

OPTUM LEARN SUBSCRIPTION ONLINE TRAINING SERVICES TERMS AND CONDITIONS

These terms and conditions (“**Conditions**”) govern the Services (as defined below) as provided by Egton Medical Information Systems Limited, a company incorporated in England and Wales (company number 2117205) whose registered office is at Fulford Grange, Micklefield Lane, Leeds, LS19 6BA (“**Optum**”) to the Customer and/or, where agreed by the Parties in writing, for the benefit of any Service Recipients (as defined below).

BACKGROUND:

- (A) Optum is a provider of medical software solutions, training and related services.
- (B) Optum has developed certain software applications and platforms, known as Optum Learn, which it makes available to subscribers via the internet on a pay-per-user basis for the purpose of providing a subscription based digital learning platform, allowing its customers to take the power of learning into their own hands, providing 24/7 access to the latest learning content to enhance, optimise and transform their ways of working with our software and solutions through which the Services under the Agreement are delivered.
- (C) The Customer wishes to use the Services for itself and/or the Services Recipients in their business operations.
- (D) The Customer and Optum (together the “**Parties**”) desire to enter into the Agreement pursuant to which Optum will provide the Customer (and/or where applicable, any Service Recipients) with the Services subject to these Conditions.

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause 1 apply in the Agreement.

Access Security Measures: means the measures which the Customer must comply with, in relation to accessing and using the Software and Services, as more particularly set out at clause 7.4.

Agreement: means the agreement between Optum and the Customer for the supply of the Services in accordance with the Quote and these Conditions (including any annexes and/or schedules hereto).

Authorised User: means an employee, researcher, member of staff or other individual related to the Customer and/or, where applicable, the Service Recipients, who is authorised by the Customer to access and use the Services and Documentation, as further described in clause 3.2.4.

Basic Services: means such free to use training materials and online training services as may be made available by Optum to users of the Software from time to time. For the avoidance of doubt, the Basic Services are made available direct to users via the Website subject to the Terms of Use, they are not provided under the Agreement.

Business Day: means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Commencement Date: means the date on which Optum receives the (un-amended) signed Quote from the Customer (or written confirmation that the Customer accepts the Quote).

Confidential Information: means any information relating to the business of the disclosing Party which is not publicly available including: any information specifically designated by the disclosing Party as confidential; any information supplied to the disclosing Party by any third party in relation to which a duty of confidentiality is owed or arises; and any other information which should otherwise be reasonably regarded as possessing a quality of confidence or as having commercial value in relation to the business of the disclosing Party.

Customer: means the Customer detailed in the Quote.

Customer Data: means any data, including Personal Data, provided by the Customer, Service Recipients and/or Authorised Users to Optum under the Agreement.

Data Protection Legislation: means all data protection and/or privacy legislation, regulations and guidance which applies to the Parties’

performance of their respective obligations under the Agreement, including UK GDPR, the Data Protection Act 2018, and the Privacy and Electronic Communications (EC Directive) Regulations 2003; and any guidance or codes of practice issued by the UK Information Commissioner and/or European Data Protection Board from time to time (all as amended, updated or re-enacted from time to time).

Documentation: means all documents, information, manuals, guides, schematics, drawings and other material made available by Optum to the Customer from time to time which set out a description of the Services and the user instructions for the Services.

Initial Subscription Term: means the initial term of the Agreement, which shall be 12 months from the Commencement Date.

Losses: means any claims, demands, actions, liabilities, costs, expenses, fines, monetary penalties, losses and/or damages.

Normal Business Hours: means 8:00 am to 6:00 pm local UK time, each Business Day.

Personal Data: has the meaning set out in the UK GDPR.

Process: has the meaning set out in the UK GDPR.

Quote: means the quote provided by Optum to the Customer for acceptance, detailing the number of User Subscriptions, the Services, Subscription Fees and (where applicable) any Service Recipients.

Renewal Period: means the period described in clause 2.1.

Service Recipients: means, where the Customer has purchased the Services to be delivered to third parties, those third parties as identified in the Quote or as otherwise agreed in writing with Optum.

Services: means those online training services to be provided via the Software as detailed in the Quote excluding the Basic Services.

Software: means the online software applications provided by Optum which form the digital learning platform, known as Optum Learn.

Subscription Fees: means the total sums payable by the Customer to Optum in consideration for the Services set out in the Quote and elsewhere in the Agreement.

Subscription Term: has the meaning set out in clause 2.1.

