

Standard Terms of Purchase

[NOTE: these Standard Terms of Purchase require additional provisions to deal with arrangements involving the processing or use of personal data. "Personal data" includes but is not limited to names, contact details, payment card data, financial data, health data, employment details and IT system information (e.g. user ID). Please consult your counterpart if you believe (or are unsure) that personal data is being processed as part of this arrangement.]

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following definitions and rules of interpretation shall apply:

"**Agreement**" means these terms and conditions and the Order to which they relate;

"**Applicable Laws**" means all applicable laws, legislation, statutes, statutory instruments, regulations, codes of practice, edicts, bye-laws or directions or guidance from government or governmental agencies which have the force of law whether local, national, international or otherwise existing from time to time;

"**Bupa**" means the entity identified as such in the Order;

"**Bupa Data**" means any of the following:

(i) any data, information or records that are provided to the Supplier in connection with this Agreement; and

(ii) any derivatives, compilations and copies of the above in whatever form, including any redacted and/or aggregated versions of the same;

"**Bupa Equipment**" means any IT systems and IT or other equipment or tools provided by Bupa to the Supplier and used directly or indirectly in the provision of the Services;

"**Bupa Group**" means Bupa and all entities that directly or indirectly Control, are Controlled by or are under common Control with Bupa, together with its and their respective joint ventures;

"**Bupa Materials**" means all documents, information and materials provided by Bupa to the Supplier relating to any of the Services, including computer programs, drawings, data, reports and specifications;

"**Bupa Personal Data**" means any and all personal data which is supplied by or on behalf of any member of the Bupa Group to Supplier or Supplier's subcontractors under or in connection with this Agreement or as generated, collected, stored, transmitted or otherwise processed as part of, or in connection with, the Services;

"**Bupa's Policies**" means Bupa's policies, procedures and standards (including safety, security and site procedures and standards) notified to the Supplier and as amended from time to time;

"**Bupa's Representative**" means the person identified as such in the Order or as otherwise notified to the Supplier in writing from time to time;

"**Business Days**" means days that are not a Saturday, a Sunday nor a public or bank holiday in England;

"**Charges**" means the sums set out in the Order;

"**Confidential Information**" means commercial, financial, marketing and technical information, know-how, trade secrets and other information in any form or medium, howsoever disclosed or accessed, whether before or after the date of this Agreement (together with any reproductions of such information in any form or medium), which in each case (either in its entirety or in the precise configuration or assembly of its components) is not publicly available (save for where such information entered the public domain as a result of a breach of this Agreement);

"**Control**" means the beneficial ownership of more than 25% (twenty-five percent) of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company (and "Controlled" shall be construed accordingly);

"**Data Protection Legislation**" means all laws relating to the processing of personal data, privacy and security, including, without limitation and to the extent applicable from time to time, the GDPR and all other applicable international, regional, federal or national data protection laws and regulations;

"**Deliverables**" means any documents, products or materials (of any form, including any reports, software, databases, specifications, systems, designs or drawings) which is to be, or is, created, developed, modified or provided in connection with the provision of the Services, as briefly set out in the Order;

"**GDPR**" means the EU General Data Protection Regulation (2016/679);

"**Good Industry Practice**" means: (i) the exercise of that degree of skill, care, diligence, prudence and foresight that would reasonably be expected from a leading skilled and experienced supplier in the provision of services similar to the Services; and (ii) compliance with all Applicable Laws;

"**Goods**" means the goods detailed in the Order;

"**Intellectual Property Rights**" means copyright and related rights, design rights, rights in know-how, rights in Confidential Information, database rights, software rights, patents, rights to inventions, utility models, rights in trade marks (and all goodwill attaching to such trade marks), trade names, domain names and topography rights, in each case whether registered or unregistered, including all applications for, and renewals or extensions of

such rights, and any other similar or equivalent rights or forms of protection that subsist or will subsist now or in the future anywhere in the world;

"**Losses**" means any claims, losses, demands, actions, damages, expense, costs (including court costs and reasonable legal fees), fines, liabilities, obligations, liens and expenses;

"**Order**" means an instruction or purchase order issued by an authorised Bupa representative to the Supplier specifying certain Services (including pursuant to a blanket order for the Services) to be provided by the Supplier, whether in writing (including by order form, email, letter or other document) or orally (including by telephone);

"**Output**" means: (i) the Deliverables (and all drafts, modifications and enhancements of the Deliverables); and (ii) any other works created in course of or exclusively for the purpose of performing the Services;

"**processor**", "**data subject**", "**personal data**" and "**processing**" shall have the meanings ascribed to them in the Data Protection Legislation;

