
Healthcare Services Agreement

This document contains the Provider Terms which form part of a Healthcare Services Agreement between:

- (1) Bupa Insurance Services Limited, a company incorporated in England and Wales with registered number 03829851 whose registered office is at 1 Angel Court, London, EC2R 7HJ ("**Bupa**"); and
- (2) the Provider listed in Schedule 1 ("**Provider**"),

each a "**Party**" and together the "**Parties**".

BACKGROUND

- (A) Bupa is a service company authorised to act for Bupa Insurance, an insurance company providing a variety of private medical insurance products under which Members receive funding for private medical treatment. Bupa is also authorised to act on behalf of the trustees of Bupa Health Trust Arrangements, and under other Schemes under which other Members are entitled to receive funding for private medical treatment.
- (B) The Provider's Group is engaged in the provision of Treatment at its facilities in the United Kingdom.
- (C) Bupa wishes to arrange for some or all of its Members to have access to certain Treatment provided by the Provider's Group, and has agreed to recognise some or all of the Provider's facilities to provide such Services to such Members in accordance with the terms of this Healthcare Services Agreement.
- (D) This Healthcare Services Agreement may be one of a series of agreements which Bupa has entered into with the Provider. Other healthcare services agreements may already be in place, or be in the process of being put in place, between Bupa and the Provider in respect of certain other services and/or other facilities and/or other categories of Members. The provisions of this Healthcare Services Agreement shall govern the provision of the Services at the Facilities to the Relevant Members during the Term. The terms of the Other Agreements shall apply to the circumstances governed by those Other Agreements.

AGREEMENT:

1 Definition and Interpretation

1.1 In these Provider Terms, the following expressions shall have the following meanings:

"Bupa Group" means Bupa, its subsidiaries and subsidiary undertakings, any holding company of Bupa and all other subsidiaries and subsidiary undertakings of any such holding company from time to time;

“Bupa Health Trust Arrangement”	means a trust which provides for the payment of treatment costs and other costs incurred by beneficiaries of the trust and which is administered by Bupa or another member of the Bupa Group from time to time;
“Bupa Insurance”	means Bupa Insurance Limited, a private limited company incorporated in England and Wales with registered number 03956433 whose registered office is at 1 Angel Court, London, EC2R 7HJ;
“Charges”	means the charges for each Service set out in Schedule 2;
“Covered Treatment”	means the Services for which the Relevant Member is entitled to be reimbursed under their Member Policy, subject to: (a) the relevant Member Policy being valid and in force at the time the Services are provided; (b) there being no amounts payable to Bupa under the relevant Member’s Policy that are outstanding at the time the Services are provided; and (c) the charges for the Services being within the maximum aggregate amounts that may be claimed by the Relevant Member under the relevant Member Policy;
“Earliest End Date”	means the earliest date on which this Healthcare Services Agreement may be terminated, which shall be the date set out in paragraph 2 of Schedule 1;
“Episode”	means the period of time commencing when a Relevant Member is admitted to a Facility for continuous Treatment and ending when that Relevant Member is discharged from a Facility;
“Facilities”	means the hospitals and facilities recognised by Bupa as being permitted to provide all or some of the Services to the Relevant Members under and in accordance with the terms of this Healthcare Services Agreement, such hospitals and facilities being those set out in Schedule 1 (as such list may be amended from time to time in accordance with the terms of this Healthcare Services Agreement) and “Facility” shall be construed accordingly;
“Healthcare Services Agreement”	means this agreement between Bupa and the Provider which relates to the provision of the Services at the Facilities for the Relevant Members and which comprises these Provider Terms and the Rules (as each may be varied in accordance with the terms of this agreement);
“Member”	means: <ul style="list-style-type: none"> (A) an individual who is covered under a health insurance contract which is underwritten by Bupa Insurance or another member of the Bupa Group; (B) an individual who is a beneficiary under a Bupa Health Trust Arrangement; (C) an individual who is a beneficiary of a scheme which is not health insurance provided by Bupa, or a trust, the primary purpose of which is to provide for the payment of the cost of Treatment received by

beneficiaries of the scheme and which is administered by a member of the Bupa Group; or

(D) an individual who benefits under a rehabilitation arrangement with Bupa;

"Member Policy" means, in respect of a Member, the particular Scheme which provides cover for medical expenses incurred by the Member;

"Other Agreements" means the agreement(s) between Bupa and the Provider which are intended to govern arrangements similar to those set out in this Healthcare Services Agreement but which relate to different services and/or facilities and/or Members (as appropriate);

"Provider Terms" means the terms set out in this document (including the Schedules);

"Provider's Group" means the Provider, its subsidiaries and subsidiary undertakings, any holding company of the Provider and all other subsidiaries and subsidiary undertakings of any such holding company from time to time;

"Quality Assessment Information" means the quality assessment information requested by Bupa and provided by the Provider as specified in Schedule 1;

"Recognition Status" means, in respect of each Facility, the status of the Facility as a Bupa recognised hospital or facility as and to the extent set out in Schedule 1, the ability of a Member to access any Facility always being subject to the eligibility of a Member to do so under their Member Policy, and the relevant Treatment being Covered Treatment;

