

AGREEMENT REGARDING ACCESS TO DATA

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THIS AGREEMENT (this "**Agreement**") is effective from 30 October 2015 (the "**Effective Date**")

BETWEEN:

- (1) **NHS BRENT CLINICAL COMMISSIONING GROUP** of Wembley Centre for Health and Care, 116 Chaplin Road, HA0 4UZ ("**Host**") and
- (2) **MCKINSEY & COMPANY, INC. UNITED KINGDOM** (company registration number FC012665) of 1 Jermyn Street, London, SW1Y 4UH ("**McKinsey**")

the Host and McKinsey each being a "**Party**" and together the "**Parties**" to this Agreement.

BACKGROUND:

- (A) The Host has been appointed as host of the North West London Whole Systems Integrated Care (WSIC) data warehouse ("**Data Warehouse**") under an Information Sharing and Hosting Agreement dated 1 October 2014 (as amended on 5 May 2015) between the Host and the Provider Partners (the "**ISA**").
- (B) McKinsey is permitted to have access to a demo environment of the Data Warehouse (the "**Environment**") under an agreement between McKinsey and the Host (the "**Underlying Commercial Agreement**").
- (C) The Parties agree and acknowledge that it is not necessary for McKinsey to receive, gain access to, or otherwise Process any Personal Data from the Host or the Provider Partners or the CCG Partners in connection with the Underlying Commercial Agreement.
- (D) The purpose of this Agreement is for the Parties to record the specific procedures applicable in case McKinsey encounters or Processes any Personal Data in the course of its access to the Data Warehouse.

THE PARTIES AGREE as follows:

1. SPECIFIC OBLIGATIONS OF MCKINSEY

- 1.1 If, in the course of performing its obligations under the Underlying Commercial Agreement, McKinsey becomes aware that it is accessing, has accessed or is able to access Data (an "**Incident**"), McKinsey shall (and shall ensure that any Personnel working on its behalf shall):

- 1.1.1 cease to access the Environment with immediate effect;

- 1.1.2 provide the Host with full details of the Incident (including the nature of the Data and the date and time of such access) promptly (in compliance with any reporting protocols notified by the Host and in any event within no more than eight (8) hours); and
 - 1.1.3 provide any assistance reasonably required by the Host to resolve and identify the cause of the Incident.
- 1.2 McKinsey shall at all times comply with any protocols notified by the Host or any other CCG Partner to McKinsey in relation to the handling of Data (including any reporting and security protocols).
- 1.3 McKinsey shall not:
 - 1.3.1 Process any Data unless McKinsey has entered into an agreement with the Host expressly authorising such Processing;
 - 1.3.2 do anything that may materially damage the reputation of any CCG Partner (including the Host) or any Provider Partner; or
 - 1.3.3 make, or permit any person, company or other body to make, any public announcement concerning this Agreement without the Host's prior written consent, except as required by law, any governmental or regulatory authority (including any relevant securities exchange), or any court or other authority of competent jurisdiction.
- 1.4 While McKinsey has access to the Environment (whether during the term of this Agreement or following termination), McKinsey shall:
 - 1.4.1 ensure the reliability of any of McKinsey's Personnel who have access to the Environment;
 - 1.4.2 implement appropriate technical and organisational measures to protect against unauthorised or unlawful Processing of Data and against accidental loss, destruction, damage, alteration or disclosure (including information security arrangements that are consistent with the principles of the most current version of ISO 27002 (Code of Practice for Information Security Management));
 - 1.4.3 promptly notify the Host if complying with an instruction or request received by McKinsey in relation to the Environment is, in McKinsey's professional opinion, likely to result in an Incident or a Security Incident or is otherwise likely to adversely affect the interests of the Host, any other CCG Partner and/or any Provider Partner;
 - 1.4.4 provide all assistance and cooperation as may be reasonably requested by the Host to allow the Host, any other CCG Partner and/or any Provider Partner to comply with all Applicable Laws. Such assistance shall include the granting of access to McKinsey's equipment, facilities, and Personnel, to demonstrate that McKinsey has satisfied its obligations under this Agreement and if and to the extent such access is requested by any Regulator undertaking any assessment of the Host's or any Provider Partner's compliance with any Applicable Laws; and
 - 1.4.5 comply with Applicable Laws and use best efforts to refrain from doing anything or failing to do anything which results or may result in the Host, any other CCG Partner and/or any or any Provider Partner breaching any Applicable Law.
- 1.5 The Host has appointed a Senior Information Risk Owner ("**SIRO**") in relation to its obligations under the ISA, and McKinsey shall implement any information security

requirements reasonably required by the SIRO. As of the date of this Agreement the SIRO is Rob Larkman.

