undertaken by employed practice staff for non-NHS work undertaken to practice registered patients not covered by primary care NHS contracts - General Medical Services, Personal Medical Services and Alternative Provider Medical Services;
- (iv) indemnity for GP work undertaken or services provided outside of England and Wales but within the United Kingdom;
- (v) indemnity for writing insurance reports;
- (vi) indemnity for travel vaccination clinics;
- (vii) indemnity for worldwide Good Samaritan Acts;
- (viii) 24 hours a day/seven days a week access to medico-legal advice;
- (ix) assistance with patient complaints;
- (x) assistance with disciplinary matters;
- (xi) advice and assistance with General Medical Council investigations, including representation at Medical Practitioners Tribunal Service hearings;
- (xii) advice and assistance with NHS England investigations including Performance Advisory Group and Performers List Decision Making Panel hearings;
- (xiii) support with ombudsman investigations;
- (xiv) assistance with drafting reports for the coroner and representation at inquests;
- (xv) assistance with HR and employment law issues;
- (xvi) access to a range of medico-legal publications, on and offline; and
- (xvii) discounted risk management and related training.

Access to such discretionary benefits in relation to incidents arising before 1 April 2019 will continue to be provided by MDDUS.