"Relevant Members" means those categories of Members covered by this Healthcare Services Agreement as set out in Schedule 1, and "Relevant Member" shall be construed accordingly;

"Rules" means the rules which Bupa publishes and which the Provider and Bupa have agreed shall apply to this Healthcare Services Agreement, further details in respect of which are set out at paragraph 3 of Schedule 1. References to a particular set of Rules in this Healthcare Services Agreement shall be a reference to the version of those Rules set out at paragraph 3 of Schedule 1 (as may be amended in accordance with this Healthcare Services Agreement);

"Schedules" means the schedules to these Provider Terms;

"Schemes" means:

(A) health insurance contracts which are underwritten by Bupa Insurance or another member of the Bupa Group;

(B) Bupa Health Trust Arrangements;

(C) health insurance schemes, health trust schemes, or schemes for which the primary purpose is to provide for the payment of the cost of

Treatment received by beneficiaries of the schemes, in each case administered by a member of the Bupa Group; and

(D) rehabilitation arrangements with Bupa,

in each case, from time to time, and "**Scheme**" means any one of such schemes or health trusts;

"Service Line" means a type of Treatment relating to a specific clinical specialty, including any sub-specialty and/or any individual Treatment, procedure or test;

"Services" means:

(A) the services, facilities and goods to be provided by the Provider at the relevant Facility further details of which are set out in Schedules 1 and 2; and

(B) the provision of Separately Chargeable Drugs and Separately Chargeable Prostheses (as defined in the Definitions Rules),

in each case, on the basis of and inclusive of those elements of service described in the Services and Charges Rules and "**Service**" shall be construed accordingly;

"Start Date" means the commencement date of this Healthcare Services Agreement which shall be the date set out in paragraph 2 of Schedule 1;

"Term" means the period of this Healthcare Services Agreement commencing on the Start Date and ending when this Healthcare Services Agreement is terminated in accordance with its terms; and

"Treatment" means a medical, surgical or diagnostic service that is needed to diagnose, relieve or cure a disease, illness or injury.

1.2 This Healthcare Services Agreement shall be interpreted in accordance with the principles of interpretation set out in Part 2 of the Definitions Rules.

1.3 The provisions of the Provider Terms should always be read alongside and in conjunction with the provisions of any relevant Rules.

1.4 In the event of any conflict between the different parts of this Healthcare Services Agreement, the order of precedence shall be: the Schedules; the Provider Terms (excluding the Schedules); the Recognition and General Terms Rules; the Billing and Payment Rules; and then the other Rules (which shall rank equally).

2 Recognition Status of Facilities

- 2.1 For the duration of this Healthcare Services Agreement Bupa shall recognise the Facilities to provide Treatment to the Relevant Members, to the extent such Treatment is Covered Treatment in accordance with the Recognition Status of the Facilities. The Facilities and other facilities within the Provider's Group may be recognised under Other Agreements between the Parties for other services and/or Schemes.
- 2.2 Subject to the other provisions of this Healthcare Services Agreement, the Provider shall ensure that the Services provided at the Facilities at the date of this Healthcare Services Agreement (or in relation to any Facilities that are added to this Healthcare Services Agreement, as at the date such Facilities are recognised) continue to be provided in accordance with this Healthcare Services Agreement and that such Services are provided at the Facilities subject and to the extent provided for in this Healthcare Services Agreement.

3 Charges for the Services

- 3.1 Bupa shall be liable to pay the Provider for the Services at the Charges, in each case subject and to the extent:
- (A) that the relevant Facility is recognised to provide such Services under its Recognition Status;
 - (B) provided for in this Healthcare Services Agreement; and
 - (C) the Services are Covered Treatment.
- 3.2 Where any amendment to the Charges takes effect during an Episode, the applicable Charges for any Services provided to the Member shall be those applying at the date on which the particular Service is provided to the Member.
- 3.3 If:
- (A) neither Party has served notice to terminate this Healthcare Services Agreement in accordance with Clause 5.2 and, as a result, this Healthcare Services Agreement continues after the Earliest End Date; or
 - (B) this Healthcare Services Agreement has or is due to be terminated in accordance with its terms, but the Parties have agreed that the Provider should continue to provide some or all of the Services pursuant to a new healthcare services agreement but that new healthcare services agreement has not yet been entered into between the Parties,
- then the Charges applying on the day before the Earliest End Date shall continue to apply until the date that this Healthcare Services Agreement is terminated or the new healthcare services agreement has been entered into (whichever is the earlier).
- 3.4 For the avoidance of doubt, this Healthcare Services Agreement does not impose any minimum or maximum volume of Services that Members must or may request from, or Bupa is required or may refer to, the Provider, and does not restrict Bupa's ability to direct Members in accordance with the terms of a Member Policy.

3.5 The Parties agree that the charges set out in Schedule 2 will apply to Services provided to Members covered by health insurance provided by members of the Bupa Group incorporated outside of the United Kingdom (including Bupa Australia, Bupa Middle East and Sanitas) and health insurance sold by Bupa through its international division, and in these circumstances the Provider shall directly invoice the relevant organisation within the Bupa Group which at the relevant time operates the Scheme concerned.