"**Services**" means provision of the Goods, Deliverables and those other services (if any) set out in the Order;

"**Service Credits**" means the respective service credits as may be set out in the Order (if any);

"**Service Levels**" means the Supplier's performance levels as may be set out in the Order (if any);

"**Standard Terms**" means these terms and conditions;

"**Start Date**" means the date described as such in the Order;

"**Supplier**" means the entity identified as such in the Order;

"**Supplier Personnel**" means any person (including any employee, worker or subcontractor) engaged by the Supplier wholly or partly from time to time in the provision of any of the Services;

"**Supplier Representative**" means the person identified as such in the Order or as otherwise notified to Bupa in writing from time to time;

"**Supply Chain**" has the meaning given in clause 22.1;

"**TUPE**" has the meaning given in clause 12.2.

1.2 a statutory provision includes a reference to the statutory provision as modified or re-enacted from time to time, and any subordinate legislation made pursuant to the statutory provision, in each case whether before or after the effective date of this Agreement;

1.3 any reference to persons or entities includes a reference to natural persons, any body corporate, unincorporated association, trust, partnership, or other entity or organisation, and includes a reference to that person's or entity's successors or assigns;

1.4 unless the context requires otherwise, the singular includes the plural and vice versa;

1.5 in the event of any inconsistency between any provisions of an Order and these Standard Terms, the provisions of the relevant Order shall prevail for that Order only;

1.6 the headings and subheadings in this Agreement shall not affect the interpretation of this Agreement;

1.7 any reference to the term "including" shall be deemed to mean "including without limitation"; and

1.8 any reference to the term "execution" shall include execution by electronic signature.

2 SCOPE OF AGREEMENT

2.1 **Effective date of Agreement:** The issue of an Order by Bupa to the Supplier shall constitute an offer by Bupa to purchase the Services from the Supplier, subject to this Agreement. The offer shall be deemed to be accepted on the earlier of: (i) the Supplier issuing a written acceptance of the Order; and (ii) the Supplier doing any act consistent with fulfilling the Order, at which point (and in no other circumstance) this Agreement shall come into existence.

2.2 **Expiry date of Agreement:** This Agreement shall continue in effect until the expiry date as specified in the Order (or, if no expiry date is specified, then the earlier of: (i) the date when all the Services under the Order have been provided; and (ii) 12 months from the effective date of this Agreement), unless terminated in accordance with this Agreement or extended as agreed by both parties.

- 2.3 **Non-exclusivity:** Any purchase of the Services by Bupa is for the benefit of the Bupa Group and is non-exclusive. Nothing in this Agreement shall place a requirement on Bupa to order a minimum volume of Services.

3 DELIVERY

- 3.1 **Method and timing of delivery:** The Supplier shall deliver the Services on the dates and times and at the location and in the manner as agreed between the parties. In the event that no date, time or location for, or manner of, delivery is agreed between the parties, the Supplier shall use its best efforts to confirm this with Bupa promptly and in any event within twenty-eight (28) days of the date of issue of the Order. Time of delivery shall be of the essence and (unless otherwise agreed) shall be during Bupa's normal business hours. Bupa shall not be obliged to accept early delivery of the Services.
- 3.2 **Order details:** The Supplier shall ensure that each supply of the Services corresponds exactly with the corresponding Order, and, in the case of any Goods, shows the Order number, date of Order, number of packages and contents, (in the case of part delivery) the outstanding balance remaining to be delivered and when, (in the case of perishable goods or goods that have a short life expectancy) confirmation of this as well as storage requirements and best before dates, and any other detail requested in the Order. Any dangerous Goods must be prominently marked as such.
- 3.3 **Transport of Goods:** The Supplier shall ensure that any Goods and Deliverables are properly packed, able to withstand handling by mechanical means, and secured in such a manner as to reach their destination in good condition. Further, in the event that Bupa is unable to accept delivery of any Goods or Deliverable, the Supplier shall store and safeguard them, take all reasonable steps to prevent their deterioration, loss or damage, and work with Bupa to ensure their successful re-delivery at no extra cost.
- 3.4 **Packaging materials:** Bupa shall not be liable to the Supplier for any loss or damage to, and shall not be expected to return, any packaging materials (including cases) supplied with the Goods or Deliverables, unless it expressly agrees in writing reasonable arrangements for prompt collection by the Supplier.
- 3.5 **Excessive Services:** Bupa shall not be liable for any Services provided in excess of the Order, which shall remain at the Supplier's risk.

