


DATABASE AGREEMENT

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THIS AGREEMENT is made the day of 

BETWEEN:

- (1) **CHKS LIMITED** Registered No: 2442956 whose registered office is situated at 30 Berners Street, London, England, W1T 3LR

("CHKS")

and

- (2) of

("the Client")

WHEREAS:

- (A) The Client processes certain Data for various medical purposes and requires such information to be analysed for certain statistical and research purposes.
- (B) CHKS has agreed to analyse such Data in conjunction with similar data received from other Data Sources in order to provide the Client with certain anonymised statistical results under the terms and conditions of this Agreement but CHKS will not Process Personal Data and the Client will not supply CHKS with Personal Data.


WHEREBY IT IS AGREED as follows:

1. **Definitions**

- 1.1 In this Agreement the following terms have the following meanings:

"Authorised Officer" means the person appointed by the Client and notified in writing to CHKS to act as the representative of the Client for all purposes connected with this Agreement or the authorised representative of such a person;

"Commencement Date" means ;

"Contract Period" means the period of  from the Commencement Date subject to earlier termination in accordance with clause 9;

"Data" means data of the type set out in the First Schedule concerning patients of the Hospital;

"Database"	means the comparative database created and maintained by CHKS from data provided by Data Sources under arrangements similar to those contained in this Agreement, and which CHKS is able to use for the purposes of this Agreement;
"Data Sources"	means health authorities and hospitals and other persons or bodies providing patient healthcare data to CHKS;
"Data Supply Date"	means such date in each month as CHKS and the Client shall agree in writing;
"Deliverables"	means the items and services referred to in the Third Schedule;
"Force Majeure"	means in relation to either party, circumstances beyond the reasonable control of that party, including acts of God, acts of governmental or supra-national authority, outbreak of hostilities, national emergency, riots, civil commotion, terrorism, fire, explosion, flood, epidemic, lock outs (not by that party), strikes and other industrial disputes (not relating to that party's workforce), restraints or delays affecting carriers, and inability or delay in obtaining supplies or adequate or suitable materials.
"Hospital"	means ;
"Intellectual Property Rights"	means any and all patents, trade marks, service marks, copyright, database rights, moral rights, rights in design, know-how, confidential information and all or any other intellectual property rights in training materials, definitions of indicators, implementation of schedules (this is a non-exhaustive list) introduced during the term of the Agreement whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world, together with all or any goodwill relating thereto.
"Personal Data"	has the same meaning as in Section 1(1) of the Data Protection Act 1998;

"Process"

means, in relation to Data, obtaining, analysing, recording or holding the Data or carrying out any operation or set of operations on the Data, including organisation, adaptation, alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment, combination, blocking, erasure or destruction of the Data;

"Report"

means any report included in the Deliverables.

"Services"

means the services to be provided by CHKS as set out in full in the Third Schedule – The Deliverables

- 1.2 Unless the context otherwise requires, reference to any statute, order, regulation or other similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended or re-enacted by any subsequent statute, order, regulation or instrument.
- 1.3 The headings to the clauses shall not affect their interpretation.

2. **Supply**

- 2.1 During the continuance of this Agreement, the Client shall supply (or procure that the Hospital supplies) the Data to CHKS and save as required by law or by any requirements of the Department of Health or NHS Executive generally applicable to Health Authorities and Trusts shall not supply (and shall procure that the Hospital does not supply) the Data to any other commercial undertaking which carries on or intends to carry on any business in competition with CHKS.
- 2.2 The Client grants CHKS a royalty free irrevocable right in perpetuity to Process the Data only for the purpose of incorporating it into and using it as part of the Database.
- 2.3 During the continuance of this Agreement, the Client shall supply the Data to CHKS no later than the Data Supply Date following the month to which the Data relates.
- 2.4 The Client will ensure that the Data is supplied in the agreed format on secure electronic means or such other media as the parties agree shall be suitable.
- 2.5 The Client will also supply to CHKS, on signature of this Agreement, a copy of all codes, instructions and other information necessary to enable the Data to be readily understood and useable by CHKS for the purpose of performing this Agreement.
- 2.6 CHKS shall supply the Deliverables to the Client at the times and in the manner referred to in Schedule 3.
- 2.7 On written request, CHKS will supply the Client with the names of the then current Data Sources providing data to the Database and which it is relevant for the Client to know in connection with the Deliverables provided that such supply does not contravene any confidentiality obligations undertaken by CHKS.

3. **Duration**

Subject to the provisions of Clause 11, this Agreement shall continue for the Contract Period and thereafter until terminated by either party giving to the other at least 90 days' notice in writing to expire on or at any time after the expiry of the Contract Period.

4. **Charges and Payment**

- 4.1 The Client shall pay CHKS the fees specified in the Second Schedule at the times stated therein.
- 4.2 Payment of the fees under sub-clause 4.1 shall be made in full without any deduction or set off, within 30 days of receipt of the invoice, and VAT at the rate from time to time in force shall be added thereto.
- 4.3 The fees shall be net i.e. after the deduction of all agreed discounts. The amount of any early settlement discounts are shown separately in the Second Schedule.
- 4.4 An invoice shall be rendered on CHKS's own invoice form to the Client clearly marked with the Client's order number.
- 4.5 Invoices shall show the period and the services for which payment is claimed.
- 4.6 The Client may pay CHKS by BACS (Bank Account Clearing System).

5. **Indexation**

Upon the anniversary of the Commencement Date and annually thereafter CHKS may increase the Charges by the percentage increase as published by the Office of National Statistics of Average Earnings Index for Health and Social Workers. The percentage increase will relate to the published figure for the month prior to the anniversary of the Commencement Date.

6. **Value added tax**

All fees in this agreement are net of VAT or any other tax or duties levied. Where applicable, the Client shall pay the VAT, tax or duty which shall be added to the invoice at the prevailing rate.

7. **Change**

Any changes to the Deliverables shall be raised and documented in accordance with the process prescribed within the Fourth Schedule (x) (Authorisation Form). Changes are subject to agreement by both parties in writing.

8. **Undertakings**

8.1 CHKS undertakes:

- (a) to Process the Data in accordance with such policies as are agreed by it from time to time with the Board of Trustees chaired by the King

Edwards Hospital Fund for London, copies of which policies will be supplied by CHKS upon request;

- (b) to use all reasonable endeavours to ensure that the Data is maintained and stored in a secure manner.
 - (c) to comply with all relevant aspects of the Data Protection Act 1998;
 - (d) that without restricting CHKS rights relating to the Database pursuant to this Agreement, any Data in the Deliverables may identify the name the Client or a third party Trust and/or location of the Trust for the purposes of a comparison review in the production of such statistical results as required for the Services. All other Data in the Deliverables shall remain restricted in an anonymised form to either the Client or any other clients of CHKS from time to time;
 - (e) to impose equivalent security, confidentiality and data protection obligations on any third party used by CHKS to Process the Data.
- 8.2 The Client undertakes, in so far as is reasonably possible, to ensure that all Data disclosed to CHKS under this Agreement is provided in anonymous form so that the Data disclosed does not constitute Personal Data in the hands of CHKS.

9. Liabilities and Limitation of Liabilities

- 9.1 Either party shall be under no liability for any special, indirect or consequential losses, damages, pure economic loss, costs or expenses, any (whether direct or indirect) loss of profits, loss of business, loss of revenue, loss of contract, loss or depletion of goodwill and/ or business opportunity, loss of data and costs of recovery of the same, loss of use or value of any data or software or loss of anticipated earnings or savings or like in contract, tort (including negligence and breach of statutory duty) or otherwise howsoever arising which may be suffered by either party, or in respect of errors or defects in data or information contained in all or any of the Deliverables caused for any reason whatsoever
- 9.2 To the extent that all or any of the Deliverables are based on or incorporate data and information provided by persons other than the Client or the Hospital, the Client for itself and on behalf of the Hospital acknowledges that CHKS will not verify the accuracy or completeness of such data and information and agrees that CHKS shall be under no liability whatsoever as a result of any inaccuracy or incompleteness of or any other deficiency concerning such data or information caused
- 9.3 The total liability of CHKS (whether in contract, tort, under an indemnity or otherwise howsoever) shall not exceed a sum equal to the fees (excluding VAT) paid to it by the Client in the preceding year prior to the event giving rise to the liability.