4 Warranties, Representations and undertakings

4.1 The Provider warrants to Bupa that as at the date of this Healthcare Services Agreement:

- (A) it has the requisite power and authority to enter into and perform the obligations under this Healthcare Services Agreement on behalf of itself and any other member of the Provider's Group which owns or manages the Facilities;
- (B) notwithstanding the provisions of Clause 4.1(A), it has the requisite power and authority to procure that the relevant members of the Provider's Group will comply with the relevant provisions of the Healthcare Services Agreement in respect of the Facilities which they may own or manage; and
- (C) it and/or other members of the Provider's Group have all the necessary regulatory licences and approvals to operate as a provider of the Services.

4.2 The Provider warrants to Bupa that the Quality Assessment Information provided to Bupa for the purposes of considering whether to recognise the Provider under the terms of this Healthcare Services Agreement remains correct as at the date of this Healthcare Services Agreement save as disclosed in writing by the Provider to Bupa, and the Provider will notify Bupa promptly of any changes which would render the provided quality assessment information incorrect during the course of this Healthcare Services Agreement.

4.3 Bupa warrants to the Provider that as at the date of this Healthcare Services Agreement it has the requisite power and authority to enter into and perform the obligations under this Healthcare Services Agreement on behalf of itself.

4.4 Except to the extent expressly set out in this Healthcare Services Agreement, neither Party makes any further warranties whether express or implied, and all implied warranties of any kind are excluded to the extent permitted by law.

4.5 The Provider hereby undertakes that it or other members of the Provider's Group will for the duration of this Healthcare Services Agreement maintain all necessary regulatory licences and approvals to operate as a provider of the Services.

4.6 Each Party hereby undertakes to the other Party that, for the duration of this Healthcare Services Agreement, it will neither do nor omit to do anything which it intends will damage the reputation or good name of the other Party.

4.7 Where an obligation under this Healthcare Services Agreement relates to a Facility which is owned or managed by a member of the Provider's Group and not the Provider itself, the Provider shall procure that the relevant member of the Provider's Group shall comply with the relevant obligations of the Healthcare Services Agreement. Further, for the purposes of this Healthcare Services

Agreement, every act or omission of such relevant member of the Provider's Group shall be deemed to be the act or omission of the Provider and the Provider shall be liable to Bupa as if such act or omission had been committed or omitted by the Provider itself.

- 4.8 Anti-bribery and corruption - The parties shall each comply with all applicable UK legislation relating to the detection and prevention of financial crime (including, without limitation, the Bribery Act 2010) and shall have in place adequate policies and procedures to procure compliance.
- 4.9 For the avoidance of doubt, nothing in this Agreement obliges either Party to perform any action (including but not limited to paying any claim or providing any benefit or services) to the extent it would cause us to breach any trade or economic sanctions, laws or regulations of any jurisdiction to which we are subject (which may include without limitation those of the European Union, the United Kingdom and/or the United States of America).

5 Term and Termination Rights

- 5.1 This Healthcare Services Agreement shall commence on the Start Date and shall continue in force until terminated by either Party in accordance with the provisions of this Healthcare Services Agreement.
- 5.2 Without prejudice to any other rights to terminate this Agreement as set out in the Rules, either Party may terminate this Healthcare Services Agreement on giving not less than 3 calendar months' written notice to the other Party provided always that such notice period shall not expire prior to the Earliest End Date.
- 5.3 Termination of this Healthcare Services Agreement, howsoever arising, shall be without prejudice to: (i) any accrued rights, liabilities or remedies arising under this Healthcare Services Agreement or at law; and (ii) any provision in this Healthcare Services Agreement which expressly or by implication is intended to survive termination.
- 5.4 If a Member is receiving Services from a Facility on the date that this Healthcare Services Agreement is terminated, the Facility shall continue to provide such Services and such other Services as are necessary or are in the best interests of the Member until the earlier of completion of the Member's Treatment, or the Member is safely transferred to another hospital of Bupa's choice. Any Services provided to a Member during this further period shall be provided in accordance with the provisions of this Healthcare Services Agreement. The Provider shall be entitled to invoice Bupa for that part of such Member's Treatment which would have been Covered Treatment had this Healthcare Services Agreement been continuing and in full force and effect and Bupa shall settle such invoice notwithstanding the termination of this Healthcare Services Agreement.

6 Entire Agreement

- 6.1 This Healthcare Services Agreement constitutes the whole and only agreement between the Parties relating to the subject matter of this Healthcare Services Agreement and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing, except to the extent that such prior agreements are expressed to continue to apply (for example, in respect of the treatment of Members which may have commenced under the terms of such prior agreement) and without

prejudice to any antecedent breaches under such prior agreements. Nothing in this Clause 6.1 shall prevent the Parties from entering into Other Agreements.

6.2 Other than as expressly contemplated by this Healthcare Services Agreement, this Healthcare Services Agreement may only be varied or amended in accordance with the Change Control Rules.

6.3 If any provision of this Healthcare Services Agreement is or becomes illegal, invalid or unenforceable, that shall not affect or impair the legality, validity or enforceability of any other provision of this Healthcare Services Agreement.