4 QUALITY AND DESCRIPTION

- 4.1 **Goods and Deliverables:** The Supplier undertakes, represents and warrants that the Goods and Deliverables shall:
- 4.1.1 conform in all respects to any standards and requirements stated in the Order, or as agreed by the parties;
- 4.1.2 be of satisfactory quality;
- 4.1.3 be of sound materials and workmanship and free from defects;
- 4.1.4 comply with the Supplier's published specifications, if any and be of at least equal quality to any samples the Supplier provides to Bupa;
- 4.1.5 be fit for the purposes indicated in the Order or as agreed in writing by the parties;
- 4.1.6 comply with all Applicable Laws and any applicable standards; and
- 4.1.7 not infringe the Intellectual Property Rights of any third party.
- 4.2 **Manufacturer guarantees/warranties:** The Supplier shall transfer or assign to Bupa or otherwise obtain for the benefit of Bupa any guarantee, warranty or other confirmation of quality, title or fitness for purpose given by any manufacturer in respect of the Goods (or part thereof) to the extent that the same is capable of such transfer or assignment to Bupa or otherwise providing such benefit for Bupa.
- 4.3 **Services:** The Supplier undertakes, represents and warrants that it will:
- 4.3.1 provide the Services to Bupa in accordance with this Agreement;
- 4.3.2 supply the Services in accordance with Good Industry Practice and notify Bupa if it becomes aware that it may be in breach of this and the steps it will be taking to remedy such breach;

- 4.3.3 use appropriately qualified and trained Supplier Personnel to perform the Services;
- 4.3.4 for Services performed on a time and materials basis, not use personnel to perform these Services whose rate reflects a competency level greater than that reasonably required for the relevant Services;
- 4.3.5 keep accurate and up-to-date records of all work done as part of the Services;
- 4.3.6 ensure that all Bupa Materials, Bupa Equipment and Bupa Data shall: (i) remain the exclusive property of Bupa; and (ii) be held in safe custody, which the Supplier warrants as providing adequate protection from any unauthorised or unlawful disclosure, processing, copying or other use;
- 4.3.7 comply with Bupa's Policies and not disrupt the business or ordinary activities of Bupa; and
- 4.3.8 comply with any reasonable requests or directions of Bupa in relation to the Supplier's performance of the Services, including in order to ensure good Bupa customer outcomes.

5 BUPA OBLIGATIONS

Bupa shall provide the Supplier with access to the site for performance of the Services as set out in the Order (which the Supplier shall use solely for the provision of the Services) and any information reasonably required for provision of the Services.

6 NON-CONFORMING SERVICES

- 6.1 **Non-conformance:** In the event that the Supplier in Bupa's reasonable opinion is in breach of clauses 3 and/or 4, Bupa may refuse to accept any Services related to that breach and will give the Supplier written notice of the nature of the breach. Where the non-conformance can be rectified in Bupa's opinion, the Supplier must then rectify and resubmit the Services to Bupa for acceptance within the period specified in Bupa's notice or, if no period is specified, promptly.
- 6.2 **Remedies:** Following resubmission in accordance with clause 6.1, if the non-conformance has not been rectified, or where the non-conformance cannot be rectified, Bupa may in its sole discretion: (i) accept the Services subject to a reasonable reduction and/or (if already paid) refund in the Charges; or (ii) reject the Services and the Supplier shall refund to Bupa (within fourteen (14) days of the date of the rejection) all sums paid in respect of such Services (and any other Services that in Bupa's opinion cannot be used for their intended purpose as a result); or (iii) recover from the Supplier any costs reasonably incurred by Bupa in obtaining substitute services from another supplier. If Bupa exercises its rights under (ii) or (iii) of this clause, it may at its option terminate this Agreement by written notice with immediate effect for material breach.

7 TITLE & RISK

- 7.1 **Risk:** The Goods and Deliverables shall remain at the risk of the Supplier until delivery is completed in accordance with clause 3 (including offloading and stacking).
- 7.2 **Title:** Notwithstanding clause 7.1, ownership in the Goods and Deliverables shall pass to Bupa on the earlier of payment by Bupa of the Charges or delivery of the respective Goods and Deliverables (without prejudice to any right of rejection or other right which may accrue or have accrued to Bupa).
- 7.3 **Bailment:** The Supplier shall be required to hold the Goods on a fiduciary basis as Bupa's bailee and shall ensure the Goods are stored in a manner which protects and preserves them. The Supplier shall have no right to any lien over the Goods or any right of stoppage in transit.