- 9.4 The Client for itself and on behalf of the Hospital acknowledges that CHKS will not verify the accuracy or completeness of the Data supplied by the Hospital to CHKS save for any standard validation process as CHKS may agree to undertake as part of its services under this Agreement. CHKS shall not be liable for any losses, damages, costs, expenses claims or proceedings whatsoever associated with the provision of inaccurate or incomplete data.
- 9.5 Client acknowledges and accepts full responsibility for its use of the Services, and the results obtained therefrom including, without limitation, the provision of advice, medical treatment, information, health reference information or materials to any third party. In particular, Client acknowledges and accepts that the results of the Services are informative and not definitive, that its use of the Services and the results obtained therefrom require the use of appropriate intellect and judgement at all times, and that the Services and the results obtained therefrom should not be not used to inform clinical decisions for patient care.
- 9.6 Client agrees to defend and indemnify, at its own expense, CS from and against any third-party claim against CS to the extent arising out of or in connection with the Customer's use of the Services and/or the results obtained therefrom.
- 9.7 Notwithstanding the foregoing sub-clauses neither CHKS nor the Client excludes liability for death or personal injury (to the extent only that the same arises as a result of the negligence), fraud or any other matter for which liability cannot be excluded by law.
- 9.8 The Client acknowledges and accepts that there is clinical information ('Clinical Content') embedded with or otherwise delivered with the Services.
- 9.9 The Client accepts full responsibility for the selection of the Clinical Content and also accepts full responsibility for its use and the results obtained from such use including, without limitation, the provision of advice, information, health reference information or materials to any end customers or other third parties. It is therefore the Client's responsibility to ensure that the Clinical Content should not be used for the purpose of clinical decisions for patients. The Client further agrees to hold harmless and keep CS fully indemnified against any claim by an end customer or other third party that relates to such end customer's or third party's use or reliance on the Clinical Content.
- 9.10 CHKS does not itself warrant or guarantee the accuracy, safety, efficacy or completeness of any of the Clinical Content.
- 9.11 The Client understands and accepts that the use of the Clinical Content requires the application of appropriate intellect and judgement at all times, and should not form part of any clinical decision for patient care.

10. **Intellectual Property Rights**

- 10.1 CHKS acknowledges that subject to the rights granted to it herein any and all Intellectual Property Rights in the Data supplied by the Client shall be and remain the sole property of the Client.
- 10.2 The Client acknowledges that any and all Intellectual Property Rights in the Deliverables and any other material prepared by CHKS in connection therewith or otherwise relating to the Database shall be and remain the sole property of CHKS or such other person (if any) as may be named as the owner thereof in the Deliverables.
- 10.3 CHKS warrants that the use by or supply or delivery to the Client of any Deliverable pursuant to this Agreement will not constitute an infringement of any Intellectual Property Rights of any third party.
- 10.4 The Client warrants that it is the custodian, on behalf of the Secretary of State, of all Intellectual Property Rights in the Data supplied by the client and that the provision to and use by CHKS of the Data will not infringe the Intellectual Property Rights of any third party.

11. **Termination**

- 11.1 Either Party shall have the right at any time, by giving notice in writing to the other, to terminate this Agreement forthwith in any of the following events:
 - 11.1.1 if the other party commits a material breach of any of the terms or conditions of this Agreement and fails to remedy the same within 28 days of being required by the other party to do so;
 - 11.1.2 if the other party enters into a deed of arrangement or commits an act of bankruptcy or compounds with its creditors or if a receiving order is made against it or if (being a body corporate) an order is made or a resolution is passed for its winding up (other than voluntary winding up when solvent) or if an order is made for the appointment of an administrator to manage its affairs, business and property or if a receiver is appointed of any of its assets or undertakings or any like action is taken by reason of its insolvency.
- 11.2 Any rights to terminate this Agreement and the termination of this Agreement shall be without prejudice to the other rights of the parties or any of the provisions hereof which survive termination namely clauses; 2.2, 8, 9, 10, 12, 18, 20 and 27

12. **Confidentiality Use and Restrictions**

- 12.1 Each party undertakes to:
 - 12.1.1 keep confidential all information (written or oral) concerning the business and affairs of the other that it shall have obtained or received as a result of the

- discussions leading up to or the entering into or performance of this Agreement (“the Information”). The term “Information” extends to all knowledge and information relating to the trade, business, activities, operations, organisations, finances, processes, drawings, specifications, methods, designs, formulae, software and technology of and concerning the other party and any of its Clients or suppliers;
- 12.1.2 not without the other party’s written consent to disclose the Information in whole or in part to any other person, save those of its employees, agents and sub-contractors involved in the provision or receipt of the Services and who have a need to know the same; and
 - 12.1.3 use the Information solely in connection with the provision or receipt of the Services and not for its own benefit or the benefit of any third party.
 - 12.2 The provisions of clause 12.1 shall not apply to the whole or any part of the Information to the extent that it is:
 - 12.2.1 already in the other party’s possession on the date of its disclosure without breach of any obligation of confidentiality; or
 - 12.2.2 is already public knowledge or becomes public knowledge
 - 12.2.3 in the public domain other than as a result of a breach of this clause;
 - 12.2.4 independently developed by the other party without reference to or use of the Information.
 - 12.3 For the purposes of the undertaking in clause 12.1, the Information shall be deemed to include all Data of the Client under the care and control of either party. In respect of any part of such Data that is Personal Data, the Client shall be the data controller and CHKS the data processor (as such terms are defined in the Data Protection Act 1998). Each party shall ensure compliance with its own obligations pursuant to the Data Protection Act 1998 and the Computer (Misuse) Act 1990 in respect of Data and any relevant Information in its possession. To the extent that CHKS is required to process any Personal Data (as such term is defined in the Data Protection Act 1998) in the performance of the Services it shall do so in accordance with the reasonable instructions of the Client and, to the extent that such instructions are not expressly set out in this Agreement and entail additional expense for CHKS, at the Client’s cost.
 - 12.4 Each party undertakes to make all its relevant employees, agents and sub-contractors aware of the confidentiality of the Information and the provisions of this clause 12, and, without limitation to the foregoing, to take all such steps as shall from time to time be necessary to ensure compliance by its employees, agents and sub-contractors with the provisions of this clause 12.5 The obligations of this clause 12 shall continue to apply during the Contract Term and thereafter for a period of five years
 - 12.5 Each party undertakes that it will not during the continuance of this Agreement or at any time thereafter divulge any confidential information in relation to the

Data or any of the Deliverables or to the affairs, business or methods of carrying on business of the other except as required by law or in accordance with this Agreement

- 12.6 The Client agrees that at all times during and after the termination of this Agreement the Deliverables shall be used only for the Client's internal purposes and the management and marketing of the Hospital and its Hospital services.
- 12.7 The Client agrees that it will not, and will procure that each Hospital or other person controlled by it will not, during the continuance of this Agreement and for a period of six months after termination of this Agreement ("the Relevant Period") for whatever reason directly or indirectly on its own account or on behalf of any other person solicit, employ or engage any person who during the Contract Period is an officer, employee or consultant of CHKS and who was involved in a material respect with the provision of services to the Client by CHKS.
- 12.8 Save for the provisions set out in this Clause 12, the Parties agree that a disclosure with regard to the name the Client or location of the Client may be permitted for the purposes of a comparison review in the production of such statistical results as required for the Services and for any other third party client where CHKS is providing similar or the same type of service. CHKS shall ensure that the same confidentiality undertakings set out in this Clause 12 shall apply to all other third party clients where a disclosure of the Client's name or location is made.
- 12.9 Notwithstanding anything to the contrary in this Clause 12, CHKS may:
 - 12.9.1 include Client's name on CHKS's customer list and may describe in general terms the nature of the services provided by CHKS to the Client;

13. **Performance**

- 13.1 During the course of this Agreement the Authorised Officer may inspect and examine the work being carried out on the Client's premises without notice at any time. Where any part of the work is being carried out on CHKS premises then upon reasonable notice being given to CHKS, CHKS will give access to all such facilities as is reasonable and does not contravene its contractual and confidentiality undertakings to other persons as the Client may reasonably require for such inspection and examination.
- 13.2 If any part of the service described in the Third Schedule – The Deliverables is demonstrated to be defective in any material respect and is defective , other than as a result of a default or negligence on the part of the Client, CHKS shall at its own expense carry out the services again within such reasonable time as agreed in writing between CHKS and the Client.
- 13.3 Without prejudice to Clause 29 (Force Majeure) or of any other rights of either party under this Agreement, if the performance of this Agreement is delayed by reason of any act or default on the part of one party or by any other cause that the other party could not have reasonably foreseen or prevented and for which it was not responsible, the other party shall be

allowed a reasonable extension of time to complete its obligations under this Agreement.

14. **Staff**

14.1 While on the premises of the Client, CHKS staff shall follow any reasonable requests and instructions on the Clients site and will follow any specific instructions CHKS have been informed of by the Client, in writing, in advance.

14.2 CHKS shall employ sufficient staff to ensure that the services to be performed by it are provided at all times and in all respects in accordance with its obligations under this Agreement. CHKS shall ensure that a sufficient reserve of staff is available to meet its obligations to perform the services under this Agreement during holidays or absences.

14.3 CHKS shall employ for the purposes of this Agreement only such persons as are careful, skilled and experienced in the duties required of them and shall ensure that every such person is properly and sufficiently trained and instructed and carries out the services with regard to:-

- (a) the tasks that person has to perform;
- (b) all relevant provisions of this Agreement;
- (c) fire risks and fire precautions;
- (d) the data protection, security and confidentiality obligation placed on the Client by legislation and/or all relevant internal practices, procedures and/or policies operated by the Client as in each case are agreed with CHKS to be relevant internal practices and procedures to the carrying out of this Agreement;
- (e) the need for those working in the National Health Service to observe the highest standards of hygiene, courtesy and consideration.

14.4 Whilst every effort will be made to use the nominated staff on the contract, CHKS reserves the right to replace any staff member if it becomes necessary to do so. Such replacement will be suitably skilled, experienced and trained.

14.5 The normal hours of work are seven hours per day, Monday to Friday, 9am till 5pm excluding UK public holidays.

15. **Inducements to Purchase**

15.1 CHKS shall not offer to the Client or its representatives as a variation of the conditions of contract or as an agreement collateral to it, any advantage other than a cash discount against the contract price.

15.2 The Client shall be entitled to terminate this Agreement and (subject as provided below) to recover from CHKS the amount of any loss resulting from such termination in the following circumstances:-

15.2.1 if CHKS shall have offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward for doing forbearing to do or having done or forborne to do any action in relation to the obtaining or execution of this Agreement or any other contract with the Client or any other NHS Trust or Health Authority or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement or any other contract with the Client or any other NHS Trust or Health Authority;

15.2.2 if the like acts shall have been done by any person employed by CHKS or acting on its behalf (for example on a consultancy or sub contractor basis);

15.2.3 if in relation to this Agreement or any other contract with the Client or any other NHS Trust or Health Authority CHKS or any other person employed by it shall have committed any offence under the Prevention of Corruption Act 1889 to 1916 or shall have given any fee or reward to any officer of the Client which shall have been exacted or accepted by such officer under colour of his office or employment otherwise than such officer's proper remuneration;

except that CHKS shall not be liable for any such loss where its employee or person acting on its behalf acted without the knowledge of CHKS.

16. **Waiver**

16.1 No delay, neglect or forbearance on the part of either party ("the First Party") in enforcing against the other party any term or condition of this Agreement or in seeking redress for any breach of this Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of the First Party under this Agreement or cause a diminution of the obligations of the other party under this Agreement.

16.2 No waiver of any provision of this Agreement shall be effective unless it is agreed to by both parties.

16.3 No waiver of any default shall constitute a waiver of any subsequent default.

17. **Notices**

Any notice to be given hereunder shall either be delivered personally or sent by first class recorded delivery post or airmail or facsimile or telex to the party to be served at its address as set out at the head of this Agreement. A notice shall be deemed to have been served as follows: -

17.1 if personally delivered, at the time of delivery;

17.2 if posted, at the expiration of two business days after the envelope containing the same was delivered into the custody of the postal authorities;

17.3 if sent by facsimile, at the expiration of one business day after the same was dispatched.

18. **Data Protection**

18.1 In this Agreement, "UK Data Protection Legislation" means, until 25 May 2018, the Data Protection Act 1998, and thereafter Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (GDPR); within this Agreement the terms "controller", "data subject", "personal data", "process" and "processor" shall have the same meanings as in the UK Data Protection Legislation.

18.2 Both parties confirm that they will fulfil the obligations assigned to them under the UK Data Protection Legislation when processing personal data provided by the Client, and shall give each other such assistance as is reasonable to enable each other to comply with such obligations taking into account the nature of the processing and the information available to the parties. Under the terms of the Data Protection Legislation the Client shall be the Data Controller and CHKS shall be the Data Processor.

18.3 CHKS warrants that it shall:

18.3.1 only process the personal data in accordance with the Client's documented instructions or as required by law;

18.3.2 implement appropriate technical and organisational measures against unlawful or unauthorised processing and/or against accidental loss or destruction of or damage to such personal data which the Client agrees are appropriate measures;

18.3.3 ensure CHKS staff who have access to the personal data are subject to appropriate confidentiality obligations;

18.3.4 not process or transfer personal data outside the EEA, except with the prior written consent of the Client;

18.3.5 not engage a third party to process personal data without the prior written consent of the Client;

18.3.6 make available to the Client such information as the Client reasonably requests and CHKS is able to reasonably provide, and, permit and contribute to such audits, including inspections, conducted by the Client, as is necessary to demonstrate CHKS's compliance with the Data Protection Legislation. The Client will give reasonable notice of any audit and will be fully liable for any associated costs (including those of CHKS).

- 18.3.7 notify the Client without undue delay after becoming aware of any personal data breach involving the personal data, taking into account the nature of processing and the information available to CHKS.
- 18.3.8 save as required by law, at the choice and cost of the Client delete or return the personal data on expiry or termination of this Agreement.
- 18.4 CHKS will ensure that, from 25 May 2018, the subject matter, duration, nature and purpose of the processing activities, the type of personal data processed, the categories of data subjects and the obligations and rights of the Data Controller in relation to this Agreement are set out in the record of processing activities in relation to this Agreement that is required to be maintained by the Data Processor under Article 30.2 of the GDPR.
- 18.5 The Client warrants, represents and undertakes to CHKS that its instructions in relation to processing the personal data in accordance with the provisions of this Agreement are lawful.
- 18.6 The Client shall indemnify and keep indemnified CHKS against any liability, fines, claims, demands, expenses and costs (including reasonable legal fees) arising as a result of either (i) a breach of the applicable UK Data Protection Legislation by the Client, or (ii) CHKS following the Client's instructions, policies or procedures in relation to the data processing undertaken.

19. **Due Diligence and accuracy of information**

The Client acknowledges that CHKS has relied and will rely upon information provided to it both prior to and during the term of the Agreement. The Client warrants that all such information has been and will at the time of supply be compiled with reasonable skill and care and shall not by virtue of any error or omission be misleading or inaccurate in any material respect.

20. **Dispute Resolution**

- 20.1 In the event of there being any dispute between the parties then this will be escalated to the respective heads of each organisation and if this fails to achieve a resolution then the parties shall attempt to settle the matter by mediation in accordance with the Alternative Dispute Resolution process conducted by the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure & Agreement. Unless agreed otherwise between the parties then the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing to the other party (an "ADR Notice") to the dispute requesting mediation. A copy of the request should be sent to CEDR at the International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU. www.cedr.co.uk telephone +44 (0) 207 536 6000. The mediation will start not later than forty (40) Working Days after the date of the ADR Notice.
- 20.2 This clause shall be without prejudice to either party's right to seek interim relief from the Courts.

21 TUPE and Staffing

- 21.1 The Client warrants to CHKS that in respect of the transfer of the provision of the Services from the Client internally or from a contractor of the Client to CHKS upon the commencement of this Agreement that there are no employees of the Client or any contractor of the Client ("Relevant Employees") to whom the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended and / or replaced from time to time) ("the TUPE Regulations") will apply and that the TUPE Regulations will not have the effect of transferring any contract of employment of any Relevant Employees to CHKS upon or at any time following commencement of this Agreement.
- 21.2 If upon or at any time following commencement of this Agreement any Relevant Employee claims that their employment should have or has transferred to CHKS as a result of the provisions of the TUPE Regulations, then:
- 21.2.1 CHKS may, within 30 Business Days of becoming aware of any such claim, terminate such person's employment;
- 21.2.2 the Client will indemnify CHKS in full against any actions, proceedings, costs, claims, demands, awards, fines, orders, expenses and liability whatsoever (including legal and other professional fees and expenses) in relation to such person whether arising directly or indirectly out of or in connection with such termination or otherwise, and against any sums payable to or in relation to such person in respect of his/her employment from the commencement of this Agreement to the date of such termination; and
- 21.2.3 when reasonably required do to so by CHKS, the Client will assist CHKS in taking and/or defending any proceedings by and/or against CHKS in connection with the termination of such employment.

22 Assets

Neither party shall at any time assert any title, claim or right to ownership in the assets, systems, equipment, software or any other property of the other party. No title or right in any property (whether tangible or intangible) shall pass from one party to the other unless explicitly agreed in writing by authorised representatives of both parties.

23 Relationship

Nothing in this Agreement shall create any partnership, joint venture or relationship of principal and agent between the parties.

24 Discrimination

CHKS shall not unlawfully discriminate within the meaning of the Sex Discrimination Act 1975 or the Race Relations Act 1976 or any enactment

relating to discrimination in employment and shall take all reasonable steps to secure the observance of this condition by all its staff or agents employed in the performance of this Agreement.

25 Assignment, Transfers and sub-contracting

- 25.1 The Client shall not assign or otherwise transfer the Agreement or any of its rights and obligations hereunder whether in whole or in part without the prior written consent of CHKS (which shall not be unreasonably withheld).
- 25.2 CHKS may enter into any sub-contract with any person for the performance of any part of the Agreement. CHKS shall not be relieved from any of its obligations hereunder by entering into any sub-contract for the performance of any part of the Agreement.
- 25.3 CHKS may assign or otherwise transfer the Agreement or any of its rights and obligations hereunder whether in whole or in part to any part of the Capita Group plc.

26 Variations to Contract and Representations

- 26.1 Any terms or conditions that either party may seek to impose and which in any way add to, vary, or contradict the terms and conditions of this Agreement shall be excluded and not form part of this Agreement unless each of such terms and conditions has been specifically agreed to in writing by the other party.
- 26.2 Each party acknowledges that it has not entered into this Agreement in reliance on any representation by or on behalf of the other (save as specifically incorporated in this Agreement) but this shall not exclude or limit the liability of either party to the other in respect of any fraudulent misrepresentation.

27 Third Parties

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

28 Validity and Severability

If any clause or part of this Agreement is found by any court, tribunal, administrative body or authority of English jurisdiction to be illegal, invalid, void or unenforceable in whole or in part, then that provision shall, to the extent required, be severed from this Agreement and shall be ineffective without, as far as is possible, modifying any other clause or part of this Agreement and this shall not affect or impair the legality, validity or enforceability of any other provision of this Agreement which shall remain in full force and effect and the parties shall in good faith amend and, if necessary, novate this Agreement to reflect as nearly as possible the spirit and intention behind that illegal, invalid

or unenforceable provision, to the extent that such spirit and intention is consistent with the laws of England, and so that the amended clause complies with the laws of England.

29 **Force Majeure**

- 29.1 Neither party shall be liable to the other for any failure or delay or for the consequences of any failure or delay in performance of this Agreement if it is due a Force Majeure event and the party so delayed shall be entitled to a reasonable extension of time for performing such obligations.
- 29.2 The party so delayed shall give prompt notice thereof to the other party and shall be under no liability for loss, damage, injury or expense suffered by the other party, except where specified within the terms and conditions.
- 29.3 The party so delayed shall use all reasonable efforts to avoid or overcome the cause(s).

30 **Jurisdiction, Governing Law and related Matters**

- 30.1 The formation, existence, construction, performance, validity and all aspects whatsoever of this Agreement or of any term of this Agreement shall be governed by the law of England and Wales.
- 30.2 The courts of England and Wales shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement. The parties irrevocably agree to submit to that jurisdiction.

31 **ENTIRE AGREEMENT**

- 31.1 This Agreement and other documents which are incorporated into and form part of this Agreement contain, or shall contain, all the terms which the parties have agreed in relation to the subject matter of this Agreement, and supersede any prior written or oral agreements, representations or understandings between the parties in relation to such subject matter.
- 30.2 With effect from the Commencement Date this Agreement shall supersede any other agreement between the parties relating to all or any part of the subject matter hereof which other agreement shall automatically terminate but without prejudice to the liabilities of the parties accrued under or to have effect after the termination of any such other agreements (unless otherwise expressly modified by this Agreement).
- 31.3 The parties acknowledge that this Agreement has not been entered into wholly or partly in reliance on any statement, promise or representation made by or on their behalf.

- 30.4 Nothing in this Clause 30 shall exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.
- 30.5 All written communications, understandings, proposals, representations, terms and warranties are by agreement, excluded and are of no force or effect (to the extent permitted at law). This Agreement will negate the Clients own Terms and Conditions as such

THE FIRST SCHEDULE

The Data

Data Item	Desirable	Max Length
LOCAL PATIENT IDENTIFIER	Yes	10
BIRTH DATE	Yes	8
ETHNIC CATEGORY	Yes	2
MARITAL STATUS		1
SEX	Yes	1
POSTCODE OF USUAL ADDRESS	Yes	8
PCT OF RESIDENCE	Yes	3
HOSPITAL PROVIDER SPELL NUMBER		12
ADMINISTRATIVE CATEGORY		2
PATIENT CLASSIFICATION	Yes	1
ADMISSION METHOD (HOSPITAL PROVIDER SPELL)	Yes	2
SOURCE OF ADMISSION (HOSPITAL PROVIDER SPELL)	Yes	2
DURATION OF ELECTIVE WAIT	Yes	4
INTENDED MANAGEMENT	Yes	1
DECIDED TO ADMIT DATE	Yes	8
GMP (CODE OF REGISTERED OR REFERRING GMP)	Yes	8
CODE OF GP PRACTICE (REGISTERED GMP)	Yes	6
REFERRER CODE	Yes	8
REFERRING ORGANISATION CODE	Yes	6
DISCHARGE DESTINATION (HOSPITAL PROVIDER SPELL)	Yes	2
DISCHARGE METHOD (HOSPITAL PROVIDER SPELL)	Yes	1
START DATE (HOSPITAL PROVIDER SPELL)	Yes	8
DISCHARGE DATE (HOSPITAL PROVIDER SPELL)	Yes	8
EPISODE NUMBER	Yes	2
FIRST REGULAR DAY OR NIGHT ADMISSION	Yes	1
LAST EPISODE IN SPELL INDICATOR	Yes	1
NEONATAL LEVEL OF CARE	Yes	1
CARER SUPPORT INDICATOR	Yes	2
LEGAL STATUS CLASSIFICATION CODE (ON ADMISSION)		2
OPERATION STATUS	Yes	1
START DATE (CONSULTANT OR MIDWIFE EPISODE)	Yes	8
END DATE (CONSULTANT OR MIDWIFE EPISODE)	Yes	8
COMMISSIONING SERIAL NUMBER		6
NHS SERVICE AGREEMENT LINE NUMBER		10
PROVIDER REFERENCE NUMBER		17
COMMISSIONER REFERENCE NUMBER		17
ORGANISATION CODE (CODE OF PROVIDER)	Yes	5

Data Item	Desirable	Max Length
ORGANISATION CODE (CODE OF COMMISSIONER)	Yes	5
CONSULTANT CODE	Yes	8
TREATMENT SPECIALTY FUNCTION CODE	Yes	3
CONSULTANT MAIN SPECIALTY CODE		3
SUB-SPECIALTY CODE		5
PRIMARY DIAGNOSIS (ICD)	Yes	6
1st SECONDARY DIAGNOSIS (ICD)	Yes	6
2nd SECONDARY DIAGNOSIS (ICD)	Yes	6
3rd SECONDARY DIAGNOSIS (ICD)	Yes	6
4th SECONDARY DIAGNOSIS (ICD)	Yes	6
5th SECONDARY DIAGNOSIS (ICD)	Yes	6
6th SECONDARY DIAGNOSIS (ICD)	Yes	6
7th SECONDARY DIAGNOSIS (ICD)	Yes	6
8th SECONDARY DIAGNOSIS (ICD)	Yes	6
9th SECONDARY DIAGNOSIS (ICD)	Yes	6
10th SECONDARY DIAGNOSIS (ICD)	Yes	6
11th SECONDARY DIAGNOSIS (ICD)	Yes	6
12th SECONDARY DIAGNOSIS (ICD)	Yes	6
13th SECONDARY DIAGNOSIS (ICD)	Yes	6
14th SECONDARY DIAGNOSIS (ICD)	Yes	6
15th SECONDARY DIAGNOSIS (ICD)	Yes	6
16th SECONDARY DIAGNOSIS (ICD)	Yes	6
17th SECONDARY DIAGNOSIS (ICD)	Yes	6
18th SECONDARY DIAGNOSIS (ICD)	Yes	6
19th SECONDARY DIAGNOSIS (ICD)	Yes	6
PRIMARY PROCEDURE (OPCS)	Yes	4
PROCEDURE DATE	Yes	8
2nd PROCEDURE (OPCS)	Yes	4
2nd PROCEDURE DATE	Yes	8
3rd PROCEDURE (OPCS)	Yes	4
3rd PROCEDURE DATE	Yes	8
4th PROCEDURE (OPCS)	Yes	4
4th PROCEDURE DATE	Yes	8
5th PROCEDURE (OPCS)	Yes	4
5th PROCEDURE DATE	Yes	8
6th PROCEDURE (OPCS)	Yes	4
6th PROCEDURE DATE	Yes	8
7th PROCEDURE (OPCS)	Yes	4
7th PROCEDURE DATE	Yes	8

Data Item	Desirable	Max Length
8th PROCEDURE (OPCS)	Yes	4
8th PROCEDURE DATE	Yes	8
9th PROCEDURE (OPCS)	Yes	4
9th PROCEDURE DATE	Yes	8
10th PROCEDURE (OPCS)	Yes	4
10th PROCEDURE DATE	Yes	8
11th PROCEDURE (OPCS)	Yes	4
11th PROCEDURE DATE	Yes	8
12th PROCEDURE (OPCS)	Yes	4
12th PROCEDURE DATE	Yes	8
13th PROCEDURE (OPCS)	Yes	4
13th PROCEDURE DATE	Yes	8
14th PROCEDURE (OPCS)	Yes	4
14th PROCEDURE DATE	Yes	8
15th PROCEDURE (OPCS)	Yes	4
15th PROCEDURE DATE	Yes	8
16th PROCEDURE (OPCS)	Yes	4
16th PROCEDURE DATE	Yes	8
17th PROCEDURE (OPCS)	Yes	4
17th PROCEDURE DATE	Yes	8
18th PROCEDURE (OPCS)	Yes	4
18th PROCEDURE DATE	Yes	8
19th PROCEDURE (OPCS)	Yes	4
19th PROCEDURE DATE	Yes	8
20th PROCEDURE (OPCS)	Yes	4
20th PROCEDURE DATE	Yes	8
21st PROCEDURE (OPCS)	Yes	4
21st PROCEDURE DATE	Yes	8
22nd PROCEDURE (OPCS)	Yes	4
22nd PROCEDURE DATE	Yes	8
23rd PROCEDURE (OPCS)	Yes	4
23rd PROCEDURE DATE	Yes	8
24th PROCEDURE (OPCS)	Yes	4
24th PROCEDURE DATE	Yes	8
CRITICAL CARE DAYS	Yes	4
SUPER OUTPUT AREA - LOWER		9

THE SECOND SCHEDULE

THE CHARGES

THE THIRD SCHEDULE

THE DELIVERABLES

The Fourth Schedule **Authorisation Form**

The process needs to be defined here and a copy of the authorisation form needs to be included

AS WITNESS the hands of the duly authorised representatives of the parties the day and year first above written.

Signed by).....
duly authorised for) Print nameTitle.....
and on behalf of)
CHKS LIMITED).....
in the presence of) Print nameTitle.....

Signed by).....
duly authorised for) Print nameTitle.....
and on behalf of)
the CLIENT).....
in the presence of) Print nameTitle.....