7 Governing Law and jurisdiction

7.1 This Healthcare Services Agreement is to be governed by and construed in accordance with English law.

7.2 Subject to the provisions of the Disputes Rules, the courts of England are to have exclusive jurisdiction to commence and/or settle any dispute arising out of or in connection with this Healthcare Services Agreement. This Clause 7 is not concluded for the benefit of any particular Party.

This Healthcare Services Agreement is entered into by the Parties on the date first written above.

Signed by)
.....)
for and on behalf of **Bupa Insurance**
Services Limited

Signed by)
.....)
for and on behalf of **The Provider**

SCHEDULE 1

Recognition Status / Facilities and Services

1 The Provider (these details will be used for Notices under this Healthcare Services Agreement)

Provider Name (Legal Name) [text]
Company Registration Number [text]
Registered Address 1 [text]
Registered Address 2 [text]
Town [text]
County [text]
Postcode [text]

2 Term of the Healthcare Services Agreement

Start Date [text]
Earliest End Date [text]

3 The Rules (including versions) applicable to this Healthcare Services Agreement

Rules	Version of the relevant Rules applicable to this Healthcare Services Agreement as appearing on Providers Online on the date of this Agreement.
The Recognition and General Terms Rules	[Version 1.0]
The Services and Charges Rules	[Version 1.0]
The Clinical Quality Rules	[Version 1.0]
The Pre-Authorisation Rules	[Version 1.0]
The Billing and Payment Rules	[Version 1.0]
The Disputes Rules	[Version 1.0]
The Performance Management Rules	[Version 1.0]
The Change Control Rules	[Version 1.0]
The Definitions Rules	[Version 1.0]

4 Provider Main Contact Details (Provider Representative)

Title	[text]
Forename(s)	[text]
Surname	[text]
Address 1	[text]
Address 2	[text]
Town	[text]
County	[text]
Postcode	[text]
Telephone Number	[text]
Email address	[text]

5 Provider Contact Details (Provider Senior Representative)

Title	[text]
Forename(s)	[text]
Surname	[text]
Address 1	[text]
Address 2	[text]
Town	[text]
County	[text]
Postcode	[text]
Telephone Number	[text]
Email address	[text]

6 Provider Contact Details (Commercial Director)

Title	[text]
Forename(s)	[text]
Surname	[text]
Address 1	[text]
Address 2	[text]
Town	[text]
County	[text]
Postcode	[text]
Telephone Number	[text]
Email address	[text]

7 Bupa Contact Details (Bupa Commissioning Manager)

Title	[text]
Forename(s)	[text]
Surname	[text]
Address 1	Bupa Place
Address 2	102 The Quays
Town	Salford Quays
County	Greater Manchester
Postcode	M50 3SP
Telephone Number	[text]
Email address	[text]

8 Bupa Contact Details (Head of Hospital Contracting)

Title	Mr
Forename(s)	John
Surname	Crompton
Address 1	Willow House
Address 2	Chertsey Lane
Town	Staines
County	Middlesex
Postcode	TW18 3DZ
Email address	John.Crompton@bupa.com

9 Bupa Contact Details (Bupa Director)

Title	Mr
Forename(s)	James
Surname	Sherwood
Address 1	Willow House
Address 2	Chertsey Lane
Town	Staines
County	Middlesex
Postcode	TW18 3DZ
Email address	James.Sherwood@bupa.com

10 Categories of Members covered by this Healthcare Services Agreement

The categories of Members covered by this Healthcare Services Agreement are the Members that may access the networks included in this Healthcare Services Agreement (those networks being specified at Appendix 1 to this Schedule).

11. Quality Assessment Information

Details of Information Provided	Date Provided
[Text]	[dd/mm/yyyy]

SCHEDULE 1 – Appendix 1 – Customer, Quality and Specialty Networks

[insert MS Excel template]

SCHEDULE 1 – Appendix 2 – Equipment and Services

[insert MS Excel template]

SCHEDULE 1 – Appendix 3 – Specialties

[insert MS Excel template]

Explanatory Notes to Schedule 1

Appendix 1 to this Schedule sets out the networks referred to in the Member Policies in which the Facilities are included. The extent of recognition of the Facilities under these networks as set out in Appendix 1 is subject to the services, specialties and complementary procedures being specified in Appendices 2 – 4 to this Schedule, and also subject to any Treatment being Covered Treatment.

SCHEDULE 2

Charges

The Charges are set out in the Appendices below.

The Charges shall be amended as follows:

Contract Year	Price Change (%)
[date] to [date]	[Text]
[date] to [date]	[Text]

SCHEDULE 2 - Appendix 1 - INPATIENT, DAYCASE AND OUTPATIENT SURGICAL AND MEDICAL FIXED PRICE PACKAGES

[insert MS Excel template]

SCHEDULE 2 - Appendix 2 – ITEM BY ITEM CHARGES – ACCOMMODATION AND THEATRE

[insert MS Excel template]

SCHEDULE 2 - Appendix 3 – DIAGNOSTIC TESTS AND OTHER AMBULATORY SERVICES (INCLUDING PATHOLOGY AND RADIOLOGY)

[insert MS Excel template]

SCHEDULE 3

Variations to the Rules

The Parties have agreed that from the Start Date the variations set out below shall be made to the Rules as they apply to this Healthcare Services Agreement.