- 1.6 McKinsey shall notify the Host promptly (and in any case within 24 hours) if it becomes aware of any proceedings or any other matter which will or might have a material adverse effect on this Agreement or on the ability of McKinsey to perform its obligations under this Agreement and/or the Underlying Commercial Agreement.

2. INDEMNITIES

- 2.1 McKinsey shall indemnify and keep the Host fully indemnified in respect of losses, liabilities, damages, claims, costs and expenses of whatsoever nature, incurred by the Host or by any Provider Partner that arise directly out of or in connection with McKinsey's or McKinsey's Personnel's acts and/or omissions under this Agreement, including those arising out of any third party demand, claim or action, or any breach of contract, negligence, fraud, wilful misconduct, breach of statutory duty or non-compliance with any Applicable Law by McKinsey or McKinsey's Personnel in relation to this Agreement. For the avoidance of doubt, McKinsey will not indemnify any Provider Partner for losses not incurred out of or in connection with McKinsey's or McKinsey's Personnel's acts and/or omissions. McKinsey's liability under or in connection with this Agreement shall be limited to five hundred thousand pounds sterling (£500,000).
- 2.2 Nothing in Clause 2.1 shall require McKinsey to indemnify the Host in relation to any losses to the extent that such losses arise directly from (a) the Host's negligence, breach of this Agreement or wilful misconduct; or (b) any Provider Partner's negligence or wilful misconduct.
- 2.3 The Host's right to be indemnified under Clause 2.1 above shall be without prejudice to any other rights or remedies the Host may have, including, without limitation, injunctive or other equitable relief.

3. TERM AND TERMINATION

- 3.1 This Agreement shall commence on the Effective Date and the Parties agree that notwithstanding the date this Agreement is signed all rights and obligations of either Party arising out of this Agreement shall be in force from the Effective Date. This Agreement shall continue until both of the following have occurred: (a) the Underlying Commercial Agreement has been terminated; and (b) McKinsey has ceased to have access to the Environment in any manner whatsoever.
- 3.2 McKinsey may not terminate this Agreement except where it has given notice to terminate the Underlying Commercial Agreement. The Host may terminate this Agreement at any time by giving at least thirty (30) days' notice in writing to McKinsey.
- 3.3 Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, the Host may terminate this Agreement with immediate effect by giving written notice to McKinsey if McKinsey commits a material breach of any term of this Agreement and (if that breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so.
- 3.4 The termination or expiry of this Agreement for whatever reason shall not affect the accrued rights or obligations of either Party arising out of this Agreement and/or the Underlying Commercial Agreement.
- 3.5 Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiry of this Agreement shall survive any termination of this Agreement and continue in full force and effect (together with any other provisions required to interpret or enforce the same).

4. FREEDOM OF INFORMATION

- 4.1 McKinsey acknowledges that the Host (and each of the other CCG Partners) is subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and shall assist and cooperate with the CCG Partners (including the Host) to enable the CCG Partners to comply with their disclosure obligations under the FOIA. McKinsey agrees:
- 4.1.1 that this Agreement and any other recorded information held by McKinsey on a Provider Partner's behalf for the purposes of this Agreement are subject to the obligations and commitments of the Provider Partner under FOIA;
 - 4.1.2 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under FOIA is a decision solely for the entity to whom the request is addressed;
 - 4.1.3 that where McKinsey receives a request for information under FOIA and McKinsey itself is subject to FOIA, it will liaise with the relevant CCG Partner or Provider Partner as to the contents of any response before a response to a request is issued and will promptly (and in any event within 2 Working Days) provide a copy of the request and any response to the relevant CCG Partner or Provider Partner;
 - 4.1.4 that where McKinsey receives a request for information under FOIA and McKinsey is not itself subject to FOIA, it will not respond to that request (unless directed to do so by the relevant CCG Partner or Provider Partner to whom the request relates) and will promptly (and in any event within 2 Working Days) transfer the request to the relevant CCG Partner or Provider Partner;
 - 4.1.5 that any Provider Partner, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of FOIA, and regulation 16 of the Environmental Information Regulations 2004, may disclose information concerning McKinsey and this Agreement either without consulting with McKinsey, or following consultation with McKinsey and having taken its views into account; however, any Provider Partner will use reasonable efforts to provide McKinsey with prompt notice of such disclosure or advice prior to disclosure so that McKinsey may seek a protective order or other appropriate remedy; and
 - 4.1.6 to assist the Provider Partners in responding to a request for information, by processing information or environmental information (as the same are defined in FOIA) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of FOIA, and providing copies of all information reasonably requested by that Provider Partner within 5 Working Days of that request and without charge.
- 4.2 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of this Agreement is not the confidential information of either Party.
- 4.3 Notwithstanding any other term of this Agreement, McKinsey consents to the publication of this Agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of FOIA.
- 4.4 In preparing a copy of this Agreement for publication under Clause 4.3 the Host may consult with McKinsey to inform decision-making regarding any redactions, but the final decision in relation to the redaction of information will be at the Host's absolute discretion.