8 INTELLECTUAL PROPERTY

- 8.1 **Assignment of IPR:** Any Intellectual Property Rights in any Goods and/or Deliverables shall vest in Bupa upon creation. The Supplier hereby assigns (and before delivery to Bupa shall procure the assignment from the Supplier Personnel of) such rights to Bupa with full title guarantee to the fullest extent permitted by law.
- 8.2 **Further assurance:** The Supplier undertakes to execute all documents, make all applications, give all assistance and do all acts and things, at the reasonable expense of Bupa and at any time either during or after the term of this Agreement, as may, in the opinion of

Bupa, be necessary or desirable to vest in Bupa all Intellectual Property Rights in the Goods and/or Deliverables, and/or to defend Bupa against claims that any of such Intellectual Property Rights infringe third party rights, and/or to otherwise protect and/or maintain any such Intellectual Property Rights.

- 8.3 **Trade marks:** All logos, trade names and trade marks (the “Marks”) owned or used by any of the Bupa Group in the course of its business are the property of the Bupa Group. The Supplier may not use any such Marks (whether to publicise the existence of the Supplier’s relationship with Bupa or otherwise) or any similar Marks without the prior written permission of Bupa’s Corporate Affairs Director on a case by case basis.

9 CHARGES

- 9.1 **Charges:** Subject to the provisions of this clause 9, Bupa shall pay the Charges to the Supplier in consideration of the Supplier’s performance of its obligations under this Agreement. The Charges set out in the Order include all expenses, costs and taxes (including VAT) relevant to the Services.
- 9.2 **Invoices:** Unless otherwise agreed in writing by the parties, all invoices should be supplied promptly following delivery of the Services in PDF format (one invoice per PDF) by email to accpay@bupa.com, save for in respect of invoices for Services provided to Oasis Dental Care Limited trading as Bupa Dental Care in which case invoices should be sent by email to: invoice.queries@bupadentalcare.co.uk, in each case clearly stating Bupa’s: (i) purchase order number; and (ii) key contact name.
- 9.3 **Payment terms:** Bupa shall pay the Charges to the Supplier for the Services within 45 (forty-five) days from the end of the month in which Bupa receives the relevant valid undisputed invoice from the Supplier at the times agreed under the Order (or, if no time is agreed, on completion of supply of the Services).
- 9.4 **Disputed invoice:** Notwithstanding clause 9.3, if Bupa disputes any sum included in an invoice, it shall notify the Supplier of the dispute and the amount to which it relates. Bupa shall pay any undisputed balance of the invoice in accordance with this clause 9.4 but may withhold payment of the disputed sum until the dispute is resolved in accordance with the dispute resolution procedure set out at clause 16.
- 9.5 **Interest:** If any undisputed sum payable under this Agreement is not paid when due then, following the expiry of 30 (thirty) days’ written notice, the party entitled to payment may claim interest from the due date until payment is made in full, both before and after any judgment, at 2% (two per cent) per annum above the Bank of England Bank Rate from time to time. The parties agree that this clause 9.5 is a substantial remedy for late payment of any sum payable under the Agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 9.6 **Set-off:** Bupa may set-off, against any liability of any of the Bupa Group to the Supplier, any liability that it reasonably believes to be due from the Supplier to any of the Bupa Group.
- 9.7 **Service Credits:** If the Services are not being provided in accordance with any of the Service Levels (and the Supplier will provide sufficient information to enable Bupa to assess this), the Supplier shall pay or credit (as applicable) the Service Credits to Bupa (in full, free from set-offs, counterclaims and other deductions) within 30 (thirty) days of the end of the month in which they accrued.

10 SUBCONTRACTING

- 10.1 **No subcontracting:** The Supplier shall not subcontract the performance of any of its obligations under this Agreement without Bupa’s prior written consent.
- 10.2 **Subcontract terms:** Where a subcontractor is appointed, the Supplier shall ensure that it is engaged under a contract containing obligations no less onerous than those imposed on the Supplier and the Supplier shall remain responsible and liable to Bupa for any work performed by any subcontractors as part of the Services.
- 10.3 **Replacement:** Bupa may at any time and without reason request that any particular subcontractor appointed by the Supplier under this Agreement in accordance with this clause be replaced.

11 CONFIDENTIALITY

- 11.1 **No disclosure:** The Supplier shall, and shall procure that all Supplier Personnel shall, keep in strict confidence all Confidential Information

relating to any of the Bupa Group, this Agreement and/or the Services performed under it, and shall not use or disclose the same, save: (i) for the purposes and as required for the proper performance of this Agreement; or (ii) with the prior written consent of Bupa on a case by case basis; or (iii) as may be required by Applicable Law, a court of competent jurisdiction or any governmental or regulatory authority.