Part 1: PROVIDER RECOGNITION AND GENERAL TERMS RULES

Paragraph 3.2(D) of the Provider Recognition and General Terms Rules shall be amended as follows:

“3.2(D) to a Member where such confidential information relates to a Member or to the operator of a Scheme where such confidential information relates to the Scheme;”

Paragraph 3.2(I) of the Provider Recognition and General Terms Rules shall be amended as follows:

“3.2 (I) if the party is Bupa, for the disclosure of pricing information to a third party either (i) requiring pricing information on a Scheme, but solely to the extent required for the third party to consider proposals by Bupa or Bupa Insurance for a Scheme or (ii) operating a Scheme, but solely to the extent required by the third party to operate such Scheme, in each case subject to equivalent confidentiality obligations being obtained from such third party by Bupa;”

Paragraph 4 is deleted and replaced with the following:

4. Data Protection

4.1 Each Party shall comply, and shall procure (insofar as it is lawfully able to do so) that each member of their Group shall comply, in each case, with all applicable obligations in respect of any Personal Data relating to a Member (“**Member Data**”) imposed by, or made under, Data Protection Law, for so long as it processes any such Member Data.

4.2 Subject to paragraph 4.3, a Party (the “**Data Requestor**”) may request that the other Party discloses Member Data so as to allow the Data Requestor to exercise its rights or comply with its obligations under the Healthcare Services Agreement or in the case of Bupa to manage claims made by Members or administer the Schemes.

4.3 Where a Party (the “**Conflicted Party**”), acting reasonably, believes that disclosing Member Data under paragraph 4.2 would result in a breach of Data Protection Law, the Conflicted Party shall:

- (a) notify the Data Requestor of this fact as soon as reasonably practicable, in no event later than 7 days, giving details of the reason(s) why it believes a disclosure under paragraph 4.2 would cause it to be in breach of Data Protection Law; and
- (b) use all reasonable endeavours, having regard to the purpose of any request for Member Data, to furnish the Data Requestor with sufficient information to achieve that purpose, including (but not limited to) taking measures to obtain Member’s consent where required, redacting Member Data to the minimum extent possible to achieve compliance with the Data Protection Law to facilitate the request made by the Data Requestor under paragraph 4.2 and/or providing alternative or additional information suited to achieving the purpose).

4.4 The Parties agree and acknowledge that for the purposes of this paragraph 4: (i) the Party disclosing Member Data shall ensure that it has a lawful basis for disclosing Member Data in accordance with Data Protection Law; and (ii) in respect of any Member Data that is disclosed, (“**Disclosed Member Data**”) that

the Data Requestor, in receiving the Disclosed Member Data, is a separate and independent data controller in respect of the Disclosed Member Data.

THE SERVICES AND CHARGES RULES

Paragraph 26. Separately Chargeable Drugs

Paragraph 26 is deleted and replaced with the following:

“26. Separately Chargeable Drugs

Each Facility shall provide drugs where required for a Member's Treatment.

Unless the procedure performed is charged as a Fixed Price Package, a Provider may charge Bupa for any Separately Chargeable Drugs where required for a Member's Treatment. The charges for any drugs shall include any reconstitution required.

Subject to the Pre-Authorisation and Drugs to Take Away requirements (at Paragraph 27 below), Bupa shall only pay, and each Facility shall only charge for Separately Chargeable Drugs (as constituted at the time of Treatment whether for In-Patient, Day-Patient, or Out-Patient treatment). All other charges for any drugs whatsoever are included in the Charges, and the Provider shall not be entitled to charge the Member for any other drugs in connection with any Covered Treatment.

Separately Chargeable Drugs shall be charged at the price equal to:

- (a) the [British National Formulary (BNF) or Chemist and Druggist (C&D) (delete as required)] (excluding VAT) plus a xx% mark up charge [delete as required]

save that Bupa reserves the right to negotiate and agree alternative pricing directly with the manufacturer or supplier of the drug, in which case the Provider shall charge Bupa the lower of:

- (i) the [BNF or C&D] listed price; or
 - (ii) the Bupa negotiated price (excluding VAT); and
- (b) if any VAT is routinely charged by third parties to a Provider in respect of the supply of such drugs to the Provider, the Provider's VAT Costs. In calculating the amount of the Provider's VAT Costs, the relevant VAT rate shall be the rate that was applicable to supplies of the drugs in question at the time when the supply to the Provider took place or was treated, for VAT purposes, as having taken place,

In exceptional circumstances, Bupa may also pay for drugs separately other than in accordance with this Paragraph 26 on a one-off basis, but in such cases the drugs planned to be used must be specifically Pre-Authorised on each occasion. This may include drugs used out of licence and if the drug and patient are part of a recognised medical trial and the costs are not being funded through other sources, such as the Medical Research Council or by the manufacturer.”

THE PERFORMANCE MANAGEMENT RULES

Paragraph 3. INSPECTION AND AUDIT RIGHTS

Paragraph 3 is deleted and replaced with the following:

3. INSPECTION AND AUDIT RIGHTS

3.1 Upon reasonable notice to the Provider and subject to appropriate supervision from the Facility's staff, Bupa shall have the right to reasonable access to each Facility during Working Hours to conduct an inspection of each Facility from time to time in connection with:

- (A) quality assurance of specific Services; and
- (B) reasonable concerns about the Facility expressed by anyone.

