

CHKS DATABASE AGREEMENT

Between

CHKS Limited

and

[INSERT CLIENT LEGAL ENTITY]

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The First Schedule – Data Processing and The Data

The Second Schedule – The Charges

The Third Schedule - The Deliverables and Listed
Affiliates

The Fourth Schedule – Authorisation Form

Signature of the parties

THIS AGREEMENT is made the day of [...]

BETWEEN:

- (1) **CHKS LIMITED** Registered No: 02442956 whose registered office is situated at 11 Buckingham Street, London, WC2N 6DF ("CHKS")
- and
- (2) **[XYZ** Registered No: 123 whose registered office is situated at INSERT ADDRESS] ("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 insight and benchmarking for healthcare providers by giving access to the Deliverables under the terms and conditions of this Agreement. The Client shall not supply CHKS with Personal Data under this Agreement.
- (C) Following such CHKS analysis and access to the Deliverables, the Client shall be able and permitted to run Reports for internal use only (Authorised Purpose”).
- (D) References to the Client shall include its Affiliates where required strictly for the Authorised Purpose. The Client is responsible and liable for all uses of the Data, Deliverables, NHS Data, Reports and Confidential Information resulting from access provided by Client or any Affiliate, directly or indirectly, whether such access or use of the Services/ Deliverables is permitted by, or in violation of, the Agreement. Without limiting the generality of the foregoing, the Client is responsible for all acts and omissions of its Affiliates and its Authorised Users, and any act or omission of an Affiliate and its Authorised Users that would constitute a breach of the Agreement if taken by the Client will be deemed a breach of the Agreement by the Client. Client shall make all Affiliates and Authorised Users aware of the provisions of the Agreement as applicable to such Affiliates’ and Authorised Users’ use of the Data, Deliverables, NHS Data, Reports and Confidential Information and shall cause Affiliates and Authorised Users to comply with such provisions.
- (D) References to CHKS shall include its Affiliates. Without limiting the generality of the foregoing, CHKS is responsible for all acts and omissions of its Affiliates and any act or omission of an Affiliate that would constitute a breach of the Agreement if taken by CHKS will be deemed a breach of the Agreement by CHKS. CHKS

shall make all Affiliates aware of the provisions of the Agreement as applicable to such Affiliates' and shall cause Affiliates to comply with such provisions.

WHEREBY IT IS AGREED as follows:

1. **Definitions**

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

"Affiliate"	means in relation to an entity, any entity controlling, controlled by, or under common control with that entity, where "control" (in its various forms) means having the right to direct the management and affairs of an entity, whether through ownership of voting securities, by contract, or otherwise. For the purposes of this Agreement the Client's authorized Affiliates are identified the Third Schedule.
"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;
"Client Data"	means any Personal Data and Data which is transmitted by or on behalf of Client to, or is otherwise processed by, CHKS under this Agreement or which is generated under this Agreement
"Authorised Users"	means the Client's Personnel and listed Affiliates using the Deliverables for the Authorised Purpose.
"Charges"	means the Charges set out in the Second Schedule;
"Commencement Date"	means the date at the start of the Agreement;
"Contract Period"	means the period of ____ years from the Commencement Date unless terminated earlier in accordance with Clause 11 (Termination);

"Data"	means data of the type set out in the First Schedule concerning patients of the Hospital;
"Data Protection Legislation"	means the General Data Protection Regulation ((EU 2016/679) or any replacement legislation applicable in England and Wales from time to time and any other applicable laws relating to the processing of personal data.
"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, including NHS England, hospitals and other persons or bodies who are 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 which enable Reports to be run by the Client;
"Force Majeure"	means in relation to either party, circumstances beyond the reasonable control of that party, including acts of God, acts of governmental (including acts or omissions of NHS England) or supra-national authority, outbreak of hostilities, war or military operations, national or local 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.
"Good Industry Practice"	means the degree of skill, care, prudence, foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and

experienced person engaged in the same or similar type of undertaking or carrying out the same or similar type of activities;

"Hospital"

means all Client sites;

"Intellectual Property Rights"

means any and all patents, trademarks, 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.

"NHS Data"

means NHS data provided by NHS England in pseudonymised format provided by NHS England to CHKS containing Hospital Episode Statistics (HES), Outpatient (OP), Emergency Care Data Set (ECDS) and Standardised Hospital Mortality Indicator (SHMI) under a separate direct contract between CHKS and NHS England. CHKS anonymise the NHS data provided in the Database housed within the Deliverables which is then made available to the Client in anonymised format and access provided by CHKS subject to the provisions of this Agreement, including the First Schedule;

"NHS England"

means NHS England who are providing patient healthcare NHS Data to CHKS under a separate direct contract between CHKS and NHS England which includes clinical content. The NHS Data feeds for the Deliverables are provided by NHS England;

"Personnel"

means a party's officers, employees, (contractors and professional advisers under the same or similar duty of confidentiality as set out in this Agreement) for the Authorised Purpose.

"Personal Data"

has the same meaning as in Section 1(1) of the UK Data Protection Legislation;

"Report"	means any report that the Client can run producing an output file in the Deliverables.
"Services"	means the services to be provided by CHKS as set out in full in the Third Schedule – The Deliverables
"VAT"	means value added tax and / or any similar or analogous sales tax imposed in any jurisdiction (including, but not limited to, any value added tax charged or imposed pursuant to Council Directive 2006/112/EC or any national legislation implementing such Directive)

Within this Agreement the terms "controller", "data subject", "personal data", "personal data breach", "process ("processed" to be construed accordingly) and "processor" shall have the same meanings as in the Data Protection Legislation.