Terms of Use: means a binding, enforceable end user licence agreement between Optum and an Authorised User, concerning the Authorised User's use of the Software which shall contain the terms set out at <http://www.optumlearn.com/admin/tool/policy/view.php?versionid=15&returnurl=https%3A%2F%2Facademy.emishealth.com%2Fadmin%2Ftool%2Fpolicy%2Findex.php&numpolicy=2&totalpolicies=2>

UK GDPR: means EU Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, as incorporated into domestic United Kingdom law by the European Union (Withdrawal Agreement) Act 2020 and amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2020.

User Subscriptions: means the user subscriptions granted to the Customer which allows Authorised Users to access and use the Software in accordance with the Agreement and, where applicable, the Terms of Use.

VAT: means value added tax or any equivalent tax chargeable in the UK or elsewhere.

Virus: means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Vulnerability: means a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to their confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be construed accordingly.

1.2 Clause, attachment, schedule and paragraph headings shall not affect the interpretation of the Agreement.

1.3 A reference to: (i) a **person** includes an individual, corporate or unincorporated body

(whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assignees; (ii) a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established; (iii) words in the singular shall include the plural and vice versa; (iv) one gender shall include a reference to the other genders; (v) **writing or written** includes e-mail (provided that, in respect of correspondence sent from the Customer to Optum, that the same is sent to uk.contracts@optum.com), but not faxes; and (vi) a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

- 1.4 References to clauses, annexes and schedules are to the clauses of, annexes to and schedules to, these Conditions; references to paragraphs are to paragraphs of the relevant schedule or annex.
- 1.5 Any words following the terms 'including', 'include', 'in particular', 'for example' or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.6 To the extent Optum performs Services for the benefit of any Service Recipients, the Customer shall:
 - 1.6.1 procure that the Service Recipients comply with the Customer's obligations pursuant to the Agreement to the extent such Customer obligations relate to the Services to be delivered to the relevant Service Recipients (other than the obligation to pay the Subscription Fees, which shall be solely a Customer obligation) or that are otherwise stated in the Agreement to apply to such Service Recipients; and
 - 1.6.2 be liable to Optum for the acts and omissions of such Service Recipients to the extent they constitute a breach of the Customer's obligations under the Agreement, as if they were acts or omissions of the Customer.
- 1.7 In the Agreement, unless the context requires otherwise:
 - 1.7.1 references to the Customer receiving Services shall include, to the extent that they are receiving Services, the Service Recipients;

- 1.7.2 obligations on the Customer shall be interpreted as, to the extent that the Customer's obligation needs to be performed by the Service Recipient, an obligation on the Customer itself to use its best endeavours to procure that the Service Recipient complies with the obligation on the Customer;
- 1.7.3 references to the Customer's assets, systems, business, operations and the like, and Customer's customers, contractors, advisors and other similar third parties, shall include, to the extent that they are receiving the Services, those of the Service Recipients; and
- 1.7.4 other references to the Customer shall be deemed to include the Service Recipients where such reference relates to a right of the Customer which the Service Recipients also require the benefit of in order to receive equivalent benefit in relation to the Services under the Agreement.

- 1.8 Without prejudice to the generality of clause 1.7, a number of clauses refer specifically to both the Customer and/or the Service Recipients for the sake of clarity.

2. COMMENCEMENT AND DURATION

- 2.1 The Agreement shall commence on the Commencement Date and shall continue for the Initial Subscription Term and, thereafter, the Agreement shall be automatically renewed for successive periods of 12 months (each a "**Renewal Period**"), unless:
 - 2.1.1 either Party notifies the other Party of termination, in writing, at least 90 days before the end of the Initial Subscription Term or any Renewal Period, in which case the Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
 - 2.1.2 otherwise terminated in accordance with these Conditions,

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the "**Subscription Term**".

3. USER SUBSCRIPTIONS

- 3.1 Subject to the Customer purchasing the User Subscriptions in accordance with clause 4.3 and clause 9.1, the restrictions set out in this clause 3 and the other terms and conditions of the Agreement, Optum hereby grants to the

Customer a non-exclusive, non-transferable right, without the right to grant sub-licences, to permit the Service Recipients and Authorised Users to access and use the Services and the Documentation during the Subscription Term solely for the Customer's and/or Service Recipient's internal business operations.