Such right shall be capable of being exercised by Bupa no more than twice in any one consecutive period of 12 months, unless issues of fraud and/or patient safety are involved, in which case such limit shall not apply.

3.2 If any material issue of quality and/or of safety is identified as a result of any inspection carried out by Bupa, Bupa shall immediately notify the Provider of the issue and the remedial action required.

3.3 Bupa may from time to time, on reasonable notice to the Provider, conduct an audit of the Provider's underlying billing or clinical data in order verify that:

- (A) the treatment shown in any invoice issued by the Provider under the relevant Healthcare Services reflects the treatment received;
- (B) the number of units or sessions of treatment shown in any such invoice is correct;
- (C) the CCSD or other charge code shown in any such invoice is correct; and/or
- (D) the treatment was provided in compliance with the relevant Healthcare Services Agreement, and the basis on which charges have been included in any such invoice is consistent with the basis on which the Provider was entitled to be reimbursed for such charges under the relevant Healthcare Services Agreement.

The Provider agrees that it shall provide assistance to Bupa under this Paragraph which shall include:

- (A) providing such billing or clinical data as Bupa may reasonably require in order to perform the verification described above; and/or
- (B) enabling access to any Facility for Bupa to the extent reasonably necessary to inspect such billing or clinical data,

in each case within 28 days of any request made by Bupa to do the same. In respect of underlying billing data, Bupa's right of audit shall only include third party invoices where the invoices are not subject to third party confidentiality obligations, and if they are subject to third party confidentiality obligations pre-dating the date of the Healthcare Services Agreement, the Provider shall allow Bupa access to anonymised invoices. Where the Data Protection Law would prevent the Provider from disclosing any personal data to Bupa under this Paragraph 3.3, the Provider agrees that it shall, to the extent necessary to avoid any breach of the Act, provide anonymised data to Bupa. The period to which the audit relates shall not be prior to the Start Date. The Provider acknowledges that individuals making claims do so subject to the Bupa Data Protection Notice.

3.4 Bupa shall have the right to audit the billing of all Treatment invoiced under the Healthcare Services

Agreement which includes pathology and radiology to ensure that:

- (A) tests performed on the same sample at the same time on the same machine are not unbundled so as to be charged separately; and
 - (B) the volume, frequency and mix of tests is Clinically Appropriate.
- 3.5 If, within three months of any audit referred to in Paragraph 3.1, 3.3, and/or 3.4 Bupa notifies the Provider that, as a result of such audit, it believes it has made an overpayment under the relevant Healthcare Services Agreement, then Bupa shall, notwithstanding Paragraph 4.1 of the Billing and Payment Rules, be entitled to set off such amounts against future payments made to the Provider subject to notifying the Provider 10 calendar days in advance of such set off and providing at the same time reasonable details of the basis for making such set-off. If such set off is not possible then Bupa shall issue further invoices to the Provider in respect of the amounts due providing reasonable details of the basis of the invoices, and obtain payment of these charges within a period of 30 days of the date of issue of these invoices. Any dispute under this Paragraph shall be referred to the Dispute Rules.
- 3.6 The Provider shall permit Bupa staff (subject to compliance with the Access to Health Records Act 1990, the Data Protection Law and any other relevant legal requirements and with the informed consent of the Member) to inspect and copy health records (including medical records) maintained by the Facility in respect of the Members for the purposes of concurrent review, retrospective review, discharge management and disease management. The Member will be informed about any copies made and Bupa will be responsible for destroying any such copies once no longer required.
- 3.7 The Provider shall procure that Bupa staff are afforded access to any Member unless not Clinically Appropriate, subject to the consent of that Member and of the Consultant in charge of the treatment of that Member, in order that aspects of post-operative and/or post-discharge care may be discussed by Bupa with that Member and that Consultant.

Annual Audits

- 3.8 Bupa shall also be entitled to carry out Annual Audits of Facilities. An "Annual Audit" shall be an audit on the basis set out in Paragraphs 3.9 to 3.17 using a third party Auditor. The Facility or Facilities chosen for Annual Audits shall be selected by Bupa.
- 3.9 The process for an Annual Audit shall be as follows, and Bupa shall procure that the Auditor complies with the terms of this Paragraph 3.9:
- (a) Bupa shall inform the Auditor which Facility or Facilities it wishes to Audit, and the Audit Year applicable;
 - (b) The Auditor shall then be given access to Bupa's databases in order to select the Clinical Cases it shall audit at the relevant Facility. The Clinical Cases shall be selected by the Auditor on a random basis to avoid any bias. The number of Clinical Cases inspected shall be sufficient in the Auditor's reasonable opinion to ensure the statistical significance of findings under empirical based assumptions, but for any one Annual Audit shall not be less than the lower of:
 - (i) 400 Clinical Cases; or
 - (ii) a reduced number of Clinical Cases where the Parties can agree a smaller sample that maintains statistical significance; or