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 and/or NHS Data, Deliverables or give access to the Services to any third party including but not limited 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 Subject to payment of the Charges due under this Agreement, CHKS grants a limited revocable term licence, as set out in Clause 10.5 to access the Deliverables, receive the Services and process the NHS Data only for the Authorised Purpose during the term of this Agreement.
- 2.7 The First Schedule sets out the data processing requirements and conditions for the Client's access to the Deliverables and NHS Data provided by CHKS under the terms of the Agreement.
- 2.8 The Client warrants and represents that it shall:
- 2.8.1 comply with this Agreement and the provisions set out in the First Schedule;
 - 2.8.2 only process the NHS Data in the UK.
 - 2.8.3 not make any change, alter, modify, manipulate, derive, sub-process or sub-licence the NHS Data;
 - 2.8.4 use and process the NHS Data in accordance with the Authorised Purpose and the terms of this Agreement;
 - 2.8.5 maintain good information governance standards and practices, meeting or exceeding the NHS England's IG Toolkit standards required of its organisation type;
 - 2.8.6 not share the Deliverables or NHS Data with any third party without the prior written consent of CHKS;
 - 2.8.7 ensure that Personnel processing the NHS Data are suitably trained and made aware of their responsibilities in handling the NHS Data;
 - 2.8.8 ensure that all Personnel, prior to accessing or using Data, are trained in the use of the Deliverables and made fully aware of, and comply with the terms and conditions set out in this Agreement;
 - 2.8.9 Upon the expiry or termination of this Agreement permanently destroy or erase the NHS Data, together with all hard and soft copies of the same and provide CHKS with a Certification of Destruction;
 - 2.8.10 immediately notify any NHS Data breach to CHKS as soon as the Client discovers such data breach; and CHKS shall assess whether to notify the ICO of the Data Breach, in accordance with applicable law and the ICO's guidance on breach notification; and
 - 2.8.11 immediately notify CHKS if it no longer has a legal basis on which to process NHS Data.
- 2.9 Unless specified in the Authorised Purpose, (or as otherwise authorised by a CHKS Digital director in writing), the Client must not combine the NHS Data with any other Client Data or Data held by the Client and must not attempt to identify any individual from the NHS Data, or use or manipulate the NHS Data in any way that re-identifies any individual from the NHS Data.

- 2.10 The Client shall when using and processing the NHS Data comply with and have regard at all times to:
- 2.10.1 all applicable law;
 - 2.10.2 Good Industry Practice;
 - 2.10.3 CHKS and NHS England written guidance; and
 - 2.10.4 the data security requirements set out in Annex B of the First Schedule.
- 2.11 In the event of any change in applicable law subsequent to the date of signature of this Agreement, the Client shall take such steps (including, agreeing to additional obligations and/or executing additional documents) as may be requested by CHKS (as directed by NHS England) to ensure that the transfer to the Client, and the processing and use by the Client, of the NHS Data complies with such amended applicable law.
- 2.12 The Client must not market or publish Information, this Agreement or the NHS Data or any derived information, without CHKS's prior written consent, which may require the consent of NHS England and such consent (if granted at CHKS and NHS England's sole discretion) and the Client must ensure compliance with the terms of this Agreement at all times.
- 2.13 The Client must not contact any individual that could be identified from the NHS Data.
- 2.14 Without prejudice to its rights under Clauses 9.11 and 11.1 of this Agreement, CHKS shall be entitled to suspend the supply of NHS Data to the Client under this Agreement without incurring any liability to the Client if, in the reasonable opinion of CHKS, the Client may be in breach of any of its obligations under this Agreement.
- 2.15 CHKS shall supply the Services or give access to the Deliverables to the Client at the times and in the manner referred to in the Third Schedule. The Client acknowledges that access to and update of NHS Data on a monthly basis (or at a frequency provided by NHS England) is dependent upon NHS England providing CHKS access to and monthly update of the NHS Data and CHKS shall not be responsible for any delays, non-supply or accuracy or completeness of NHS Data. The NHS Data will be anonymised and aggregated by CHKS in accordance with CHKS' agreement with NHS England.
- 2.16 The Client warrants and represents that it shall not disclose any of the Client's Data, including Personal Data under this Agreement.
- 2.17 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 (Termination), this Agreement shall continue for the Contract Period unless terminated earlier in accordance with the Agreement.

4. **Charges and Payment**

- 4.1 The Client shall pay CHKS the Charges specified in the Second Schedule at the times stated therein.
- 4.2 Payment of the Charges under 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 prevailing rate from time to time in force shall be added thereto.
- 4.3 An invoice shall be rendered on CHKS's own invoice form to the Client clearly marked with the Client's order number, if provided upon the Commencement Date, or referencing this Agreement. CHKS shall be permitted to invoice without an order number if this is not supplied by the Client on the Commencement Date.
- 4.4 Invoices shall show the period and the Services for which payment is claimed.
- 4.5 The Client may pay CHKS by BACS (Bank Account Clearing System).
- 4.6 Without prejudice to CHKS's other rights or remedies, whether at law, in equity, or under the Agreement CHKS shall be entitled to add an interest charge to the outstanding balance at the rate of four percent (8%) per annum above Barclays Bank Plc's current base rate from time to time; this interest will begin to accrue on the day after the payment due date and will accumulate on the outstanding balance on a daily basis until paid in full by the Client.
- 4.7 Without prejudice to CHKS's other rights or remedies, whether at law, in equity, or under the Agreement CHKS, if the Client fails to pay all invoice amounts by the due date and it continues for fourteen (14) days following written notice thereof, CHKS shall be entitled to suspend performance of Services and/or, where applicable, access to the Deliverables until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to the Client or any other person by reason of such suspension.

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 the Retail Price Index (RPI). The percentage increase will be calculated based on the average percentage increase in the Retail Price Index published by the Office for National Statistics, during the (12) month period of the latest available indices published preceding the anniversary, provided that the rate of increase shall always be three percent (3%) or greater. If Office for National Statistics ceases to publish annual RPI data a comparative index from the Office for National Statistics, or its successor, shall be applied.

6. **Value added tax**

All Charges in this Agreement are net of VAT or any other tax or duties levied which are chargeable in addition. 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 (Authorisation Form). Changes are subject to agreement and signature of the Authorisation Form by both parties in writing.

8. **Undertakings**

8.1 CHKS undertakes to provide the Services in accordance with Good Industry Practice and to comply with all relevant aspects of the UK Data Protection Legislation.

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 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 or Reports 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 aggregate liability of CHKS (whether in contract, tort, under an indemnity or otherwise howsoever) shall not exceed a sum equal to the Charges (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 or NHS Data supplied to CHKS by the Hospital and NHS England, respectively, 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 or NHS 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 used to inform clinical decisions for patient care.
- 9.6 Client agrees to defend and indemnify, at its own expense, CHKS from and against any third-party claim against CHKS to the extent arising out of or in connection with the Client'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 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. The Client further agrees to hold harmless and keep CHKS 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 shall fully indemnify CHKS (and NHS England) in full for any liabilities, losses, demands, claims, damages, amounts agreed in settlement, costs and expenses incurred which arise from or in connection with:

- 9.11.1 any loss of the NHS Data by the Client;
- 9.11.2 unauthorised or unlawful use of the NHS Data beyond the Authorised Purpose by the Client;
- 9.11.3 any confidential Information and/or NHS Data breach of this Agreement by the Client, whether arising in negligence, contract or otherwise; and
- 9.11.4 any monetary penalty notice imposed on CHKS (or NHS England) by the Information Commissioner under Data Protection Legislation as a result of the Client's breach of this Agreement.