3.2 In relation to the Authorised Users, the Customer undertakes that:

3.2.1 the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;

3.2.2 it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;

3.2.3 each Authorised User shall keep a secure password for their use of the Services and Documentation, that such password shall be changed no less frequently than is prompted by the Software, and that each Authorised User shall keep their password confidential;

3.2.4 it shall maintain a written, up to date list of current Authorised Users and provide such list to Optum within 5 Business Days of Optum's written request at any time or times;

3.2.5 it shall permit Optum or Optum's designated auditor to audit the Services in order to establish the name and password of each Authorised User to audit compliance with the Agreement. Each such audit may be conducted no more than once per quarter, at Optum's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;

3.2.6 if any of the audits referred to in clause 3.2.5 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Optum's other rights, the Customer shall promptly disable such passwords and Optum shall not issue any new passwords to any such individual; and

3.2.7 if any of the audits referred to in clause 3.2.5 reveal that the Customer has

underpaid Subscription Fees to Optum, then without prejudice to Optum's other rights, the Customer shall pay to Optum an amount equal to such underpayment as calculated in accordance with the prices set out in the Quote within 10 Business Days of the date of the relevant audit.

3.3 The Customer shall not, during the course of its use of the Services, access, store, distribute or transmit any Viruses or any material that:

3.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

3.3.2 facilitates illegal activity;

3.3.3 depicts sexually explicit images;

3.3.4 promotes unlawful violence;

3.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

3.3.6 is otherwise illegal or causes damage or injury to any person or property,

and Optum reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause 3.3.

3.4 The Customer shall not:

3.4.1 except to such extent as may be allowed by any applicable law which is incapable of exclusion by agreement between the Parties, and except to the extent expressly permitted under the Agreement:

3.4.1.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or

3.4.1.2 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;

3.4.2 access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation;

- 3.4.3 use the Services and/or Documentation to provide services to third parties;
- 3.4.4 subject to clause 14.6, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users;
- 3.4.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 3; or
- 3.4.6 introduce or permit the introduction of, any Virus or Vulnerability into Optum's network or information systems.
- 3.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Optum.
- 3.6 The rights provided under this clause 3 are granted to the Customer and Service Recipients only.
- 3.7 Notwithstanding these Conditions, all Authorised Users must agree to the Terms of Use in order to be able to use the Software and receive the benefit of the Services.
- 3.8 Authorised Users will also be able to access any Basic Services through their Software account, subject to the Terms of Use. The Basic Services will continue to be available to such users notwithstanding termination of the Agreement and, at Optum's discretion, they will still be able to access any certificate or learning history created through use of the Services.
- 3.9 Subject to clause 3.10, the Customer will not be responsible for Authorised Users' use of any Basic Services through their Software account.
- 3.10 Without prejudice to any other rights Optum may have under the Agreement, in the event that any Authorised User breaches the terms of the Agreement and/or the Terms of Use, Optum shall be entitled to suspend or terminate such Authorised User's access to and/or use of the Software, Services and/or Basic Services. Any such suspension shall continue until a resolution to the relevant breach(es) has been achieved or as otherwise determined by Optum (acting at its discretion) and shall be without prejudice to the Customer's obligation to pay the Subscription Fees for such Authorised User(s).

4. ADDITIONAL USER SUBSCRIPTIONS

- 4.1 Subject to clause 4.2 and clause 4.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out the Quote, and Optum shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of the Agreement.
- 4.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify Optum in writing. Optum shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request (such approval not to be unreasonably withheld). Where Optum approves the request, Optum shall activate the additional User Subscriptions within 5 Business Days of its approval of the Customer's request.
- 4.3 If Optum approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 30 days of the date of Optum's invoice, pay to Optum the relevant fees for such additional User Subscriptions as set out in any additional Quote or as agreed in writing between the Parties and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by Optum for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

5. SERVICES

- 5.1 Optum shall, during the Subscription Term, use reasonable endeavours to deliver the Services and make available any relevant Documentation in accordance with the Agreement in all material respects to the Customer.
- 5.2 Optum shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for planned maintenance and unscheduled maintenance performed outside Normal Business Hours, provided that Optum has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.
- 5.3 Optum will, as part of the Services, provide the Customer with Optum's standard customer support services during Normal Business Hours.

- 5.4 Optum reserves the right to change (from time to time) the Services, Software and/or Documentation provided under this Agreement.

6. OPTUM OBLIGATIONS

- 6.1 Optum undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 6.2 The undertaking at clause 5.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Optum's instructions, or modification or alteration of the Services by any party other than Optum or Optum's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Optum will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly. Such correction constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 5.1.
- 6.3 Optum does not warrant that:
- 6.3.1 the Customer's use of the Services will be uninterrupted or error-free;
 - 6.3.2 that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; or
 - 6.3.3 the Software or the Services will be free from Vulnerabilities or Viruses.
- 6.4 Optum is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 6.5 The Agreement shall not prevent Optum from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Agreement.
- 6.6 Optum warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Agreement.