- (iii) where the Provider has carried out less than 400 Clinical Cases in the relevant Audit Year, and the Parties are not able to agree a reduced number of Clinical Cases under Paragraph (ii) above, the total number of Clinical Cases that the Provider has carried out in that Audit Year;
- (c) Bupa shall provide the Auditor with the relevant details it holds on the selected Clinical Cases, including consultant billed codes;
- (d) Bupa shall inform the Facility or Facilities of the intention to carry out an Annual Audit and the relevant Audit Year;
- (e) the Auditor shall, prior to attending the Facility, provide to the Provider a list of the Clinical Cases it intends to audit together with the details of any methodology used to select such Clinical Cases. The Auditor shall notify the Provider of the date it intends to carry out the Audit, which shall not be less than 10 working days from the date on which the Provider receives such notification, together with the anticipated time required to complete its review;
- (f) the Provider will have 10 working days from receipt of the Auditor's notification under Paragraph (e) above to collate all the information from the necessary sources within the relevant Facility, which shall include:
 - (i) all details which are available to the Provider or the Facility of the notified Clinical Cases together with all clinical notes the Provider or the Facility holds in relation to the Treatment that is the subject of the Clinical Case; and
 - (ii) any underlying invoices relating to costs passed on to Bupa in connection with the Clinical Case,together, the "Clinical Case Data";
- (g) the Auditor shall attend the relevant Facility on the date notified, or otherwise agreed in writing with the Provider, and on the Auditor's arrival the Provider shall provide the following:
 - (i) appropriate space for the representatives of the Auditor to work onsite for the length of time notified by the Auditor to the Provider under Paragraph (h);
 - (ii) the Clinical Case Data; and
 - (iii) a representative that can liaise with the representatives of the Auditor to review audit findings and provide such additional information as is reasonably requested;
- (h) the Auditor shall review the Clinical Case Data onsite at the Facility and shall take such time as is reasonably necessary to review the data in order to identify the items listed in Paragraph (i) below. The Auditor shall notify the Provider as soon as reasonably practicable of any additional time it anticipates it will require to complete its review where this differs from the anticipated time notified under Paragraph (e) above;
- (i) the review by the Auditor shall seek to identify the following:
 - (i) whether the Facility has complied with the coding requirements contained in the Schedule of Procedures (as defined in the relevant Healthcare Services Agreement and in the form applicable at the time of the relevant Clinical Case) and in particular if there are any discrepancies between the hospital claims data and the clinical source data;

- (ii) whether the Treatment shown in any invoice issued by the Provider under the relevant Healthcare Services Agreement reflects the Treatment received;
 - (iii) whether the number of units or sessions of Treatment shown in any such invoice reflects the Treatment received;
 - (iv) whether the invoice for the Treatment is consistent with the Charges (as defined in the relevant Healthcare Services Agreement) applying to the relevant Audit Year, including whether particular items should be included or excluded from any package price for any Treatment to which such invoice relates;
 - (v) whether Consultants have erroneously assigned OPCS codes in place of CCSD codes in connection with any Treatment invoiced to Bupa;
 - (vi) whether it is apparent from the Clinical Case Data that either the complexity under the applicable Schedule of Procedures applied to the Treatment, or the care pathway adopted in connection with the Treatment, departs from prevailing clinical practice according to a reasonable body of medical opinion; and
 - (vii) whether the clinical notes held by and/or provided by the Facility to the Auditor are sufficient for the Auditor to identify the above matters. If they are not, the Facility agrees to provide all reasonable assistance to Bupa to obtain any consultant notes relating to the relevant Treatment;
- (j) appropriate representatives of the Auditor and the audited Facility shall liaise during the Annual Audit as appropriate to allow discussion about the findings of the Annual Audit and any queries that may arise. Where possible, all types of error found by the Auditor shall be communicated with the representative of the Facility designated by the Provider for this purpose while onsite, to give the Facility the opportunity to provide relevant evidence while the Auditor is still onsite;
 - (k) the audited Facility will have a maximum of 15 working days from the date the Auditor leaves the site to submit relevant notes against the Annual Audit findings; and
 - (l) the Auditor will issue a draft written feedback report within a period of two calendar months from the date the Auditor leaves the relevant Facility, and a draft report as soon as reasonably practicable after it has determined the Average Error Rate (as defined in Paragraph 3.13) and calculated any sum due pursuant to Paragraph 3.14. Any such draft report and any further iterations of each such report by the Auditor will be disclosed to Bupa and the Provider at the same time and shall detail all the errors found by the Auditor for the Audit Year. The Auditor's representatives will participate in facilitated discussions with Bupa and the Provider on the findings of each Annual Audit, the Auditor's determination of the Average Error Rate, and calculation of the sum due pursuant to Paragraph 3.14, and the Provider will have five working days from the date of any such discussion and any subsequent draft of each such report to provide feedback on any such findings, determination or calculation.

3.10 In carrying out the Audits the Auditor shall at all times act as an independent auditor and shall follow the process set out above. The Auditor will provide a multi-disciplinary team with extensive experience of performing claims data diagnostic and case note audit services to support the Annual Audit.

3.11 The Provider agrees that it shall provide all assistance to the Auditor reasonably necessary to allow the Auditor to identify the items listed in Paragraph 3.9 (i) which shall include providing such data and and/or enabling such access to the relevant Facility as the Auditor may reasonably request.