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, NHS Data and any other material or Reports 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, such as NHS England for the NHS Data, as may be named as the owner thereof in the Deliverables.
- 10.3 Subject to the Client's strict compliance with the terms of this Agreement, 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.
- 10.5 Subject to and in consideration of the Client's payment of the Charges, Clause 10.6 and compliance with all other terms and conditions of the Agreement, CHKS grants to Client for the Contract Period, a nonexclusive, non-transferable, non-sublicensable and revocable licence for Client to use, solely by and through the Authorized Users, the Deliverables(s) (in object code form only) listed in the Third Schedule (including any maintenance releases) and the relevant Reports, within the UK and solely for the Authorized Purpose.
- 10.6 For NHS Data, the Client is permitted to access, view, process the data and securely store the Reports from iCompare and shall not copy, modify, manipulate/ reverse engineer, change, derive or in any way amend the NHS Data.

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 if the breach is capable of remedy, fails to remedy the same within 30 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 CHKS may immediately terminate this Agreement by giving notice in writing to the Client if;

11.2.1 in respect of the NHS Data, the Client no longer has the legal basis or permission by NHS England to process the NHS Data;

11.2.2 CHKS no longer has an agreement with NHS England for the NHS Data to continue performing the Services of this Agreement;

11.2.3 it becomes unlawful for the Client to perform all or any of its obligations under this Agreement as determined by NHS England;

11.2.4 there is a change in applicable law which materially affects NHS England's powers to provide the NHS Data to CHKS;

11.2.5 NHS England terminate the data sharing agreement with CHKS for any reason rendering CHKS unable to provide access to the NHS Data.

11.3 Without prejudice to CHKS's rights under Clause 11.1 and 11.2, where an event under Clause 11.1 or 11.2 occurs or is likely to occur, CHKS shall be entitled to suspend this Agreement (which shall include the suspension of any licence granted to the Client), without incurring any liability to the Client, with immediate effect by written notice to the Client.

11.4 Upon termination or expiry of the Agreement the Client must ensure that all NHS Data and Confidential Information of CHKS is securely and permanently destroyed or erased and provide a destruction certificate within 28 days of the date of termination or expiry in the form provided by CHKS.

11.5 Any rights to terminate this Agreement and the termination of this Agreement shall be without prejudice to the other rights of the parties. Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Contract (including Clauses 4, 8, 9, 10, 11.4, 12, 18, 20, 27, 30, 31 and the First Schedule) shall survive termination and remain in full force and effect.

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, NHS Data, software and technology of and concerning the other party and any of its customers or suppliers;
- 12.1.2 not without the other party's prior written consent to disclose the Information in whole or in part to any other person or third party, save those of its Personnel involved in the provision or receipt of the Services and who have a need to know the same subject to being under a duty of confidentiality on the terms set out in this Agreement; 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 free of any obligation of confidentiality and without breach of any obligation of confidentiality; or
- 12.2.2 is already lawfully public knowledge or becomes public knowledge without breach of this Agreement;
- 12.2.3 lawfully in the public domain other than as a result of a breach of this Clause;
- 12.2.4 can be demonstrated that it has been 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 UK Data Protection Legislation). Each party shall ensure compliance with its own obligations pursuant to the UK Data Protection Legislation 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 UK Data Protection Legislation) 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 Personnel and any pre-authorised 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 Personnel and any pre-authorised agents and sub-contractors with the provisions of this Clause. Each party shall be responsible for any unauthorised disclosure or use of the Information made by any of its Personnel and any pre-authorised agents and sub-contractors and shall take all reasonable precautions to prevent such unauthorised disclosure or use.
- 12.5 The obligations of this Clause 12 shall continue to apply during the Contract Term and thereafter for a period of six years or in perpetuity in relation to NHS Data.
- 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, NHS 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 Where Information is required to be disclosed by an order of any court or regulatory, judicial, governmental or similar and to the minimum extent required to do so and provided that, to the extent legally permitted, the disclosing party shall advise the owning party of the Information of such requirement to disclose promptly upon becoming aware of it and agree with the disclosing party, to the extent lawful and practicable to do so, the nature, extent and timing of any such disclosure prior to any disclosure being made.
- 12.6 The Client agrees that at all times during the term of this Agreement the Deliverables, including NHS Data, shall be used only for the Client's internal purposes in accordance with the Authorised Purpose and must not be used externally for marketing or any publicity purposes.
- 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 Personnel 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 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 All Services are provided remotely.

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 or NHS England, 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, including due to NHS England, the other party shall be allowed a reasonable extension of time to complete its obligations under this Agreement to the extent it is reasonably able to acknowledging that in relation to NHS Data this may be subject to the performance of NHS England.

14. **Staff**

14.1 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.

14.2 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) Data Protection Legislation;
- (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 Neither party or its representatives as a variation of the conditions of contract or as an agreement collateral to it, shall offer any advantage, gift or consideration to the other party that would constitute a breach of the UK Bribery Act 2010.

15.2 Each party covenants that it will perform all activities under or pursuant to the Agreement in accordance with all applicable legal requirements.

15.3 Without limiting the generality of Clause 15.2 above, each party warrants and represents to the other party that it will cause all Personnel who will be given access to the Information, NHS Data and/or Deliverables to be familiar with all applicable laws relating to bribery and corruption, including the UK Bribery Act 2010, and each party represents and warrants its Personnel shall not violate any such laws in connection with their activities under or relating to the Agreement, and that they will take no actions on behalf of or in relation to the other party that would subject the other party to liability under any such laws.

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**

17.1 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: -

- a) if personally delivered, at the time of delivery;
- b) if posted, at the expiration of two business days after the envelope containing the same was delivered into the custody of the postal authorities;
- c) if sent by email, acknowledgement of receipt by the recipient party must be obtained to constitute delivery.