7. CUSTOMER OBLIGATIONS

- 7.1 The Customer shall:

- 7.1.1 provide Optum with all necessary co-operation in relation to the Agreement;
- 7.1.2 provide Optum with all necessary access to such information as may be required by Optum in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
- 7.1.3 without affecting its other obligations under the Agreement, comply with all applicable laws and regulations with respect to its activities under the Agreement; and
- 7.1.4 carry out all other Customer responsibilities set out in the Agreement in a timely and efficient manner.

In the event of any delays in the Customer's provision of such assistance as agreed by the Parties, Optum may adjust any agreed timetable or delivery schedule as reasonably necessary.

- 7.2 The Customer shall, for the duration of the Agreement:
- 7.2.1 ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of the Agreement and the Terms of Use, and shall be responsible for any Authorised User's breach of the Agreement;
 - 7.2.2 obtain and maintain all necessary licences, consents, and permissions necessary for Optum, its contractors and agents to perform their obligations under the Agreement, including without limitation the Services;
 - 7.2.3 ensure that its network and systems comply with the relevant specifications provided by Optum from time to time; and
 - 7.2.4 be, to the extent permitted by law and except as otherwise expressly provided in the Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Optum's (or a third party subcontractor's) data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.
- 7.3 The Customer shall own all right, title and interest in and to all of the Customer Data, and shall have

sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

7.4 **Access Security Measures:** The Customer shall, and will procure that Authorised Users shall, for the duration of the Agreement, fully comply with the following security measures and controls in respect of any access to the Software:

- 7.4.1 ensure that the Services are accessed and used solely in accordance with the Documentation and the Agreement;
- 7.4.2 ensure that Authorised Users have all undergone suitable training in respect of information governance and information security and remain current in such training;
- 7.4.3 prevent and deny unauthorised persons access to the Services;
- 7.4.4 inform Optum immediately if an Authorised User's account is compromised or if they disclose their password to an unauthorised recipient; and
- 7.4.5 ensure that the functions of the Customer's systems and facilities used in relation to the Agreement perform appropriately, and that the appearance of faults in the functions is reported.

8. PROPRIETARY RIGHTS

- 8.1 The Customer acknowledges that the Software incorporates intellectual property belonging to Optum (or its third party licensor(s), as appropriate), including rights licenced through the Moodle open source software licence – the licence agreement for which is available at: <https://docs.moodle.org/dev/License> (“**Moodle Licence Terms**”). In the event of any conflict or inconsistency between the terms of the Agreement and the Moodle Licence Terms, insofar as such conflict or inconsistency relates to licensing and/or ownership in respect of the Software, the Moodle Licence Terms shall prevail.
- 8.2 Subject to clause 8.1, the Customer acknowledges and agrees that Optum and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, the Agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

8.3 Optum confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the Agreement.

9. CHARGES AND PAYMENT

- 9.1 The Customer shall pay Optum the Subscription Fees for the User Subscriptions in accordance with this clause 9 and the Quote.
- 9.2 Optum shall be entitled to increase the Subscription Fees, and the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 4.3, at the start of each Renewal Period upon 90 days' prior notice to the Customer, and the Quote shall be deemed to have been amended accordingly. Notwithstanding the foregoing, if the Customer purchases additional User Subscriptions within 90 days of the start of the next Renewal Period, Optum shall be entitled to increase the Subscription Fees at the start of that Renewal Period, provided that it gives as much notice as is reasonably practicable to the Customer.
- 9.3 All sums payable to Optum under the Agreement:
 - 9.3.1 are exclusive of VAT, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
 - 9.3.2 shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 9.4 All fees are payable by the Customer annually in advance, and shall be due within 30 days of the date of the relevant invoice to a bank account nominated in writing by Optum from time to time.
- 9.5 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Optum on the due date, Optum may:
 - 9.5.1 charge interest on such sum from the due date for payment at the annual rate of 4 percentage points a year above the Bank of England's base rate, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Customer shall pay the interest immediately on demand (or, Optum may in the alternative and at its option claim interest under the Late Payment of Commercial Debts (Interest) Act 1998); and/or
 - 9.5.2 without liability to the Customer, disable the Customer's and Service Recipients'

access, and all Authorised User's password, account and access to all or part of the Services, and Optum shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid.