- 11.2 **Permitted disclosure:** Where any disclosure is made pursuant to clause 11.1(i) or (ii) above, it shall be done subject to obligations equivalent to those set out in this Agreement and the Supplier shall ensure such recipient of the Confidential Information complies with such obligations. The Supplier shall be responsible to Bupa in respect of any disclosure or use of such Confidential Information by the recipient.

- 11.3 **Record keeping:** Notwithstanding clause 11.1, the Supplier may retain one copy of any Confidential Information required for its reasonable record keeping requirements, provided it is held securely in compliance with this clause 11.

- 11.4 **Goodwill:** The Supplier shall not initiate or participate in any actions or conduct tending to injure, bring into disrepute, ridicule, damage or destroy the goodwill of any of the Bupa Group.

12 STATUS AND PERSONNEL

- 12.1 **Bupa policies:** The Supplier shall ensure that its employees, agents and subcontractors comply with all applicable Bupa policies, which the Supplier is responsible for obtaining from Bupa.
- 12.2 **Inapplicability of TUPE:** It is the parties’ commercial intention that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) shall not apply to any transfer of the Services or any part of the Services from the Supplier to Bupa on the expiry or termination of the Agreement (in whole or in part), howsoever that occurs. Accordingly it is the parties’ intention that that none of the Supplier’s personnel shall transfer into the employment of Bupa.
- 12.3 **Independent contractor:** Supplier is not authorised, and shall not purport to be authorised, to create obligations binding on Bupa or any member of the Bupa Group. The relationship of the Supplier and the Supplier’s personnel to Bupa will be that of an independent contractor. Nothing in this Agreement shall render the Supplier or any of the Supplier’s personnel an employee, worker, agent or partner of Bupa or any member of the Bupa Group, and the Supplier shall not hold itself out as such and shall procure that the Supplier’s personnel shall not hold themselves out as such.
- 12.4 **Indemnity:** The Supplier irrevocably and unconditionally agrees to indemnify and keep indemnified the Bupa Group and its and their employees, subcontractors and agents and any replacement supplier in full and on demand against all Losses incurred or suffered by any of them, and whether wholly or in part resulting directly or indirectly from any assertion by any person or any representative of any person to the effect that: (i) TUPE is applicable to this Agreement or any Order upon its termination or expiry or upon the termination of any Services or any other reduction in scope, including where Bupa or a replacement supplier has terminated the employment of such person; and/or (ii) notwithstanding clause 12.3, the Supplier or any of the Supplier’s Personnel are deemed to be an employee, worker, agent or partner of any of the Bupa Group.
- 12.5 **Information and assistance:** The Supplier will promptly provide such information and assistance as is requested by Bupa at any time in order to assess any liability under TUPE.

13 DATA PROTECTION

- 13.1 **Processing:** The subject-matter and duration of processing, the nature and purpose of the processing, the type of personal data and categories of data subjects to be processed by Supplier under this Agreement are set out in the Order. For the avoidance of doubt, unless the details referred to in this clause 13.1 are set out in the Order then it is not intended that any personal data will be processed under this Agreement and the Supplier is not permitted to process any Bupa Personal Data.
- 13.2 **Data Protection Legislation:** The Supplier shall comply with its obligations under applicable Data Protection Legislation when processing Bupa Personal Data.
- 13.3 **Data Processor:** Where the Supplier processes Bupa Personal Data, the Supplier shall do so as a processor on behalf of Bupa and the following provisions shall apply:

- 13.3.1 The Supplier shall, and shall ensure that its subcontractors shall, comply with the express obligations of a processor as articulated in Articles 28(3)(a) to 28(3)(h) inclusive of the GDPR.
- 13.3.2 Bupa provides a general authorisation to the Supplier to engage further processors to process the Bupa Personal Data, provided that the Supplier: (a) has a written contract in place with any such further processors (which imposes obligations similar to those set out in this clause 13.3); and (b) ensure that such processors comply with those obligations. The Supplier shall provide Bupa with a list of those further processors, and shall give Bupa prior notice of any intended addition to or replacement of those further processors so that Bupa has an opportunity to object to any such change. If Bupa reasonably objects to any such change, Bupa may require Supplier to stop processing Bupa Personal Data and terminate any affected services.
- 13.3.3 The Supplier shall not transfer Bupa Personal Data outside of the European Economic Area unless the Supplier has a lawful basis for that transfer (in which case the Supplier shall inform Bupa of that transfer and, where necessary, Bupa's documented instructions shall be updated with details of that transfer).