- d) A copy of the notice shall be sent to: adv.t.groupcommercial@adv.t-group.com and the CHKS Account representative when notices are sent to CHKS.

18. **Data Protection**

18.1 Roles and Scope

18.1.1 The parties acknowledge that, for the purposes of the Data Protection Legislation:

- (a) in respect of Client Data, the Client is the Controller and CHKS is the Processor; and
- (b) in respect of NHS Data, CHKS is the Controller and the Client is the Processor.

18.1.2 This Clause 18 and the First Schedule (Data Processing Schedule) are intended to satisfy the requirements of Article 28(3) UK GDPR where either party processes Client Data or NHS Data as a Processor.

18.2 Compliance with Data Protection Legislation

18.2.1 Each party shall comply with its respective obligations under the Data Protection Legislation in relation to any Client Data or NHS Data processed under or in connection with this Agreement and shall provide such reasonable assistance as the other party may require to enable compliance with those obligations.

18.2.2 For the avoidance of doubt, as between the parties only, where CHKS has complied with a specific contractual obligation under this Agreement that is expressly intended to address a corresponding requirement under the Data Protection Legislation, such compliance shall be taken into account when assessing compliance with that requirement. Nothing in this Agreement shall operate to deem compliance for the purposes of any supervisory authority or data subject.

18.2.3 The Client warrants, represents and undertakes that it has lawful grounds for the processing of Client Data and that any instructions it provides to CHKS in respect of such Client Data comply with the Data Protection Legislation.

18.2.4 The parties confirm that the information required under Article 28(3) UK GDPR in respect of the processing of Client Data and NHS Data (including subject matter, duration, nature and purpose of processing, types of Personal Data, categories of data subjects, and the parties' respective obligations and rights) is set out in the First Schedule.

18.3 Processor Obligations

Where a party processes Client Data or NHS Data under or in connection with this Agreement (the Processing Party), it shall:

- 18.3.1 save where otherwise required by law, process Client Data or NHS Data only as necessary to perform its obligations under this Agreement and only in accordance with the documented instructions of the party acting as Controller in respect of that data (the Controlling Party);
- 18.3.2 implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to the risk arising from the processing of Client Data or NHS Data, as further described in the First Schedule;
- 18.3.3 ensure that its Personnel who have access to Client Data or NHS Data are subject to appropriate confidentiality obligations;
- 18.3.4 not appoint any sub processor to process Client Data or NHS Data without the prior written consent of the Controlling Party, and where consent is given, ensure that equivalent data protection obligations are imposed on the sub processor and that the Processing Party remains fully liable for the sub processor's acts and omissions;
- 18.3.5 not process or transfer Client Data or NHS Data outside the United Kingdom without the prior documented consent of the Controlling Party, and in all cases NHS Data shall reside in the United Kingdom;
- 18.3.6 notify the Controlling Party without undue delay after becoming aware of any Personal Data breach involving Client Data or NHS Data, and provide all information reasonably required to comply with breach notification obligations;
- 18.3.7 take appropriate technical and organisational measures to assist the Controlling Party in responding to requests from data subjects in respect of Client Data or NHS Data, including requests for access, rectification, erasure, portability, restriction or objection, and not respond directly to any such request except on the documented instructions of the Controlling Party;
- 18.3.8 make available to the Controlling Party all information reasonably necessary to demonstrate compliance with this Clause 18 in respect of Client Data or NHS Data, and permit and contribute to audits and inspections conducted by or on behalf of the Controlling Party (and, in relation to NHS Data, NHS England). Routine audits shall be at the Controlling Party's cost unless material non-compliance is identified;
- 18.3.9 securely store Client Data and NHS Data and permanently delete or destroy such data when it is no longer required for the authorised purposes, save to the extent retention is required by law;

18.3.10 not publish, disclose or disseminate Client Data or NHS Data (or any subset of it) to any third party without the prior written consent of the Controlling Party, which in the case of NHS Data may also require NHS England's prior written consent;

18.3.11 take reasonable steps to ensure the reliability of its Personnel who have access to Client Data or NHS Data;

18.3.12 inform the Controlling Party immediately if it receives any communication from the ICO relating to Client Data or NHS Data, unless legally prohibited from doing so; and

18.3.13 ensure that access to Client Data and NHS Data is restricted to authorised Personnel, is role based, and is auditable.

18.4 Unlawful Instructions

The Processing Party shall inform the Controlling Party in writing if it considers that any instruction relating to Client Data or NHS Data infringes the Data Protection Legislation.

18.5 Changes in Law and Guidance

Where changes to the Data Protection Legislation, supervisory authority guidance, or binding regulatory directions relating to the processing of Client Data or NHS Data materially increase the Processing Party's cost of compliance, the parties shall discuss in good faith an equitable adjustment to charges, subject to reasonable cost mitigation and prior written notice.

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**

In the event of there being any dispute between the parties the parties agree to schedule a mandatory meeting either remotely (for example, via teleconference) or at a mutually agreeable location, within ten (10) days of the date a party gives notice of the dispute to the other party, which meeting will be attended by a senior official of each party. At that meeting, each party will present its side of the dispute, and the senior officials will enter into good faith negotiations in an attempt to resolve the dispute. In the event the matter is not resolved at such meeting or if the meeting does not take place within ten (10) days of the date a party gives notice of the dispute to the other party, the parties reserve all applicable rights and remedies under the Agreement or available at

law or in equity. Nothing in this Clause 20 shall prevent IBSS from seeking any interim or interlocutory relief.

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 sub-contract, sub-licence, assign, novate 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.
- 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, novate or otherwise transfer the Agreement or any of its rights and obligations hereunder whether in whole or in part to an Affiliate without consent from the Client and to a third party with prior written consent of the Client.

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**

- 27.1 Subject to Clause 27.2, 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.
- 27.2 The Client acknowledges that NHS England may benefit from and can enforce the terms of this Agreement in accordance with the Contracts (Rights of Third Parties) Act 1999.
- 27.3 NHS England shall have the right at any time and at its own discretion to perform an audit of the Client, provided that the Client is given seven (7) days' notice where permissible and practicable.

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.
- 31.2 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.
- 31.4 Nothing in this Clause 31 shall exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.
- 31.5 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 if referenced on orders or documentation and this Agreement shall govern and prevail.