10. CONFIDENTIALITY

- 10.1 Each Party (or, the Service Recipients, as applicable) ("**Receiving Party**") may be given access to Confidential Information from the other Party in order to perform its obligations under the Agreement. A Party's Confidential Information shall not be deemed to include information that:
- 10.1.1 is or becomes publicly known other than through any act or omission of the Receiving Party;
 - 10.1.2 was in the other Party's lawful possession before the disclosure;
 - 10.1.3 is lawfully disclosed to the Receiving Party by a third party without restriction on disclosure;
 - 10.1.4 is independently developed by the Receiving Party, which independent development can be shown by written evidence; or
 - 10.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 10.2 Each Party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation and performance of the Agreement.
- 10.3 Each Party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Agreement.
- 10.4 Neither Party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party (other than, in respect of the Customer, issues relating to the acts or omissions of a Service Recipient).
- 10.5 Upon the termination or expiry of the Agreement, Optum and the Customer shall return to each other any Confidential Information of the other Party then held.

11. LIMITATION OF LIABILITY

- 11.1 This clause 11 sets out the entire financial liability of Optum (including any liability for the acts or omissions of its employees, agents and sub-contractors) including, in respect of:
- 11.1.1 any breach of the Agreement;
 - 11.1.2 any use made of the Services and/or Documentation; and/or
 - 11.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Agreement.
- 11.2 ALL WARRANTIES, REPRESENTATIONS, CONDITIONS AND ALL OTHER TERMS OF ANY KIND WHATSOEVER IMPLIED BY STATUTE OR COMMON LAW ARE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCLUDED FROM THE AGREEMENT.
- 11.3 Nothing in the Agreement limits or excludes the liability of either Party for:
- 11.3.1 death or personal injury resulting from its negligence;
 - 11.3.2 any Losses resulting from fraud or fraudulent misrepresentation; or
 - 11.3.3 any Losses which cannot be excluded or limited pursuant to applicable law.
- 11.4 Subject to clause 11.3, Optum shall not be liable (whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise) for any:
- 11.4.1 loss (whether direct or indirect) of profits;
 - 11.4.2 loss (whether direct or indirect) of business opportunity;
 - 11.4.3 loss (whether direct or indirect) of goodwill or injury to reputation;
 - 11.4.4 loss (whether direct or indirect) of, or corruption to, any data or information;
 - 11.4.5 loss (whether direct or indirect) of any anticipated savings; or
 - 11.4.6 indirect, consequential or special loss or damage,
- in each case arising out of or in connection with the Agreement.

- 11.5 Subject to clause 11.3 and clause 11.4, Optum's total annual liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to a sum equal to the Subscription Fees paid or payable by the Customer to Optum under the Agreement during the previous 12 months.
- 11.6 Any Losses suffered by a Service Recipient under or in connection with the Agreement ("**Service Recipient Losses**") shall be deemed for the purposes of the Agreement to be Losses suffered by the Customer under the Agreement. The Customer shall be entitled to seek to recover from Optum any such Service Recipient Losses, subject always to the provisions of this clause 11, as though the relevant Losses had been suffered by the Customer. Under no circumstances shall any Service Recipient have any right to bring any claim or action against Optum other than via the Customer and subject to the terms of the Agreement, and if any such claim should be brought then the Customer will indemnify and hold harmless Optum in respect of the same.

12. TERMINATION

- 12.1 Without prejudice to any other rights or remedies to which the Parties may be entitled, either Party may terminate the Agreement without liability to the other if:
- 12.1.1 the other Party commits a material breach of any of the terms of the Agreement, and (if such a breach is remediable) fails to remedy that breach within 30 days of being notified in writing to do so; or
- 12.1.2 the other Party becomes insolvent, is the subject of a petition for creditor protection or a petition in bankruptcy or of any other proceedings under bankruptcy, insolvency or similar laws or makes an assignment for the benefit of creditors (or any event occurs, or proceeding is taken, with respect to the other Party that has an effect equivalent or similar to any of the events mentioned in this clause 12.1.2).

13. DATA PROTECTION & SECURITY

- 13.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation when processing any personal data under or in relation to the Agreement. This clause 13 is in addition to, and does not relieve, remove or

replace, a Party's obligations under the Data Protection Legislation.

- 13.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer (or the Service Recipient as appropriate) is a data controller and Optum is a separate data controller (where data controller has the meaning as defined in the Data Protection Legislation).
- 13.3 In performing their respective obligations and exercising their respective rights under the Agreement, both Parties shall:
- 13.3.1 comply with their respective obligations under the Data Protection Legislation;
- 13.3.2 provide reasonable assistance to the other Party, in relation to the other Party's compliance with its obligations under the Data Protection Legislation; and
- 13.3.3 not through their acts or omissions, place the other Party in breach of the Data Protection Legislation.
- 13.4 Without prejudice to the generality of the foregoing, in respect of any Personal Data of Authorised Users collected and processed by Optum (which the Parties acknowledge shall be limited to their name, email address, password, username, organisation ID and job title, records of training undertaken and/or any information posted on any forum chats by an Authorised User when using the Services) Optum shall:
- 13.4.1 provide such Authorised Users with a fair processing notice;
- 13.4.2 process such Personal Data fairly and lawfully and otherwise only for the purpose of delivering the Services; and
- 13.4.3 not, and procure that any subcontractor who handles such Personal Data shall not, transfer any of the Personal Data outside of the United Kingdom.

14. MISCELLANEOUS

- 14.1 **Force majeure.** Optum shall have no liability under the Agreement if it is prevented from or delayed in performing its obligations under the Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including: strikes, lock-outs or other industrial disputes (whether involving the workforce of Optum or any other party), failure of a utility service or transport or telecommunications network, act of God, epidemic, pandemic, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction,

accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

14.2 Amendment.

14.2.1 Optum may amend these Conditions at any time by:

14.2.1.1 publishing the amendment online at <https://www.optum.co.uk/contract-s-repository> or any other online address that Optum notifies to the Customer; and/or

14.2.1.2 giving notice to the Customer in addition to any online publication.

14.2.2 In the event that any amendments to be made pursuant to clause 14.2.1 are likely to cause material detriment to the Customer, Optum will use reasonable endeavours to give notice of the changes at least 30 days before the amendment is to take effect, and will give notice and/or publish online at least 1 day before the amendment is to take effect in all other cases.

14.2.3 If Optum makes any changes to the Conditions which cause the Customer material detriment, the Customer shall be entitled to terminate the Agreement for convenience on 90 days' notice if such notice is served on Optum within:

14.2.3.1 90 days after the notification, if Optum has only published the amendment online in accordance with clause 14.2.1.1; or

14.2.3.2 30 days after the notification, if the notice has been served on the Customer in accordance with clause 14.2.1.2.

14.3 **Waiver.** A waiver of any right under the Agreement is only effective if it is in writing and it applies only to the Party to whom the waiver is addressed and to the circumstances for which it is given. Unless specifically provided otherwise, rights arising under the Agreement are cumulative and do not exclude rights provided by law.

14.4 **Severance.** If any provision (or part of a provision) of the Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were

deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the Parties.

14.5 **Entire agreement.** The Agreement, and any documents referred to in it, constitute the whole agreement between the Parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover. Each of the Parties acknowledges and agrees that in entering into the Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether Party to the Agreement or not) relating to the subject matter of the Agreement, other than as expressly set out in the Agreement.

14.6 **Assignment and subcontracting.** The Customer shall not, without the prior written consent of Optum, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement. Optum may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.

14.7 **Third party rights.** Save as expressly provided for under the Agreement in respect of any Service Recipients: (i) each Party that has rights under the Agreement is acting on its own behalf and not for the benefit of another person; and (ii) the Agreement does not create or confer any rights or benefits enforceable by any person not a Party to it (within the meaning of the Contracts (Rights of Third Parties) Act 1999).

14.8 **Notices.** Any notice required to be given under the Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other Party at its address set out above, or such other address as may have been notified by that Party for such purposes, or (subject to clause 1.3(v)) by email. A notice delivered by hand or email shall be deemed to have been received when delivered (or if delivery is not in Normal Business Hours, at 9:00am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

14.9 **Governing law and jurisdiction.** The Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the laws of England. The

Parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).

14.10 **Survival.** Expiry or termination of the Agreement for any reason (whether under the Agreement or otherwise) will:

14.10.1 be without prejudice to any obligation or right of either Party which has accrued prior to such expiry or termination (or will thereafter accrue in respect of the period before such expiry or termination); and

14.10.2 not affect any provision of the Agreement which is expressly or by implication intended to come into effect on, or to continue in effect after, such expiry or termination.

Without prejudice to the generality of this clause 14.10, the provisions of clauses 1, 8.1, 8.2, 10, 11, 13 and 14 will survive expiry or termination of the Agreement for any reason.