- 4.5 If the Host elects to publish this Agreement, McKinsey will assist and cooperate with the Host to enable the Host to do so.

5. GENERAL PROVISIONS

- 5.1 **Consideration.** In consideration of McKinsey entering into this Agreement, the Host shall pay McKinsey the sum of £1.00 (one pound sterling), the receipt and sufficiency of which McKinsey acknowledges by executing this Agreement.
- 5.2 **Disputes.** Where there is a dispute, the aggrieved Party shall notify the other Party in writing of the nature of the dispute with as much detail as possible about the deficient performance of the other party. A representative from senior management of each of the parties (together the "**Representatives**") shall meet in person or communicate by telephone within five Working Days of the date of the written notification in order to reach an agreement about the nature of the deficiency and the corrective action to be taken by the respective Parties. The Representatives shall produce a report about the nature of the dispute in detail to their respective boards and if no agreement is reached on corrective action, then the chief executives of each Party shall meet in person or communicate by telephone, to facilitate an agreement within five Working Days of a written notice by one to the other. If the dispute cannot be resolved at board level within a further five Working Days, or if the agreed upon completion dates in any written plan of corrective action are exceeded, either party may seek the legal remedies to which it is entitled under this Agreement.
- 5.3 **Governing Law and Jurisdiction.** This Agreement is governed by and shall be construed in accordance with the laws of England and Wales, and the Parties agree to submit to the exclusive jurisdiction of the courts of England. Notwithstanding the foregoing, the Host shall be entitled to seek the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this Agreement in any court of competent jurisdiction.
- 5.4 **Amendment and Variation.** No amendment or variation to this Agreement, or any revocation or extension of this Agreement, shall be effective unless it is made in writing and signed by the Parties.
- 5.5 **Third Party Rights.** Any CCG Partner (other than the Host) who is affected by the Processing of Data undertaken by McKinsey shall be a third party beneficiary under this Agreement and shall be entitled to enforce and benefit from each and every term of this Agreement as if it was itself a party to this Agreement. The Parties agree that no consent of any CCG Partner (other than the Host) is required to amend or terminate this Agreement (whether or not in a way that varies or extinguishes rights or benefits in favour of any such CCG Partner or Provider Partner). Otherwise, a person who is not a Party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 5.6 **Assignment.** McKinsey shall not be entitled to assign or otherwise transfer its rights or obligations under this Agreement in whole or part to any third party.
- 5.7 **Non-Reliance.** In entering into this Agreement neither Party has relied on any representations or warranties other than those expressly made in this Agreement. No party shall have any claim for innocent or negligent misrepresentation based on any statement in this Agreement.
- 5.8 **Notices.** All notices that are required to be given under this Agreement shall be in writing and shall be sent to the address of the Party as set out in this Agreement, as may be updated by each Party from time to time by notice to the other. Any notice shall be delivered by hand or sent by pre-paid first class post or other "next working day" delivery service or by email with a delivery receipt requested. Any notice or communication shall be deemed to have been received, if delivered by hand, on signature of a delivery receipt, or if sent by email, at the time recorded by the delivery receipt, or otherwise (for all notices other than email) at 9:00 am on the second Working Day after posting or at the time recorded by the delivery service.

- 5.9 **Waiver.** No omission or delay on the part of any Party in exercising any right under this Agreement shall operate as a waiver by that Party of any right to exercise it in future or of any other rights of that Party under this Agreement. No waiver of any provision of this Agreement shall be effective except to the extent made in writing and signed by the Party giving the waiver.
- 5.10 **Invalidity.** In the event that any provision of this Agreement is determined by any court of competent jurisdiction to be invalid, unlawful or unenforceable to any extent, such provision shall, to that extent, be severed from the remainder of this Agreement, which shall continue to be valid to the fullest extent permitted by applicable law, and the Parties shall negotiate in good faith to amend the severed provision so that, as amended it is legal, valid and enforceable, and to the greatest extent possible achieves the Parties' original commercial intention.
- 5.11 **No Partnership or Agency.** Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any Party the agent of the other Party, nor authorise any Party to make or enter into any commitments for or on behalf of the other Party.
- 5.12 **Execution in Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original document but all of which taken together shall constitute one single agreement between the Parties.

6. DEFINITIONS

In this Agreement (including the Background), unless the context otherwise requires, the following words shall have the following meanings:

- "Applicable Law"** means any court order or any common law, statute, statutory instrument, order or regulation issued by a governmental body with authority over any relevant party, applicable to any relevant Party from time to time in the context of its relevant rights and obligations under this Agreement or the Underlying Commercial Agreement including the Data Protection Legislation;
- "CCG Partner"** means the Host, NHS Central London Clinical Commissioning Group, NHS Ealing Clinical Commissioning Group, NHS Hammersmith & Fulham Clinical Commissioning Group, NHS Harrow Clinical Commissioning Group, NHS Hounslow Clinical Commissioning Group, NHS West London Clinical Commissioning Group and NHS Hillingdon Clinical Commissioning Group;
- "Data"** means any information whatsoever which constitutes Personal Data or is capable of constituting Personal Data or is regarding a deceased patient or is derived from Personal Data, including but not limited to de-identified data, and is provided to or made available to McKinsey by or on behalf of the Host or any other CCG Partner and/or Provider Partner and is Processed in any manner whatsoever by McKinsey under or in connection with the Underlying Commercial Agreement;
- "Data Protection Act"** means the Data Protection Act 1998;
- "Data Protection Legislation"** means the Data Protection Act, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC

Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;

"Environment"	shall have the meaning given to it in the 'Background' section above;
"Personal Data"	shall have the meaning given to it under section 1(1) of the Data Protection Act;
"Personnel"	means, in relation to either Party, all personnel of that Party, including directors, officers, employees, and temporary staff, as well as of that Party's agents and subcontractors. For the avoidance of doubt, the Host's Personnel shall exclude McKinsey and McKinsey's Personnel;
"Processing"	shall have the meaning given to it under section 1(1) of the Data Protection Act, and permutations such as "Process" or "Processed" shall be interpreted accordingly;
"Provider Partners"	means the parties to the ISA, excluding the Host;
"Regulator"	means any governmental or public department, authority, or agency which has supervisory authority over any CCG Partner or Provider Partner in respect of the CCG Partner or Provider Partner's conduct of its business (or any aspect thereof);
"Security Incident"	means any incident whatsoever and howsoever caused which results (or could potentially result) in: (i) unauthorised or unlawful Processing of Data, including any unauthorised reproduction, alteration, disclosure, sale, or any other misuse or exploitation of Data; (ii) accidental loss, destruction, or corruption of, or damage to Data; (iii) the confidentiality, integrity, or availability of Data otherwise becoming compromised; or (iv) the Host, or any other CCG Partner and/or any Provider Partner breaching any Data Protection Legislation;
"Underlying Commercial Agreement"	means the agreement entered into between McKinsey and NHS Brent Clinical Commissioning Group, pursuant to which McKinsey is to provide certain services that involve access to the Environment;
"Working Day"	means a day which is not a Saturday or a Sunday or a public holiday in England.

7. INTERPRETATION

- 7.1 Unless the context otherwise requires, the singular includes the plural and vice versa.
- 7.2 The headings in this Agreement are for the convenience of the Parties only, and are in no way intended to affect, describe, interpret, define or limit the scope, extent, or interpretation of the Agreement of any provision thereof.
- 7.3 Any obligation in this Agreement not to do anything includes an obligation not to suffer, permit or cause that thing to be done.
- 7.4 The terms **"including"**, **"includes"**, and **"in particular"** shall not be construed as terms of limitation.


- 7.5 References to "**this Agreement**" shall include all Clauses of this document.
- 7.6 Clause headings shall not affect the interpretation of this Agreement. References to Clauses are to the Clauses to this Agreement.
- 7.7 Reference in this Agreement to any directive, regulation, decision, statute, enactment, or other similar instrument shall be construed to include a reference to such instrument, as the same is from time to time amended, extended, re-enacted, replaced, or consolidated, and all subordinate legislation made from time to time under such instrument.
- 7.8 A reference to "**writing**" or "**written**" includes e-mail if a delivery receipt has been returned to the sender indicating successful delivery.

SIGNATURE PAGE

EXECUTED by the Parties

for and on behalf of

NHS BRENT CLINICAL COMMISSIONING GROUP

Signature 

Name Jan Norman

Position Director of Quality & Safety

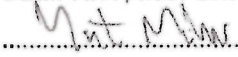
Date 3.12.15

(PLEASE COMPLETE IN CAPITALS)

EXECUTED by the Parties

for and on behalf of

MCKINSEY & COMPANY, INC. UNITED KINGDOM

Signature 

Name MARTIN MARCUS

Position DIRECTOR

Date 25/11/15

(PLEASE COMPLETE IN CAPITALS)