THE FIRST SCHEDULE

1. Data Processing of Client Data

Description	Details
Subject matter of the processing	Patient level records currently relating to admitted patient care, out-patient and accident and emergency hospital activity as detailed in the Data at item 2. CHKS may accept further settings (eg. theatres, community) in the future to support new functionality.
Duration of the processing	Normally Data will be processed once a month for the duration of the Agreement. The new and updated Data will then be added to iCompare. Where Data quality is deemed to be an issue, more frequent Data submissions may be negotiable. CHKS hold at least 5 years of Data to facilitate time series analysis.
Nature and purpose of the processing	Data is collected via a secure data transfer method either via CHKS iCompare data transfer facility or via NHS email. Data Services process each dataset to standardize the database structure, group with several case mix groupers and produce a Data quality monitor report. This report informs the dual sign-off process which prevents datasets with serious issues going onto the next stage. Once through sign-off the Data is prepared for loading to iCompare via an automated process which adds complex indicator data to each dataset before packaging and uploading overnight using secure data transfer. The Data is stored encrypted at all stages on CHKS servers. Data processing is for the purpose of providing analytics and benchmarking information to improve patient care in relation to safety, quality and efficiency of services provided.
Type of Personal Data	CHKS specifically requests that no direct personal identifiers are included in Data extracts.

Description	Details
	Postcode should be submitted truncated to sector level. Date of Birth should be submitted as year and month of birth. For the purposes of linkage between settings of healthcare data, it is essential that a consistent Local Patient Identifier or NHS number is supplied. In order to identify any patient, it would be necessary to have access to the hospital's PAS. It is also acceptable for the Client to send a pseudonymized identifier although this reduces the usability of iCompare when identifying patients whose case notes may need to be pulled as follow-up from analysis.
Categories of Data Subject	iCompare currently uses patient data relating to hospital finished consultant episodes, provider spells, outpatient appointments and accident and emergency attendances.
Plan for return or destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data.	CHKS does not normally return Data, but instead we are able to securely wipe data using multi-pass techniques and issue a certificate of destruction on request.

2. The Data

a. Admitted Patient Care

Data Item	Desirable
LOCAL PATIENT IDENTIFIER	Yes
BIRTH DATE	Yes
ETHNIC CATEGORY	Yes
MARITAL STATUS	
SEX	Yes
POSTCODE OF USUAL ADDRESS	Yes
PCT OF RESIDENCE	Yes
HOSPITAL PROVIDER SPELL NUMBER	
ADMINISTRATIVE CATEGORY	
PATIENT CLASSIFICATION	Yes
ADMISSION METHOD (HOSPITAL PROVIDER SPELL)	Yes
SOURCE OF ADMISSION (HOSPITAL PROVIDER SPELL)	Yes
DURATION OF ELECTIVE WAIT	Yes

Data Item	Desirable
INTENDED MANAGEMENT	Yes
DECIDED TO ADMIT DATE	Yes
GMP (CODE OF REGISTERED OR REFERRING GMP)	Yes
CODE OF GP PRACTICE (REGISTERED GMP)	Yes
REFERRER CODE	Yes
REFERRING ORGANISATION CODE	Yes
DISCHARGE DESTINATION (HOSPITAL PROVIDER SPELL)	Yes
DISCHARGE METHOD (HOSPITAL PROVIDER SPELL)	Yes
START DATE (HOSPITAL PROVIDER SPELL)	Yes
DISCHARGE DATE (HOSPITAL PROVIDER SPELL)	Yes
EPISODE NUMBER	Yes
FIRST REGULAR DAY OR NIGHT ADMISSION	Yes
LAST EPISODE IN SPELL INDICATOR	Yes
NEONATAL LEVEL OF CARE	Yes
CARER SUPPORT INDICATOR	Yes
LEGAL STATUS CLASSIFICATION CODE (ON ADMISSION)	
OPERATION STATUS	Yes
START DATE (CONSULTANT OR MIDWIFE EPISODE)	Yes
END DATE (CONSULTANT OR MIDWIFE EPISODE)	Yes
COMMISSIONING SERIAL NUMBER	
NHS SERVICE AGREEMENT LINE NUMBER	
PROVIDER REFERENCE NUMBER	
COMMISSIONER REFERENCE NUMBER	
ORGANISATION CODE (CODE OF PROVIDER)	Yes
ORGANISATION CODE (CODE OF COMMISSIONER)	Yes
CONSULTANT CODE	Yes
TREATMENT SPECIALTY FUNCTION CODE	Yes
CONSULTANT MAIN SPECIALTY CODE	
SUB-SPECIALTY CODE	
PRIMARY DIAGNOSIS (ICD)	Yes
1st SECONDARY DIAGNOSIS (ICD)	Yes
2nd SECONDARY DIAGNOSIS (ICD)	Yes
3rd SECONDARY DIAGNOSIS (ICD)	Yes
4th SECONDARY DIAGNOSIS (ICD)	Yes
5th SECONDARY DIAGNOSIS (ICD)	Yes
6th SECONDARY DIAGNOSIS (ICD)	Yes
7th SECONDARY DIAGNOSIS (ICD)	Yes
8th SECONDARY DIAGNOSIS (ICD)	Yes
9th SECONDARY DIAGNOSIS (ICD)	Yes

Data Item	Desirable
10th SECONDARY DIAGNOSIS (ICD)	Yes
11th SECONDARY DIAGNOSIS (ICD)	Yes
12th SECONDARY DIAGNOSIS (ICD)	Yes
13th SECONDARY DIAGNOSIS (ICD)	Yes
14th SECONDARY DIAGNOSIS (ICD)	Yes
15th SECONDARY DIAGNOSIS (ICD)	Yes
16th SECONDARY DIAGNOSIS (ICD)	Yes
17th SECONDARY DIAGNOSIS (ICD)	Yes
18th SECONDARY DIAGNOSIS (ICD)	Yes
19th SECONDARY DIAGNOSIS (ICD)	Yes
PRIMARY PROCEDURE (OPCS)	Yes
PROCEDURE DATE	Yes
2nd PROCEDURE (OPCS)	Yes
2nd PROCEDURE DATE	Yes
3rd PROCEDURE (OPCS)	Yes
3rd PROCEDURE DATE	Yes
4th PROCEDURE (OPCS)	Yes
4th PROCEDURE DATE	Yes
5th PROCEDURE (OPCS)	Yes
5th PROCEDURE DATE	Yes
6th PROCEDURE (OPCS)	Yes
6th PROCEDURE DATE	Yes
7th PROCEDURE (OPCS)	Yes
7th PROCEDURE DATE	Yes
8th PROCEDURE (OPCS)	Yes
8th PROCEDURE DATE	Yes
9th PROCEDURE (OPCS)	Yes
9th PROCEDURE DATE	Yes
10th PROCEDURE (OPCS)	Yes
10th PROCEDURE DATE	Yes
11th PROCEDURE (OPCS)	Yes
11th PROCEDURE DATE	Yes
12th PROCEDURE (OPCS)	Yes
12th PROCEDURE DATE	Yes
13th PROCEDURE (OPCS)	Yes
13th PROCEDURE DATE	Yes
14th PROCEDURE (OPCS)	Yes
14th PROCEDURE DATE	Yes
15th PROCEDURE (OPCS)	Yes