3.12 The Annual Audit shall only include third party invoices where the invoices are not subject to third party confidentiality obligations, and if they are subject to third party confidentiality obligations pre-dating the date of the Healthcare Services Agreement, the Provider shall allow the Auditor access to anonymised invoices. Where the Data Protection Law would prevent the Provider from disclosing any personal data to the Auditor under this Paragraph 3.12, the Provider agrees that it shall, to the extent necessary to avoid any breach of the Act, provide anonymised data. The Auditor will not be recording any patient identifiable data, for example unique Member numbers or dates of birth.

3.13 Following the completion of an Annual Audit, the Auditor shall notify the Provider of the Average Error Rate for that Audit Year in respect of the Facility or Facilities audited. The "Average Error Rate" shall mean a percentage figure representing the net of:

(a) the amounts identified from all Clinical Cases audited pursuant to the Annual Audit that the Provider was not entitled to recover from Bupa; and

(b) the amounts identified from all Clinical Cases which were audited pursuant to the Annual Audit which the Provider was entitled to invoice Bupa, but did not invoice,

as a percentage of the total amounts paid by Bupa to the Provider in that Audit Year for the Clinical Cases that were audited.

3.14 The Auditor shall extrapolate the Average Error Rate (if any) across all Clinical Cases at the audited Facility or Facilities for the relevant Audit Year. The extrapolation will be based on the prevalence and type of issue found and will be applied at the procedure level on the entire set of the Provider's invoices to approximate the impact across the Facility or Facilities. The Auditors shall assume that the errors and error rates identified by the Annual Audit across the Clinical Cases that were audited at the Facility or Facilities are representative of the whole population of Clinical Cases at the Facility or Facilities, and shall apply to the Services and Service Lines that were not specifically considered during the Annual Audit. If the variation of that estimate ends up being unreasonably high, additional sampling and review of such cases will need to be agreed in writing by the Parties. The Auditor shall notify the Parties of a final sum due (if any) by either Party to the other, which shall be calculated by applying the Average Error Rate to the total amounts invoiced by the Provider to Bupa in respect of all Clinical Cases at the Facility or Facilities in the relevant Audit Year. Bupa will need to provide all relevant data to the Auditor to perform this extrapolation. Both Parties will work together to agree ways and processes to mitigate any similar issues identified in future.

3.15 If for an Audit Year a payment to Bupa is identified pursuant to Paragraph 3.14, Bupa shall, notwithstanding Paragraph 4.1 of the Billing and Payment Rules, be entitled to either: (a) set off the amount of the payment against any other amount payable by Bupa to the Provider under the relevant Healthcare Services Agreement; and/or (b) issue further invoices to the Provider in respect of the amounts due, providing reasonable details of the basis of the invoices, and obtain payment of these charges within a period of 30 calendar days from the date of issue of these invoices.

3.16 If for an Audit Year a payment to the Provider is identified pursuant to Paragraph 3.14, then the Provider shall, notwithstanding Paragraph 1.2 of the Billing and Payment Rules, issue further invoices to Bupa in respect of the amounts due, providing reasonable details of the basis of the invoices, and obtain payment of these charges within a period of 30 calendar days of the date of issue of these invoices.

3.17 Fees for the work referred to in this Paragraph 3 carried out by the Auditors shall be paid by Bupa,

save where the Audit identifies an Average Error Rate of more than [5%] [figure to be discussed], in which case fees for that Audit year shall be split equally by the Parties.

- 3.18 Any dispute between Bupa and the Provider in relation to the subject matter of Paragraphs 3.8 to 3.17, including (without limitation) as to whether the scope, methodology or findings of any Annual Audit, or any associated calculation, is reasonable, shall be resolved in accordance with the Dispute Rules.

THE DEFINITIONS RULES

The following Definitions shall be added to the Definitions Rules:

Annual Audit means an audit of an individual Facility or Facilities carried out in accordance with Paragraphs 3.8 to 3.17 of the Performance Management Rules;

Auditor means a third party auditor employed by Bupa for the purposes of carrying out Audits in accordance with Paragraphs 3.8 to 3.17 of the Performance Management Rules.

Audit Year means the year from the Start Date of the relevant Healthcare Services Agreement, and each subsequent year, or, where the final period of a Healthcare Services Agreement is less than one year because the Healthcare Services Agreement is terminated before its End Date, the period of time that has elapsed in the relevant contract year prior to such termination;

Data Protection Law means the following legislation to the extent applicable from time to time: (a) national laws implementing the Data Protection Directive (95/46/EC) and the Directive on Privacy and Electronic Communications (2002/58/EC); (b) the General Data Protection Regulation (2016/679) and any national law issued under that Regulation; and (c) any other similar national privacy law.

Clinical Cases means episodes of Treatment carried out by the Facility or Facilities in the relevant Audit Year and invoiced by the Provider to Bupa;

Personal Data means i) in the case of Bupa, personal data provided by the Provider and ii) in the case of the Provider all personal data provided to it by the Members.

Paragraph (C) of the definition of "**Scheme**" shall be deleted and replaced with the following new paragraph:

- "(C) health insurance schemes, health trust schemes, or schemes for which the primary purpose is to provide for the payment of the cost of Treatment received by beneficiaries of the schemes, in each case administered by a member of the Bupa Group; and"