14 LIABILITY

- 14.1 **Unlimited liability:** Nothing in this Agreement limits or excludes, or will be deemed to limit or exclude, either party's liability for: (i) death or personal injury caused by negligence; (ii) wilful misconduct; (iii) fraud or fraudulent misrepresentation; (iv) sums arising under clauses 12.4 (Status and Personnel) and/or 15.1 (Indemnity); (v) sums required to be insured under clause 20.1 (Insurance); (vi) any breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; and (v) any other loss that may not otherwise be limited or excluded by Applicable Law.
- 14.2 **Supplier's limited liability:** Subject to clause 14.1, the Supplier's maximum liability for all and any Losses on the part of the Bupa Group that arise under or in connection with this Agreement shall be limited to 300% (three hundred percent) of the aggregate Charges paid or payable by the Bupa Group in connection with this Agreement at the time of the claim, or £10,000,000 (ten million GBP), whichever is the greater.
- 14.3 **Bupa's limited liability:** Subject to clause 14.1, the Bupa Group's maximum aggregate liability for all and any Losses that arise under or in connection with this Agreement shall be limited to 100% (one hundred percent) of the aggregate Charges paid or payable by the Bupa Group under this Agreement for the 12 (twelve) months prior to the date on which the relevant breach took place, but this limitation shall not limit or exclude Bupa's obligation to pay the Charges in accordance with this Agreement.

15 INDEMNITY

- 15.1 **Supplier's obligations:** The Supplier shall at all times fully indemnify the Bupa Group and their respective officers, employees and agents against any and all Losses suffered or incurred by any or all of the Bupa Group, or for which any or all of the Bupa Group may become liable, arising out of:
- 15.1.1 any breach by the Supplier of any warranty of this Agreement;
- 15.1.2 any actions or omissions of the Supplier that cause any of the Bupa Group to breach any regulatory requirement;
- 15.1.3 any claim made against Bupa by any customer or third party to the extent that such claim relates to or arises from any of the Services;
- 15.1.4 any default by the Supplier or any Supplier Personnel that relates to the provisions of clause 8 (Intellectual Property), 11 (Confidentiality), 13 (Data Protection), 21 (Anti-Bribery), and/or 22 (Modern Slavery);
- 15.1.5 personal injury or death caused by the Supplier's negligence; and/or
- 15.1.6 any damage to property resulting from the negligence, breach of statutory duty, omission, default or breach of contract of the Supplier.
- 15.2 **Bupa's obligations:** Bupa shall notify the Supplier promptly of any third party claim pursuant to clause 15.1, make no settlement, admission or compromise concerning such claim, allow the Supplier to conduct the defence of the claim using external legal counsel

approved by Bupa (such approval not to be unreasonably withheld or delayed) and, at the Supplier's expense, provide the Supplier with such assistance as the Supplier may reasonably request. In conducting such defence, the Supplier shall not compromise or settle any claim without the prior written consent of Bupa and shall keep Bupa updated of all material steps on an ongoing basis.

16 DISPUTE RESOLUTION

- 16.1 **Escalation:** If a dispute arises under or in relation to this Agreement, either party shall give notice to the other party in writing setting out the full particulars giving rise to the dispute. Following receipt of such notice, the Bupa Representative and Supplier Representative shall endeavour to promptly resolve the dispute.
- 16.2 **Legal proceedings:** If such dispute has not been so resolved within 15 (fifteen) Business Days of receipt of the dispute notice, either party shall be entitled to pursue other forms of dispute resolution. Before expiry of such period, neither party shall initiate legal proceedings unless such party has reasonable cause to do so to avoid damage to its business, Intellectual Property Rights or (in relation to Bupa) Bupa Data, or to protect any right of action it may have.

17 RECORDS AND AUDIT

- 17.1 **Records:** The Supplier shall, and shall procure that any subcontractors (if applicable) shall, maintain and retain complete and accurate books, records of account, reports and other data necessary for the proper administration of this Agreement for 7 (seven) years after termination or expiry of this Agreement.
- 17.2 **Audit:** Bupa or its auditors shall have the right to inspect the Supplier's compliance with this Agreement and the financial and accounting records pertaining to the Supplier's performance under this Agreement. Such right shall apply once per year between 8:30am to 6:00pm on a Business Day on giving reasonable notice, except in the event of: (i) a complaint by a regulatory authority; (ii) an alleged or actual breach of security; (iii) an alleged or actual breach of clauses 21 (Anti-Bribery) and/or 22 (Modern Slavery); or (iv) identified failings in an audit, in which case, further inspections on short notice outside of normal business hours may take place.

18 TERMINATION

- 18.1 **Mutual right to terminate:** Either party may terminate this Agreement with immediate effect on giving written notice: (i) for material breach not capable of remedy; or (ii) if a curable material breach is persisting fifteen (15) Business Days after the party in breach has been notified of it, excluding breach of clause 9.2.
- 18.2 **Termination for convenience:** Bupa may terminate this Agreement on no less than 30 (thirty) days' prior written notice.
- 18.3 **Bupa's right to terminate:** Bupa may terminate this Agreement by written notice with immediate effect in the event:
- 18.3.1 of the Supplier's actual, threatened or likely insolvency (as defined by section 123 of the Insolvency Act 1986), bankruptcy, administration, administrative receivership, liquidation or other analogous event; or
- 18.3.2 that the Supplier repeatedly breaches any term of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement; or
- 18.3.3 that the Supplier or any Supplier Personnel commits any gross misconduct affecting the business of any of the Bupa Group; or
- 18.3.4 that the Supplier or any Supplier Personnel, in the reasonable opinion of Bupa, is negligent or incompetent in the performance of the Services; or
- 18.3.5 that any warranty given by the Supplier under this Agreement is found to be untrue or misleading; or
- 18.3.6 that there is a change of Control of the Supplier.
- 18.4 **Part termination:** If Bupa becomes entitled to terminate this Agreement or any Order under this clause 18 or otherwise, Bupa may at its option and in its sole discretion terminate only the supply of Services giving cause for concern, and the terms and conditions applicable to the remaining Services under this Agreement shall remain in full force and effect

19 CONSEQUENCES OF TERMINATION

- 19.1 ~~On termination or expiry of this Agreement, howsoever arising:~~

- 19.1.1 the provisions of clauses 1, 8, 11 to 17 (inclusive), 19, 20, 24 and any provision which expressly or by implication is intended to come into or remain in force on or after termination shall continue in full force and effect;
- 19.1.2 the Supplier shall immediately on termination or expiry of the Order provide to Bupa (in a format and on media reasonably requested by Bupa) all Output (whether complete or not), Bupa Data, Bupa Equipment, Bupa Materials and any other materials, documents or equipment that belongs to any of the Bupa Group and, if the Supplier fails to do so, any of the Bupa Group may enter the Supplier's premises and take possession of them;
- 19.1.3 subject to clause 11.3, each party shall promptly on termination or expiry of the Agreement securely destroy or delete the other party's Confidential Information; and
- 19.1.4 the relationship of the parties shall cease and any obligations, rights or licences granted under or pursuant to this Agreement shall cease to have effect, save to the extent expressly provided for in this clause 19.

20 INSURANCE

- 20.1 **Levels of insurance:** The Supplier shall maintain at its own cost (and on request provide evidence to Bupa in the form of a broker's letter) the following insurance policies with an insurer of good standing and reasonably acceptable to Bupa for the term of this Agreement and 6 (six) years thereafter: (i) professional liability insurance for a minimum amount of £10,000,000 (ten million GBP); (ii) public liability insurance for a minimum amount of £10,000,000 (ten million GBP); (iii) employer's liability insurance for a minimum amount of £10,000,000 (ten million GBP); and (iv) product liability insurance for a minimum amount of £10,000,000 (ten million GBP), in each case on an each and every claim basis with the exception of professional indemnity and product liability which may be in aggregate for the period of insurance.
- 20.2 **Supplier's obligations:** The Supplier shall not during the term of this Agreement and for a period of 6 (six) years thereafter act or refrain from acting in such a way as would entitle the underwriter(s) of the policies required by clause 20.1 above to avoid or negate their liability to deal with any claim(s) which would otherwise be covered.

21 ANTI-BRIBERY

- 21.1 **Compliance:** The Supplier shall comply, and at all times maintain and enforce adequate policies and procedures designed to ensure compliance with, any Applicable Laws, including the Bribery Act 2010.
- 21.2 **Warranty:** The Supplier represents and warrants that: (i) no undue financial or other advantage of any kind has been or will be given or received by the Supplier or on its behalf in connection with the negotiation, conclusion or performance of any of this Agreement; and (ii) no foreign public official is an officer or employee of the Supplier or has a direct or indirect interest in the Supplier.
- 21.3 **Notification:** The Supplier shall notify Bupa: (i) promptly if it becomes aware, or has any suspicion, of any request or demand for any undue financial or other advantage of any kind received by the Supplier or on its behalf in connection with the negotiation, conclusion or performance of any of this Agreement; or (ii) immediately if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier.
- 21.4 **Certification:** On Bupa's request, the Supplier shall certify in writing signed by an officer of the Supplier that it remains in compliance with this clause 21, providing such supporting evidence as Bupa may reasonably request.

22 MODERN SLAVERY

- 22.1 **Compliance:** Without prejudice to any other provisions in this Agreement, the Supplier shall, and shall procure that all persons who will or may be used in performing or to support the performance of any part of this Agreement in any part of the world ("**Supply Chain**") shall, at all relevant times:
- 22.1.1 comply with the provisions of the Modern Slavery Act 2015 ("**MSA**") and all Applicable Laws made under it or relating to it, and ensure that all relevant Supplier Personnel have received appropriate training on the same;
- 22.1.2 comply with any Bupa policy relating to modern slavery and/or human trafficking as is notified to the Supplier by Bupa from time to time; and

- 22.1.3 immediately notify Bupa's UK Procurement Director in writing if it has reason to believe that it or any member of its Supply Chain is in breach or is likely to breach any of the MSA or any provisions of this clause 22 (or would do so if it were a party to this Agreement and/or any Order), or if it receives a communication from any person alleging breach of any of the MSA.
- 22.2 **Adjustments:** On Bupa's reasonable request, the Supplier shall make, and shall require any relevant member of its Supply Chain to make, such adjustments to its processes that relate to staff hiring and supplier selection as Bupa reasonably considers to be desirable to address any risk of non-compliance with the MSA.

23 ASSIGNMENT

- 23.1 **No assignment:** The Supplier shall not, assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this Agreement without the prior written consent of Bupa.
- 23.2 **Permitted assignment:** Bupa may assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement without the consent of the Supplier.

24 MISCELLANEOUS

- 24.1 **Warranties:** Each party warrants, represents and undertakes that:
- 24.1.1 by entering into and performing its obligations under this Agreement, it is not in breach of any other agreement to which it is a party;
- 24.1.2 it has and will continue to have full capacity and all necessary licences, permits and consents to enter into and perform this Agreement; and
- 24.1.3 this Agreement will be executed by a duly authorised representative of the relevant party.
- 24.2 **Waiver:** No delay, omission or failure by either party to exercise any of its rights or remedies shall be deemed to be a waiver thereof or an acquiescence in the event giving rise to such right or remedy, but every such right and remedy may be exercised from time to time and so often as may be deemed expedient by the party exercising such right or remedy.
- 24.3 **Rights and remedies:** Each right, remedy and obligation provided under this Agreement are in addition to any other right, remedy and obligation under this Agreement and those provided by law.
- 24.4 **Entire agreement:** This Agreement represents the entire agreement between the parties for the Services.
- 24.5 **Battle of the forms:** The standard terms and conditions of either party's business forms, including purchase orders and invoices, shall be without legal effect in transactions under this Agreement.
- 24.6 **Binding:** This Agreement shall be binding upon and shall inure to the benefit of the parties, their respective successors and assigns.
- 24.7 **Further assurance:** The Supplier shall do all acts and execute all documents (at the Supplier's cost and expense) as Bupa requests to give full effect to this Agreement.
- 24.8 **Third party rights:** With the exception of the Bupa Group, a person or entity that is not a party to this Agreement shall not have any rights under or in connection with it.
- 24.9 **Counterparts:** This Agreement may be executed in any number of counterparts, and counterparts may be exchanged by electronic transmission (including by email), each of which when executed shall constitute a duplicate original, but all of which shall constitute one and the same instrument. No counterpart shall be effective until each party has executed at least one counterpart of this Agreement.
- 24.10 **Severance:** Should any provision of this Agreement be or become invalid, illegal or unenforceable, the parties agree to attempt to substitute for it a valid, legal and enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of such provision. If such substitution is not possible, the relevant provision shall be deemed deleted. Any substitution or deletion of a provision under this clause shall not affect the validity or enforceability of the rest of this Agreement.
- 24.11 **Notices:** Any notices sent under this Agreement must be in writing, addressed to Bupa's Representative or the Supplier Representative, and delivered by: (i) prepaid registered post or airmail to the

registered address of the applicable party, or the address as notified by either party to the other party from time-to-time; and (ii) also by email to: ContractNotices@bupa.com. Any notice or document shall be deemed served, if delivered, at the time recorded by the postal/airmail delivery service. This clause does not apply to the service of any proceedings or other documents in any legal action, arbitration or other form of dispute resolution

24.12 **Law and jurisdiction:** The Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales and the courts of England and Wales shall have non-exclusive jurisdiction.