Data Item	Desirable
15th PROCEDURE DATE	Yes
16th PROCEDURE (OPCS)	Yes
16th PROCEDURE DATE	Yes
17th PROCEDURE (OPCS)	Yes
17th PROCEDURE DATE	Yes
18th PROCEDURE (OPCS)	Yes
18th PROCEDURE DATE	Yes
19th PROCEDURE (OPCS)	Yes
19th PROCEDURE DATE	Yes
20th PROCEDURE (OPCS)	Yes
20th PROCEDURE DATE	Yes
21st PROCEDURE (OPCS)	Yes
21st PROCEDURE DATE	Yes
22nd PROCEDURE (OPCS)	Yes
22nd PROCEDURE DATE	Yes
23rd PROCEDURE (OPCS)	Yes
23rd PROCEDURE DATE	Yes
24th PROCEDURE (OPCS)	Yes
24th PROCEDURE DATE	Yes
CRITICAL CARE DAYS	Yes
SUPER OUTPUT AREA - LOWER	

b. Outpatients

Data Item	Desirable
Attendance Date	Y
Attended or Did Not Attend	Y
Attendance Identifier	
Birth Date	Y
Birth Date Status	
Carer Support Indicator	
Administrative Category	Y
Clinic Purpose	
Code of GP Practice	Y
Consultant Code	Y
Consultant Specialty Code	Y
Commissioning Serial Number	
First Attendance	Y
General Medical Practitioner	
Health Care Contract Line Number	
Last Did Not Attend Date (if applicable)	

Data Item	Desirable
Last DNA or Patient Cancelled Date	
Last Did Not Attend Date Status	
Local Patient Identifier	Y
Local Sub-Specialty	
Location Type Code	Y
Medical Staff Type Seeing Patient	Y
Name Format Code	
Operation Status	Y
Organisation Code (Provider)	Y
Site Code of Treatment	Y
Organisation Code (Commissioner)	Y
Organisation Code (of Residence)	Y
Outcome Of Attendance	Y
Patient Diagnosis/Diagnostic Code 1	Y
Patient Diagnosis/Diagnostic Code 2	Y
Patient Diagnosis/Diagnostic Code 3	Y
Patient Diagnosis/Diagnostic Code 4	Y
Patient Operative Procedure 1	Y
Patient Operative Procedure 2	Y
Patient Operative Procedure 3	Y
Patient Operative Procedure 4	Y
Patient Operative Procedure 5	Y
Patient Operative Procedure 6	Y
Patient Operative Procedure 7	Y
Patient Operative Procedure 8	Y
Patient Operative Procedure 9	Y
Patient Operative Procedure 10	Y
Patient Operative Procedure 11	Y
Patient Operative Procedure 12	Y
Postcode of Usual Address	Y
Priority Type	Y
Commissioner's Reference Number	
Referral Request Received Date	Y
Referral Request Received Date Status	
Referrer Code	
Referring Organisation Code	Y
Service Type Requested	
Sex	Y
Source of Referral (OP)	Y
Specialty / Treatment Function Code	Y
Super Output Area - Lower	Y
Pseudonymised Patient Identifier	
Additional Data Items	

Data Item	Desirable
Additional Data Items	
Additional Data Items	
Additional Data Items	
Additional Data Items	
Additional Data Items	
Additional Data Items	
Additional Data Items	

c. Emergency Care Data Set

Data Group	Data Item	Desirable
PATIENT PATHWAY	Patient Pathway Identifier	Yes
	Organisation Identifier (Patient Pathway Identifier Issuer)	Yes
	Referral to Treatment Period Status	Yes
	Waiting Time Measurement Type	Yes
	Referral to Treatment Period Start Date	Yes
	Referral to Treatment Period End Date	Yes
PATIENT IDENTITY	Organisation Identifier (Residence Responsibility)	Yes
	Local Patient Identifier (Extended)	Yes
	Organisation Identifier (Local Patient Identifier)	Yes
	Postcode of Usual Address	Yes
	Person Birth Date	Yes
	Lower Super Output Area 2011	
PATIENT CHARACTERISTICS	Person Stated Gender Code	
	Ethnic Category	Yes
	Accommodation Status	Yes
	Preferred Spoken Language	Yes
	Accessible Information Professional Required Code	Yes
	Interpreter Language	Yes
GP REGISTRATION	Overseas Visitor Charging Category at CDS Activity Date	Yes
	General Medical Practitioner (Specified)	Yes
EMERGENCY CARE ATTENDANCE LOCATION	General Medical Practice Code (Patient Registration)	Yes
	Organisation Site Identifier (of Treatment)	Yes
AMBULANCE DETAILS	Emergency Care Department Type	Yes
	Organisation Code (Conveying Ambulance Trust)	Yes
ATTENDANCE OCCURRENCE ACTIVITY CHARACTERISTICS	Emergency Care Arrival Mode	Yes
	Emergency Care Attendance Category	Yes
	Emergency Care Attendance Source	Yes
	Organisation Site Identifier (Emergency Care Attendance Source)	Yes

Data Group	Data Item	Desirable
	Emergency Care Arrival Date	Yes
	Emergency Care Arrival Time	Yes
	Age at CDS Activity Date	Yes
	Emergency Care Initial Assessment Date	Yes
	Emergency Care Initial Assessment Time	Yes
	Emergency Care Acuity	Yes
	Emergency Care Chief Complaint	Yes
	Emergency Care Date Seen for Treatment	Yes
	Emergency Care Time Seen for Treatment	Yes
INJURY CHARACTERISTICS	Injury Date	
	Injury Time	Yes
	Emergency Care Place of Injury	Yes
	Emergency Care Injury Intent	Yes
	Emergency Care Injury Activity Status	Yes
	Emergency Care Injury Activity Type	Yes
	Emergency Care Injury Mechanism	Yes
	Emergency Care Injury Alcohol or Drug Involvement	Yes
PATIENT CLINICAL HISTORY	Comorbidity	Yes
SERVICE AGREEMENT DETAILS	Provider Reference Number	Yes
	Commissioner Reference Number	Yes
	Organisation Identifier (Code of Provider)	Yes
	Organisation Identifier (Code of Commissioner)	Yes
CARE PROFESSIONALS (EMERGENCY CARE)	Professional Registration Issuer Code	Yes
	Care Professional Tier (Emergency Care)	Yes
	Care Professional Discharge Responsibility Indicator (Emergency Care)	Yes
EMERGENCY CARE DIAGNOSIS (SNOMED CT)	Emergency Care Diagnosis	Yes
	Coded Clinical Entry Sequence Number	Yes
	Emergency Care Diagnosis Qualifier	Yes
EMERGENCY CARE INVESTIGATIONS	Emergency Care Clinical Investigation	Yes
	Procedure Date (Emergency Care Clinical Investigation)	Yes
	Procedure Time (Emergency Care Clinical Investigation)	Yes
EMERGENCY CARE TREATMENTS	Emergency Care Procedure	Yes
	Procedure Date	Yes
	Procedure Time	Yes
REFERRALS TO OTHER SERVICES	Referred to Service	Yes
	Activity Service Request Date (Emergency Care)	Yes
	Activity Service Request Time (Emergency Care)	Yes
	Referred to Service Assessment Date	Yes
	Referred to Service Assessment Time	Yes

Data Group	Data Item	Desirable
DISCHARGE FROM EMERGENCY CARE	Decided to Admit Date	Yes
	Decided to Admit Time	Yes
	Activity Treatment Function Code (Decision to Admit)	Yes
	Emergency Care Discharge Status	Yes
	Emergency Care Attendance Conclusion Date	Yes
	Emergency Care Attendance Conclusion Time	Yes
	Emergency Care Departure Date	Yes
	Emergency Care Departure Time	Yes
	Emergency Care Discharge Destination	Yes
	Organisation Site Identifier (Discharge from Emergency Care)	Yes
	Emergency Care Discharge Follow Up	Yes
	Emergency Care Discharge Information Given	Yes
HRG	Local Payment HRG	

3. Data Processing of NHS Data

This Data Processing Schedule may be updated or varied in writing from time to time by CHKS if NHS England notify CHKS of an update to the NHS Data sharing agreement and such updates shall be effective from the date specified in such NHS England notification.

Subject to the terms of this Agreement;

- a. Annex A contains the NHS Data processing requirements for access to and use of NHS Data;
- b. Annex B, contains the Data Security Requirements which must be met to handle NHS Data

ANNEX A Data Processing Schedule

Description	Details
Subject matter of the processing	CHKS receive pseudonymized data from NHS England under a separate direct NHS Data Sharing Agreement. CHKS anonymize the NHS Data by aggregation and deriving the data which is then included in the databases of the Deliverables. Anonymized NHS Data contains patient level records currently relating to admitted patient care, out-patient and accident and emergency hospital activity as detailed in the NHS Data that is being processed by CHKS and provided in summary form. CHKS may accept further settings (eg. theatres, community) in the future to support new functionality.
Duration of the processing	Normally data will be updated once a month, subject to provision of pseudonymized data from NHS England for the duration of the contract. The new and updated data will then be anonymized and added to iCompare. CHKS hold 5 years of data to facilitate time series analysis. The Client is permitted to process the NHS Data for the duration of the Agreement and must cease upon termination/expiry of the Agreement.
Nature and purpose of the processing	Data is provided by NHS England to CHKS. CHKS data services process each dataset to standardize the database structure, group with several case mix groupers and produce a data quality monitor report. The data is prepared for loading to iCompare via an automated process which adds complex indicator data to each dataset before packaging and uploading overnight using secure data transfer. The data is stored encrypted at all stages on CHKS servers. Data processing is for the purpose of providing analytics and benchmarking information to improve

	patient care in relation to safety, quality and efficiency of services provided and is only permitted for the Authorized Purpose. For NHS Data, the Client is permitted to access, view, process the data and securely store the Reports from iCompare and shall not copy, modify, manipulate/ reverse engineer, change, derive or in any way amend the NHS Data.
Type of Personal Data	Hospital Episode Statistics (HES) data, Standardized Hospital Mortality Indicator (SHMI) and Emergency Care Data Set (ECDS) provided by NHS England using proprietary data processing software which analyses, cleanses, groups, and outputs the data into service-based patient level databases. Any HES, SHMI and ECDS data are held in icompare only in anonymized form and are never directly linked with other datasets which could allow re-identification of HES data or ECDS or SHMI. As well as HES, SHMI and ECDS, CHKS Limited may process publicly available datasets (PLACE, RTT, Friends & Family Test, PROMS, Reference Costs, Staff Survey, Patient Survey, Cancer Waits, CDIFF/MRSA, Safety Thermometer, CQC Intelligence Monitoring). These other datasets are not directly linked to HES or ECDS but are available as indicators. A user could view an indicator derived from HES, SHMI and ECDS (e.g., Average LoS, Mortality) on the same screen as indicators derived from the other datasets mentioned.
Categories of Data Subject	iCompare currently uses anonymized patient data relating to hospital finished consultant episodes, provider spells, outpatient appointments and accident and emergency attendances.
Special Conditions	Only permitted use for the Authorized Purpose subject to the terms of this Agreement. The NHS Data must only be used for internal purposes only and cannot be published externally or for marketing purposes. Meeting these security controls as set out within these special conditions is a requirement of this Agreement and the Client must inform CHKS if these criteria are not met (Where applicable). The Client shall cease use of the Deliverables and delete all NHS Data held upon termination/ expiry of the Agreement providing a certificate of destruction upon request and within 28 days of the Agreement termination or expiry date. Confidentiality provisions prevail and survive termination of the Agreement. No Sub-licensing or sub-processing is permitted.

ANNEX B

Data Security Requirements

1. Without prejudice to the Client's obligations in respect of information security under the Data Protection Legislation, the Client shall:
 - 1.1 having regard to the state of technological development, provide a level of security (including appropriate technical and organizational measures) appropriate to:
 - i) the harm that might result from unauthorised or unlawful processing of NHS Data or accidental loss, destruction or damage of such NHS Data; and
 - ii) the nature of the NHS Data;
 - 1.2 take reasonable steps to ensure the reliability of the Client's Personnel who have access to the NHS Data which shall include:
 - i) ensuring all such Personnel understand the confidential nature of the NHS Data and the issues which arise if proper care is not taken in the processing of the NHS Data;
 - ii) ensuring all such Personnel are properly trained in data protection appropriate to their role, and to ensure that all such Personnel have completed such training prior to their use of the NHS Data. Where requested to do so the Client shall provide examples of training materials used, together with methodologies used to demonstrate that Personnel have understood the training. Training shall be repeated at regular intervals to take account of developments in law on good data protection practice and in any event on an annual basis; and
 - iii) ensuring all such Personnel are properly vetted, both during the initial recruitment process and throughout their engagement in their processing of the Data, including through the use of procedures to identify changes in personal circumstances which may affect an individual's ability to process the Data in accordance with the terms of this Agreement;
 - 1.3 provide NHS England, via CHKS, with such information, assistance and co-operation as NHS England may require from time to time to establish NHS England's, CHKS and/or the Client's compliance with the Data Protection Law; and
 - 1.4 inform NHS England as soon as reasonably practicable of any particular risk to the security of the NHS Data of which it becomes aware, and of the categories of Data and individuals which may be affected.
2. The Client shall promptly, and in any event not later than reasonably required in order to enable NHS England, via CHKS, to fulfil its duties under the Data Protection Law provide such information as NHS England requires relating to the identity of any third parties to whom the NHS Data has been disclosed by the Client to the extent NHS England requires this information to comply with its duties under the Data Protection Law.
3. The Client shall implement and maintain security and risk assessment standards, facilities, controls and procedures appropriate to the nature of the NHS Data held by it and the harm that would be caused by its loss or disclosure, including:

- 3.1 to maintain a comprehensive and up-to-date data protection policy, (and the Client shall ensure that all its Personnel who have access to the NHS Data shall comply with the obligations upon them contained in the data protection policy);
 - 3.2 to maintain an up-to-date Information Asset Register, which identifies the Information Asset Owner for NHS Data accessed by Personnel under this Agreement.
- 4 The Client shall ensure:
 - 4.1 that it has properly configured access rights for its Personnel including a well-defined joiners and leavers process to ensure access rights to the NHS Data are properly managed;
 - 4.2 that it has proper controls in place to make sure that complex alphanumeric passwords are required for access to the NHS Data and that training is provided in relation to the need to keep such passwords secure;
 - 4.3 it has in place procedures to identify wrongful use of NHS Data, including the monitoring of wrongful access to NHS Data;
 - 4.4 that suitable and effective authentication processes are established and used to protect NHS Data;
 - 4.5 that NHS Data stored on laptops or other portable media is encrypted and that the Client maintains an accurate, up to date asset register, including all such portable media used to process the NHS Data;
 - 4.6 that Personnel are not able to access the NHS Data from home or via their own electronic device other than through a secure electronic network and that NHS Data may not be stored in such services;
 - 4.7 that suitable physical security measures are established commensurate to the harm that could result from the unlawful disclosure of the NHS Data. Such physical security measures shall be as identified in the Client's data protection policy;
 - 4.8 without prejudice to the Client's obligations to CHKS (and NHS England) in relation to the disposal of NHS Data, all NHS Data which is disposed of must be disposed of in accordance with Applicable Law and Guidance (including the NHS England Destruction and Disposal of Sensitive Data Good Practice Guidelines), (and provided it does not conflict with the foregoing, in accordance with the Client's policy for the disposal of NHS Data identified in the data protection policy, including the disposal of assets containing Personal Data, a copy of which policy shall be provided, on request, to CHKS; and
 - 4.9 that the Client establishes and maintains adequate data security compliance policies and audits its use of Personal Data in compliance with its data security policies on a regular basis and in any event annually.
- 5 The Client shall nominate in writing an individual to take responsibility and be accountable for compliance with Data Protection Legislation and shall provide to CHKS the name of that individual.

THE SECOND SCHEDULE

THE CHARGES

[To be populated]

THE THIRD SCHEDULE

THE DELIVERABLES

[To be populated]

CLIENT LISTED AFFILIATES

[To be populated]

The Fourth Schedule
Authorisation Form

AGREEMENT PARTICULARS	
Title:	
Parties:	
Date:	

PARTICULARS OF CHANGE	
Title:	
Effective Date:	
CCN Reference:	

DETAILS OF CHANGE REQUESTED		
1.	Party requesting change	
2.	Details of change requested	
3.	Requested implementation date	

IMPACT ASSESSMENT		
1.	Analysis of requirements	
2.	Timetable	
3.	Impact on ongoing provision	
4.	Financial impact	
5.	Customer Dependencies	

CONTRACT CHANGE NOTE ("CCN")	
1.	
EFFECT ON AGREEMENT	
2.	This document represents a valid and binding amendment to the Agreement.

3.	Unless otherwise defined for the purposes of this CCN, words and expressions defined in the Agreement shall have the same meanings when used in this CCN.
4.	Relating to the subject matter herein, in the event of conflict between the Agreement and this CCN, this CCN shall take priority.
5.	Save as expressly modified by this CCN, the Agreement shall continue in full force and effect in all respects.

AGREEMENT CHANGE ACCEPTED

For and on behalf of Customer		For and on behalf of CHKS Limited	
Signature:		Signature:	
Full Name:		Full Name:	
Title:		Title:	
Date:		Date:	

This Agreement has been entered into on the date stated at the beginning of it.

For and on behalf of [INSERT COMPANY NAME]:

Authorised Signature:

Name: (Block Capitals) _____

Position: (Block Capitals) _____

Date:

For and on behalf of CHKS Limited:

Authorised Signature:

Name: (Block Capitals) _____

Position: (Block Capitals) _____

Date: