NHS
Kent and Medway
NHS and Social Care Partnership Trust

Request for (Contract/SLA) Approval

Full Name:	Louise Clack		
Job Title:	Head of Service		
Location/Department	Acute Care Group		
Service Line:	Acute Care Group		
Cost Code:			
Supplier Name:	Oxehealth	**Contract Ref:**	

Description of Contract:

A 3 year contract with Oxehealth with the aim of providing health and safety digital technology in Dartford seclusion room. The first year requires one off hardware and installation costs. Each year there are ongoing costs for licences and support.

Contract Duration and Value						
36 Months	**Annual Value**	**£7,500**	**Duration Value**	**£31,000**	**VAT**	**£ 6,200**
Total Contract Value	**£ 37,200**		**Start date:**			

Justification:

MA

By signing as the Requisitioning Officer / Budget Holder / Finance Lead, I declare that I do not have any 'Conflict of Interest' or association with the supplier named on this Request for (Contract/SLA) Approval. A false declaration could lead to disciplinary action against you.

Requisitioning Officer Signature:	L Clack	**Date:**	10/9/18
Budget Holder or Service Lead Signature:	L Clack.	**Date:**	10/9/18
Name (PLEASE PRINT):			
Finance Lead Signature:	P Suggs	**Date:**	10/09/18
Name (PLEASE PRINT):	P. SUGGS		

*Once completed, by all parties, kindly forward to **KMPT** Procurement, along with the relevant contract, for Final approval and signing **PRIOR** to any requisitions being raised against the contract. Procurement will register and file the contract prior to returning a signed copy to the requisitioning officer for reference and attachment to any requisition.*

Approved & Registered		Procurement Ref:	
Procurement Lead Signature:		Date:	
Name (PLEASE PRINT)			

Rejected & Returned	Date:		Name:	
Comments:				

Dated 2nd August 2018

(1) Oxehealth Limited

- and -

(2) Kent & Medway NHS and Social Care Partnership Trust

Services Agreement

Oxehealth

This Agreement is made the 2nd day of August 2018

BETWEEN:-

(1) **Oxehealth Limited** a company incorporated under the laws of England with company registration number 08163325 and whose registered office is at The Sadler Building, Heatley Road, Oxford Science Park, Oxford, OX4 4GE ("Oxehealth"); and

(2) **Kent & Medway NHS and Social Care Partnership Trust** of Trust Headquarters, Farm Villa, Hermitage Lane, Maidstone, Kent, ME16 9PH ("Partner").

BACKGROUND:-

A. Oxehealth is a spin-out from Oxford University which specialises in novel technology that turns digital video cameras into health & activity monitors. Oxehealth is currently in the process of developing product lines using Oxehealth's proprietary software that provide safety and health monitoring of patients ("**Oxehealth Software**"): Oxecam Human Detection software monitors a room and alerts if no human activity is detected ("**HD Software**"); and Oxecam Remote Vital Signs Probe software which captures human vital signs ("**RVS Software**"). It is intended that when development is completed and the HD Software and RVS Software is placed on the market, RVS Software will be certified as a medical device as it holds a medical purpose. Whereas, HD Software is intended solely for activity monitoring and therefore will not be a medical device. Collectively, the RVS Software and HD Software are referred to as the Oxehealth Software.

B. Partner would like to explore how Oxehealth's Software monitoring solutions could be used in the future to improve its patient care and safety monitoring regimes (the "Purpose").

C. The Parties therefore wish to enter into this Agreement in order that Oxehealth can licence and provide its monitoring software and services to Partner by way of a pilot at the Location.

THE PARTIES AGREE AS FOLLOWS: -

1. Definitions

In this Agreement the following words and expressions shall have the meanings set out below: -

1.1	"Additional Functionality"	shall have the meaning given in Clause 2.3;
1.2	"Blind Running Period"	the relevant blind running period of the Oxehealth Software, as further described at Schedule 3;
1.3	"Commencement Date"	the date of this Agreement as set out at the start of this Agreement;
1.4	"Confidential Material"	shall have the meaning given in Clauses 6.1 and 6.2;
1.5	"Disclosing Party"	shall have the meaning given in Clause 6.1;

1.6	"Fees"	shall have the meaning given in Clause 3.1;
1.7	"Hardware"	the hardware necessary for the provision of the Oxehealth Services and which will be supplied by Oxehealth;
1.8	"Intellectual Property Rights"	patents, any extensions of the exclusivity granted in connection with patents, registered designs, trademarks, service marks, applications for any of the foregoing (including, but not limited to, continuations, continuations-in-part and divisional applications), the right to apply for any of the foregoing, rights in trade names, business names, brand names, get-up, logos, domain names and URLs, copyrights, design rights, moral rights, database rights, publication rights, rights in Know-How, trade secrets and confidential information and all other forms of intellectual property right having equivalent or similar effect to any of the foregoing which may exist anywhere in the world;
1.9	"Key Contact"	shall be the individual named as the Key Contact at the Partner in Schedule 1;
1.10	"Know-How"	information and know-how including any and all data, techniques, processes, systems, formulations, designs, developments and commercial information relating to design, development, manufacture, assembly, and use;
1.11	"Location"	the location at which the Oxehealth Services will be provided as specified in Schedule 1;
1.12	"Oxehealth Services"	the licensing of Oxehealth Software subject to the limitations stated in clause 11.1, and review of the software outputs and performance as more particularly set out at Schedules 1 & 3;
1.13	"Oxehealth Software"	as defined at Section A of the Background;
1.14	"Oxehealth System"	the Oxehealth monitoring solution provided by Oxehealth as part of the Oxehealth Services, including the Oxehealth Software and any hardware owned and supplied by Oxehealth;
1.15	"Personnel"	in respect of a party, employees, consultants, agents, representatives, contractors and advisors;
1.16	"Purpose"	as defined at Section B of the Background;
1.17	"Receiving Party"	shall have the meaning given in Clause 6.1;
1.18	"Software Licence"	the licence granted by Oxehealth to Partner as defined at Clause 4.2;

1.19	"Term"	the term of this Agreement as set out at Schedule 1;

2. Services

2.1 Oxehealth shall provide the Oxehealth Services to Partner at the Location during the Term.

2.2 Oxehealth shall aim to provide the Oxehealth Services substantially in accordance with the terms of this Agreement and Schedules 1 & 3. However, the parties acknowledge that the scope of, and timetable for, providing the Oxehealth Services are indicative only.

2.3 Oxehealth shall provide the HD Software at the Commencement Date pursuant to this Agreement. Oxehealth is in the process of developing additional improvements and functionality to the existing Oxehealth Software ("Additional Functionality"). The provision of any Additional Functionality shall be provided by Oxehealth at its sole discretion. If Partner wishes to receive this Additional Functionality, during the first twelve (12) months following the Commencement Date this will be provided by Oxehealth free of charge. In any subsequent periods, such Additional Functionality will be provided at a price agreed in accordance with Clause 17.8. For the avoidance of doubt, the provision of any Additional Functionality shall be subject to Oxehealth completing all necessary filings, notifications and registrations and obtaining all mandatory approvals, authorisations and certifications, in accordance with EU law.

3. Payment

3.1 In consideration of obtaining the benefit of the Oxehealth Services and the Software Licence, Partner shall pay the fees in pounds sterling in the amounts set out at Schedule 2 (the "Fees") in accordance with this Agreement. All Fees are quoted exclusive of Value Added Tax and other applicable taxes which shall be added to the invoice at their prevailing rate.

3.2 Upon the relevant Fee falling due (as set out at Schedule 2), Oxehealth shall issue an invoice to Partner detailing the relevant Fee payable. All invoices will be paid by Partner in full, without set-off to the credit of Oxehealth's bank account (details of which shall be notified to Partner) not later than thirty (30) days from the date of invoice.

3.3 Without prejudice to any other right or remedy Oxehealth may have, if Partner fails to pay any sums due in accordance with the terms of this Agreement in full, Oxehealth shall submit to Partner a notice of non-payment. In the event Partner fails to pay any such outstanding sums within 14 days of the date of such notice, Oxehealth reserves the right to terminate this Agreement.

4. Intellectual Property Rights

4.1 All Intellectual Property Rights (be they in the Oxehealth Software itself or the solution design or otherwise pertaining to the Oxehealth System in any way) developed during the term of this Agreement, and any pre-existing Intellectual Property Rights pertaining to the Oxehealth System in any way arising or as developed prior to the Commencement Date, will be and remain as between the parties the sole property of Oxehealth.

4.2 Oxehealth hereby grants to Partner a revocable, non-exclusive, royalty-free, licence for the Term to use the Oxehealth Software, solely for the Purpose, in accordance with the terms of this Agreement (the "Software Licence").

4.3 In delivering the Oxehealth Services to Partner, the Oxehealth Software will develop several data sets as more particularly described and defined at Schedule 4 (Data). This clause details the ownership and licencing of each data set:

4.3.1 The Partner shall own all right, title and interest in the Anonymised Video Data and the same shall vest in the Partner on creation. Subject to clause 12.6, the Partner hereby grants an irrevocable, exclusive, royalty free licence to Oxehealth to use the Anonymised Video Data for the purposes of refining Oxehealth's algorithms in order to successfully deliver the Oxehealth Services and for other purposes in compliance with clause 12.6.

4.3.2 Oxehealth shall own all right, title and interest in the Algorithm Processed Data and the same shall vest in Oxehealth on creation. For the avoidance of doubt, Algorithm Processed Data shall be Oxehealth Confidential Material.

4.3.3 The Partner shall own all right, title and interest in the Alert Data and the same shall vest in the Partner on creation.

4.3.4 The Partner shall own all right, title and interest in the Partner Input Data and the same shall vest in the Partner on creation. The Partner hereby grants an irrevocable, exclusive, royalty free licence to Oxehealth to use the Partner Input Data for the purposes of refining Oxehealth's algorithms in order to successfully deliver the Oxehealth Services and for other purposes in compliance with clause 12.6.

4.3.5 The Partner shall own all right, title and interest in the Salient Video Data and the same shall vest in the Partner on creation. The Partner hereby grants a revocable, exclusive, royalty free licence to Oxehealth to use the Salient Video Data for the purposes of refining Oxehealth's algorithms in order to successfully deliver the Oxehealth Services.

4.3.6 For the avoidance of doubt, Oxehealth shall own all right, title and interest in the Oxehealth Data Annotations, the same shall vest in Oxehealth on creation and Oxehealth Data Annotations shall be Oxehealth Confidential Material.

4.4 For the avoidance of doubt, neither Anonymised Video Data, Alert Data, Partner Input Data nor Salient Video Data include Oxehealth Intellectual Property or other intellectual property which is covered by paragraphs 4.1 to 4.3 inclusive.

5. Restrictions

5.1 Save as required by law, Partner shall not:

5.1.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Oxehealth System in any form or media or by any means;

5.1.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Oxehealth System;

5.1.3 access or use all or any part of the Oxehealth System in order to build a product or service which competes with the Oxehealth System;

5.1.4 sub-license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Oxehealth System available to any third party; or

5.1.5 attempt to obtain, or assist third parties in obtaining, access to the Oxehealth System.

6. Confidential Material and Publication

6.1 In this Agreement, "Confidential Material" shall, subject to Clause 6.2, mean: -

6.1.1 any and all data, results, know-how, show-how, software, algorithms, trade secrets, plans, forecasts, analysis, evaluations, research, technical information, methods, processes, business information, financial information, business plans, strategies, customer lists, marketing plans, or other information whether oral, in writing, in electronic form or in any other form; and

6.1.2 any physical items, components or other materials

disclosed before, on or after the date of this Agreement by one party (the "Disclosing Party") to this Agreement to the other party to this Agreement (the "Receiving Party"). For the avoidance of doubt, for the purposes of this clause Algorithm Processed Data and Oxehealth Data Annotations shall be deemed to be the Confidential Material of Oxehealth and it shall therefore be deemed to be the Disclosing Party of the same.

6.2 "Confidential Material" shall not include any information or materials which the Receiving Party can prove: -

6.2.1 is or becomes public knowledge through no improper conduct on the part of the Receiving Party and/or the Receiving Party's staff;

6.2.2 is already lawfully possessed by the Receiving Party prior to receiving it from the Disclosing Party; and/or

6.2.3 is obtained subsequently by the Receiving Party from a third party without any obligations of confidentiality and such third party is in lawful possession of such information and/or materials and is not in violation of any contractual or legal obligation to maintain the confidentiality of such information and/or materials.

6.3 In consideration of the Disclosing Party disclosing Confidential Material to the Receiving Party, the Receiving Party shall:

6.3.1 subject to Clause 6.4 below, at all times keep such Confidential Material secret and confidential and not disclose or divulge any part of it to any third party;

6.3.2 take all necessary steps to ensure that such undertaking in Clause 6.3.1 above is enforced and is enforceable;

6.3.3 if it produces any document or other work (whether in paper, electronic or any other form) which includes or is derived from any such Confidential Material, the same shall constitute Confidential Material and the Receiving Party shall

clearly and conspicuously mark such document or other work with a notice stating that it contains confidential information or materials belonging to the Disclosing Party;

6.3.4 not use Confidential Material other than for the purpose of this Agreement;

6.3.5 not disclose the Confidential Material to any other third party for any purpose unless authorised under the terms of this Agreement or authorised in writing by the Disclosing Party;

6.3.6 take all reasonable steps to keep any items held under Clause 6.1.2 above safe and secure;

6.3.7 not copy or reproduce in any manner or form such Confidential Material or any part thereof without the prior written approval of the Disclosing Party;

6.3.8 in maintaining confidentiality, take at least the same standard of care and confidentiality with the Confidential Material as it takes with its own confidential material; and

6.3.9 take reasonable steps to do anything reasonably required by the Disclosing Party to prevent or restrain a breach or suspected breach of this Agreement or any infringement or suspected infringement by any person of the Disclosing Party's rights under this Agreement.

6.4 The Receiving Party may: -

6.4.1 use Confidential Material received or derived from the Disclosing Party solely for the purpose of this Agreement;

6.4.2 disclose any part of the Confidential Material received or derived from the Disclosing Party solely to the extent that it is legally required to do so pursuant to an order of a court of competent jurisdiction, provided that the Receiving Party shall use its best endeavours to limit such disclosure and provide the Disclosing Party with an opportunity to make representations to the relevant court; and/or

6.4.3 disclose Confidential Material received or derived from the Disclosing Party to those of its staff to whom it is necessary to disclose such Confidential Material in order to carry out its obligations under this Agreement.

6.5 Before disclosing any Confidential Material received or derived from the Disclosing Party to any of the Receiving Party's Personnel, the Receiving Party shall ensure that each of its Personnel receiving such Confidential Material from the Receiving Party:

6.5.1 is aware of the Receiving Party's obligations under this Agreement in respect of the Confidential Material of the Disclosing Party; and

6.5.2 is legally bound by confidentiality and non-use obligations in relation to the Confidential Material of the Disclosing Party which are at least as stringent as the provisions of this Agreement.

6.6 The Receiving Party shall use reasonable endeavours at its own expense to restrain its Personnel from making any unauthorised use or disclosure of Confidential Material

received or derived from the Disclosing Party and shall be responsible to the Disclosing Party for disclosure of any Confidential Material of the Disclosing Party by any of the Receiving Party's Personnel in breach of the provisions of this Agreement.

6.7 All equipment, documents, files, analyses, compilations, studies, or any other items containing any Confidential Material received or derived from the Disclosing Party shall remain the absolute property of the Disclosing Party.

6.8 The Receiving Party shall return to the Disclosing Party (or at the Disclosing Party's direction destroy with certification of destruction) all equipment, documents, files, analyses, compilations, studies or other items containing any Confidential Material received or derived from the Disclosing Party and in the possession or control of the Receiving Party and/or the Receiving Party's staff:

6.8.1 if so requested by the Disclosing Party within fourteen (14) days from the date of such request; or

6.8.2 immediately upon expiry or termination of this Agreement.

6.9 The Receiving Party shall promptly notify the Disclosing Party if the Receiving Party becomes aware of any unauthorised disclosure or use of any of the Confidential Material received or derived from the Disclosing Party by the Receiving Party, or any other breach of the Agreement by the Receiving Party or the Receiving Party's Personnel and will reasonably cooperate with the Disclosing Party to assist the Disclosing Party to regain possession of its Confidential Material and prevent its further unauthorised used or disclosure.

6.10 The parties to this Agreement acknowledge that damages alone would not be an adequate remedy for any breach of the provisions of this Agreement. Accordingly, without prejudice to any other rights or remedies that any party to this Agreement may have, the parties agree that they shall be entitled to equitable relief, including injunctions and orders for specific performance, in the event of any breach of the provisions of this Agreement, in addition to all other remedies available at law or in equity.

6.11 The provisions of this Clause 6 shall continue for so long as either party has knowledge or possession of any Confidential Material owned by the other party and shall, for the avoidance of doubt, survive termination or expiry of this Agreement.

6.12 Nothing in Section 6 shall prevent the Receiving Party from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the Freedom of Information Act 2000 ("**FOIA**"), Codes of Practice on Access to Government Information, on the Discharge of Public Authorities' Functions or on the Management of Records ("**Codes of Practice**") or the Environmental Information Regulations 2004 ("**Environmental Regulations**").

7. Publicity

7.1 Partner and Oxehealth shall work together in good faith to agree the form and wording of a press release announcing the existence of this Agreement to be released at a time to be agreed between the parties. The form and wording of any subsequent press releases, articles or interviews or other public announcements relating to the Oxehealth Services, this Agreement or otherwise to the relationship between the

parties (together "Public Announcements") shall also be agreed between the parties and no one party shall release a Public Announcement without the prior consent of the other.

7.2 Partner grants Oxehealth a revocable, non-exclusive, royalty-free, licence to use Partner's name and logos on Oxehealth's own website and other online or offline promotional materials for the purpose of promoting the parties' relationship and highlighting Partner as one of Oxehealth's innovative pilot partners.

7.3 Oxehealth shall at its discretion also support Partner in preparing and delivering presentations promoting the parties' relationship, the Oxehealth Services and the Oxehealth System at relevant conferences ("Presentations"). Oxehealth grants a revocable, non-exclusive, royalty-free, licence for the term of this Agreement to use the Oxehealth name and logo solely for the purpose of the Presentations so approved by Oxehealth.

7.4 Notwithstanding Clause 7.3, Partner shall send to Oxehealth for its prior written approval, the text and layout of all proposed Presentations or other similar material relating to Oxehealth or the Oxehealth System. In the event that Oxehealth does not approve such material, it shall give written notice of such non-approval to Partner within 10 days of receipt by Oxehealth of the material. Partner shall not use any material in the Presentations or other similar documentation relating to Oxehealth or the Oxehealth System that has not been approved by Oxehealth.

8. Warranties

8.1 Each party warrants to the other party that:-

8.1.1 it has the necessary power and authority to enter into this Agreement; and

8.1.2 it has not entered into any agreement, understanding or arrangement that conflicts with the terms of this Agreement.

8.2 Oxehealth warrants that, in so far as it is aware, the Oxehealth Software does not infringe the intellectual property rights of any third parties when used in accordance with this Agreement.

8.3 All statements and representations (other than fraudulent misrepresentations), warranties, terms and conditions (except for those set out in this Agreement) including any implied by statute, common law or otherwise are hereby excluded to the maximum extent permissible by law.

8.4 Without prejudice to the generality of Clause 8.3, Oxehealth does not give any warranty, representation or undertaking as to the efficacy, usefulness, safety or commercial or technical viability of the Oxehealth System and/or any products made or processes carried out during the Oxehealth Services or otherwise during the term of this Agreement.

9. Hardware

9.1 Partner acknowledges that the Hardware will be required in order for the Oxehealth Services to be provided. Oxehealth shall procure the Hardware. The Partner shall remain the owner of the Hardware at all times.

9.2 Partner acknowledges that it will be responsible for the installation of all Hardware. Partner warrants and undertakes that the Oxehealth Software will be used and installed solely on the Hardware.

10. Dependencies & Assumptions

10.1 Partner shall ensure it complies with all laws, regulations and guidance applicable to it and Partner warrants to Oxehealth that all necessary regulatory consents, ethics applications, approvals and permissions have been obtained (or will be obtained prior to the commencement of the Oxehealth Services) to allow Oxehealth to lawfully provide the Oxehealth Services. Without prejudice to the foregoing, Oxehealth shall use reasonable endeavours to assist Partner in identifying any such necessary regulatory consents, ethics applications, approvals and permissions.

10.2 Partner shall:

10.2.1 promptly provide Oxehealth with all such necessary direction, data, information, access, or other facilities, assistance and resources (including but not limited to sufficient broadband or network connectivity and power), as Oxehealth may reasonably require to successfully provide the Oxehealth Services;

10.2.2 ensure that any information it provides to Oxehealth is complete and accurate;

10.2.3 ensure that the Key Contact is made available at all reasonable times to act as Oxehealth's primary point of contact for Partner for the duration of this Agreement; and

10.2.4 co-operate with Oxehealth in all matters relating to the Oxehealth Services provided pursuant to this Agreement.

10.3 Notwithstanding the generality of the above, Partner warrants that it will:

10.3.1 allow appropriate Partner Personnel time for taking part in workshops to discuss the development of the Oxehealth Software;

10.3.2 allow appropriate Partner Personnel time to be trained by Oxehealth personnel on the use of the Oxehealth Software;

10.3.3 enable Oxehealth Personnel to be at the Location to support for at least the first 2-3 hours of a new feature or module of the Oxehealth Software going live;

10.3.4 provide access as needed for maintenance and R&D work, likely to be up to 1 day per month (excluding installation and blind running period where access may be more frequent);

10.3.5 permit the Oxehealth System to send anonymised data (including Anonymised images) to Oxehealth's secure servers for algorithm research and development purposes;

10.3.6 procure, install and maintain the broadband or network connection and power required to deliver the Oxehealth Services.

10.3.7 make its relevant Personnel available as required to install the Hardware and other necessary equipment (e.g. camera, illuminators, embedded processors etc. and including power and communications cabling) under Oxehealth's direction and in accordance with the installation guidance to be separately provided by Oxehealth;

10.3.8 ensure that Partner safety standards are met and warrant that the System is safe for use at the Location, including in patient areas;

10.3.9 ensure appropriate signage is in place at the Location in order for the Oxehealth Services to be provided;

10.3.10 provide escorts and other appropriate safety measures for Oxehealth Personnel when working at the Location in patient accessible areas in order to ensure the safety of such Oxehealth Personnel at all times; and

10.3.11 obtain signed approval from the Partner's Caldicott Guardian for this engagement and the delivery of the Oxehealth Services, either using the form set out in Schedule 5 or otherwise in such other form as may be required by the Partner's internal Caldicott Guardian approval procedures.

11. Development & Non-Reliance

11.1 Partner acknowledges that the Oxehealth Software deployed pursuant to this Agreement are not final software products and are still under development. Partner further acknowledges that this is a pilot scheme, not the provision of a final, production-grade solution, and which is not intended to amount to a clinical investigation of a medical device. Partner acknowledges that Oxehealth intends to, but has not yet, certified its prototype RVS Software as a medical device. Oxehealth's RVS Software may not become certified as a medical device and consequently, may not be made available to Partner during the Term. In the event the RVS Software has completed medical device certification in compliance with applicable EU/UK law during the Term, Oxehealth shall in its sole discretion determine whether the RVS Software is suitable to be provided to Partner, and the parties shall meet to discuss the terms on which the same shall be provided.

11.2 Partner warrants and undertakes that its standard patient monitoring and general operating procedures will be maintained throughout the Term. Partner Personnel may supplement these processes with the Oxehealth System. Partner warrants and undertakes that Partner and its Personnel will not place any reliance on the Oxehealth System or the Oxehealth Software contained within it during the term of this Agreement and Oxehealth will not be liable for any claims, damages, costs, expenses and liabilities or any other losses arising from any such reliance in any circumstances.

12. Data Protection

12.1 For the purposes of this clause 12, the "Data Protection Legislation" means the UK Data Protection Act 1998 (as amended) and, once applicable, the EU General Data Protection Regulation (2016/679), or any equivalent replacement or amending legislation from time to time. The terms "personal data", "processing", "controller", "processor" and "data subject" shall have the meanings given to them in the Data Protection Legislation.

12.2 In respect of any personal data which is contained in the data sets described in Schedule 4 and which is processed by Oxehealth in performing its obligations under this Agreement ("**Partner Personal Data**"), the parties agree that the Partner shall be the controller and Oxehealth shall be the processor.

12.3 The Partner warrants and represents that: (a) in performing its obligations under this Agreement it shall comply with the Data Protection Legislation; and (b) its making available the Partner Personal Data to Oxehealth and any subsequent instructions to Oxehealth in respect of the Partner Personal Data shall be lawful.

12.4 Oxehealth shall:

a) process the Partner Personal Data only in accordance with documented instructions contained in this Agreement or received from the Partner from time to time. If applicable law prevents Oxehealth from complying with this clause 12.4(a), Oxehealth shall inform the Partner of the relevant legal requirement (unless prohibited by the Data Protection Legislation);

b) not disclose any of the Partner Personal Data to any third party unless specifically authorised in writing by the Partner;

c) not appoint any third parties to process the Partner Personal Data without the Partner's prior written consent;

d) ensure the reliability of those of Oxehealth's Personnel with access to the Partner Personal Data, and that they have committed themselves to obligations of confidentiality;

e) implement appropriate technical and organisational measures to protect the Partner Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure;

f) taking into account the nature of the processing and the information available to the Oxehealth, provide reasonable assistance to the Partner to allow the Partner to comply with its obligations as a data controller in respect of data subjects' rights, security obligations, data breach notification, data protection impact assessments and prior consultation with the UK Information Commissioner's Office; and

g) without prejudice to the provisions of clause 12.6, at the election of the Partner, delete or return all Partner Personal Data to the Client on termination or expiry of this Agreement and delete any existing copies of such Partner Personal Data, unless applicable laws require retention by the Oxehealth of any Partner Personal Data.

12.5 Oxehealth shall make available to the Partner all information necessary to demonstrate compliance with its obligations under clause 12.4, and shall allow the Partner (or a third party appointed by it and subject to suitable confidentiality obligations) to conduct an audit of the Oxehealth's premises and processes during business hours and on reasonable advance notice.

12.6 The Partner acknowledges and agrees that the Anonymised Video Data, Oxehealth Data Annotations, Alert Data, Partner Input Data and Algorithm Processed Data (together the "**Retained Data**") shall not constitute personal data in circumstances where Oxehealth does not have access to any Salient Video Data which, when

combined with the Retained Data, would allow a data subject to be identified. Accordingly, Oxehealth shall be entitled to use Retained Data for its own purposes in the following circumstances: (a) where Oxehealth has not at any point had access to Salient Video Data which can be linked to the Retained Data; or (b) when Oxehealth has permanently deleted all Salient Video Data which can be linked to the Retained Data. Oxehealth will notify Partner when it deletes Salient Video Data. Any such Retained Data shall not be subject to the provisions of clause 12.4

13. Limitation of Liability

13.1 Subject to Clause 13.4 below, Oxehealth and its Personnel shall have no liability under this Agreement whatsoever and however arising whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, or otherwise, arising out of or in connection with this Agreement for: (i) any loss of profits; (ii) loss of business; (iii) depletion of goodwill and/or similar losses; (iv) loss or corruption of data or information; (v) pure economic loss; or (vi) any special, indirect or consequential loss, costs, damages, charges or expenses.

13.2 Subject to Clause 13.4, Oxehealth and its Personnel shall have no liability under this Agreement whatsoever and however arising whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, or otherwise, arising out of or in connection with this Agreement for any claims (including third party claims), damages, costs, expenses and liabilities or any other losses arising from or related to: (i) Partner's reliance on the Oxehealth System in contravention of Clause 11; or (ii) the Hardware.

13.3 Subject to Clause 13.4, Oxehealth's total aggregate liability whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, or otherwise, arising out of or in connection with this Agreement shall in no circumstances exceed the total Fees paid by Partner to Oxehealth in the twelve (12) month period immediately prior to the act or omission giving rise to such liability.

13.4 Nothing in this Agreement excludes or limits Oxehealth's liability for: (a) death or personal injury caused by its negligence; or (b) fraud or fraudulent misrepresentation.

13.5 Except as expressly and specifically provided in this Agreement, all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement.

14. Term and Termination

14.1 This Agreement shall commence on the Commencement Date and shall continue for the Term unless terminated earlier by either party in accordance with the provisions of this Agreement.

14.2 Oxehealth may terminate this Agreement:

14.2.1 in accordance with Clause 3.3;

14.2.2 immediately where Partner commits a breach of this Agreement which is not capable of remedy;

14.2.3 where Partner commits a breach of this Agreement which is capable of remedy and, having been notified of such breach, fails to take steps to remedy it within thirty (30) days of notification;

14.2.4 on thirty (30) days' notice should Partner not provide satisfactory collaboration and support as required by this Agreement or is otherwise in breach of Clause 9 (Dependencies & Assumptions);

14.2.5 on thirty (30) days' notice in the event that Oxehealth deems a Blind Running Period (including any extensions of such Blind Running Period) to be unsuccessful or otherwise not fit for operation;

14.2.6 in the event that Oxehealth withdraws HD Software from its service; or

14.2.7 immediately in the event of a relevant decision or indication by a regulatory or governmental body which Oxehealth believes requires this Agreement to be terminated.

14.3 Partner may terminate this Agreement:

14.3.1 immediately at any time in the event Oxehealth enters into liquidation;

14.3.2 on providing 90 days' prior written notice to Oxehealth, save that such right may not be exercised within the first 12 months of the Commencement Date.

15. Consequences of Expiry and Termination

15.1 On termination or expiry of this Agreement for any reason: -

15.1.1 neither party shall be relieved from any liability or right accrued prior to such termination or expiry;

15.1.2 Partner shall remain liable to Oxehealth for any fees payable under this Agreement accrued up to the date of termination;

15.1.3 each party shall return all materials containing any Confidential Material of the other party in its possession or control to the other party; and

15.1.4 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 Agreement shall remain in full force and effect.

16. Dispute Resolution

16.1 In the event of a dispute arising under this Agreement, authorised representatives of the parties will discuss and meet as appropriate to try to resolve the dispute within seven (7) days of being requested in writing by any party to do so. If the dispute remains unresolved, it will then be referred to a senior manager from each of the parties who will use all reasonable endeavours to resolve the dispute within a further fourteen (14) days.

16.2 In the event a dispute still cannot be resolved having taken the action described in Clause 10.1 above, the parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with the CEDR Model Mediation Procedure.

Unless otherwise agreed between the parties, within fourteen (14) days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing ("ADR Notice") to the other party to the dispute, referring the dispute to mediation. A copy of the referral should be sent to CEDR. Unless otherwise agreed, the mediation will start not later than 28 days after the date of the ADR Notice. Nothing in this clause shall limit the rights of the parties to commence or continue court proceedings in accordance with Clause 17.13.

17. Miscellaneous

Notices

17.1 Any notice given under this Agreement shall be in writing and shall be sent by pre-paid first class post or courier to the registered office of the recipient or to such other address subsequently notified by the parties to each other in writing.

Severability

17.2 If any provision of this Agreement is held to be void or otherwise unenforceable by a court of competent jurisdiction from whose decision no appeal is made within the applicable time limit then the provision shall be omitted and the remaining provisions of this Agreement shall continue in full force and effect.

Waiver

17.3 Failure or delay by either party to exercise any right or remedy under this Agreement shall not be deemed to be a waiver of that right or remedy, or prevent the party from exercising that or any other right or remedy on any occasion.

Entire Agreement and Amendments

17.4 This Agreement constitutes the entire agreement and understanding of the parties relating to the subject matter of this Agreement and supersedes any prior agreement or understanding between the parties relating to the subject matter of this Agreement.

17.5 The parties acknowledge that in entering into this Agreement they do not rely on any statement, representation (including without limitation, any negligent misrepresentation but excluding any fraudulent misrepresentation), warranty, course of dealing, custom or understanding except for the warranties expressly set out in this Agreement.

17.6 The parties irrevocably and unconditionally waive any rights and/or remedies they may have to the fullest extent permitted by law (including without limitation the right to claim damages and/or to rescind this Agreement) in respect of any misrepresentation (including without limitation, any negligent misrepresentation but excluding any fraudulent misrepresentation).

17.7 Except as expressly set forth in this Agreement, no party grants to any other party by implication, estoppel or otherwise, any right, title, licence or interest in any intellectual property right.

No change shall be made to this Agreement except in writing signed by the duly authorised representatives of both parties.

Relationship of the Parties

17.8 Nothing in this Agreement shall create or imply an agency, partnership or joint venture between the parties. Neither party shall act or describe itself as the agent of the other party nor shall either party have or represent that it has any authority to make commitments on behalf of the other.

Further Assurances

17.9 Each party shall, as and when requested by the other party, do all acts and execute all documents as may be reasonably necessary to give effect to the provisions of this Agreement.

Force Majeure

17.10 Neither party shall be liable for any failure or delay in the performance of its obligations under this Agreement (other than an obligation to pay any sums due under this Agreement) which is caused by circumstances beyond its reasonable control. If a party is unable to perform any of its obligations for a period of more than ninety (90) days after the commencement of such failure or delay then the other party may terminate this Agreement by giving the other party 7 days' written notice of termination.

Third Party Rights

17.11 The Contracts (Rights of Third Parties) Act 1999 and any legislation amending or replacing this Act shall not apply in relation to this Agreement and nothing in this Agreement shall confer on any third party the right to enforce any provision of this Agreement.

Law and Jurisdiction

17.12 English law shall govern this Agreement, including without limitation, its formation, validity, construction, performance and any non-contractual causes of action arising out of or in connection with this Agreement and the parties submit irrevocably to the exclusive jurisdiction of the English Courts in relation to the same.

Counterparts

17.13 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement. If this Agreement is executed in counterparts, it shall not be effective unless and until each party has executed and delivered a counterpart to each of the other parties.

SCHEDULE 1

Services

Overview of Services	Subject to clause 11.1 of the Agreement, Oxehealth will install the HD software as it exists at the time of installation. A camera will be installed within each of the agreed rooms, monitoring the bedroom area and part of the bathroom (if applicable). The technology will alert if the room is occupied but no human activity can be detected. The system will also monitor how long a patient has been out of shot in the bathroom area (if applicable). For ease of use, the user interface will be simple and clean in the nurse station or other agreed location. Oxehealth is constantly working to extend and improve the Oxehealth Software and solution. Whilst additional releases to the deployment are at Oxehealth's complete discretion, it will seek to make available to the deployment all material improvements and extensions made to the Oxehealth Software during the life of this Agreement.
Location	2 x Seclusion Rooms at Littlebrook Hospital, Bow Arrow Lane, Stone, Dartford, DA2 6PB [Note – one seclusion room is still to be constructed, estimated to be available for install from approximately Dec 2018]
Term	The term of this Agreement shall be an initial 36 months from the Commencement Date. Thereafter the term of this Agreement shall automatically extend for consecutive periods of 12 months unless earlier terminated in accordance with the terms of this Agreement.
Partner Key Contact	Guy Powell, Head of Nursing – Acute Care Group

Schedule 2

Fees

Payment Description	Payment Amount (£)	Invoicing Trigger
First 12 months		
Installation & Configuration (2 rooms, one-off)	2x £1,000 + VAT	Commencement Date for one room, install date for 2nd room
Annual Software Licence (2 rooms)	2 x £3,000 + VAT	Commencement Date for one room, install date for 2nd room
Camera Hardware Costs (2 rooms, at cost, one-off)	2 x £1,750 + VAT	Commencement Date for one room, install date for 2nd room
Compute Hardware Cost (one-off)	£3,000 + VAT	Commencement Date
Annual Support and Maintenance (2 rooms)	25% of Annual Software Licence	Commencement Date for one room, install date for 2nd room
After the first 12 months, dependent on software functionality being used:		
Annual Software Licence – HD (Human Detection)	£3,000 + VAT, price per room	Invoiced on the anniversary of the Commencement Date for the duration of this Agreement
Annual Software Licence – RVS (Remote Vital Signs Probe)	£2,000 + VAT Incremental to the VA+ price per room	Invoiced on the anniversary of the Commencement Date for the duration of this Agreement
Annual Support and Maintenance (2 rooms)	25% of Annual Software Licence	Invoiced on the anniversary of the Commencement Date for the duration of this Agreement

* Note that the Software Licence and Annual Support and Maintenance Fees in Schedule 2 represent the charge for the HD Software available at the Commencement Date and any other Additional Functionality provided in the first 12 months of the Parties working together. Post this first 12-month period, any Additional Functionality will be subject to an additional fee.

Schedule 3 (Timetable)*

- **Pre-contract Phase**: Oxehealth to begin Hardware procurement.
- **Stage 1 - Installation:** Installation of Hardware in the rooms will be completed as close to Commencement Date as possible, subject to timely receipt of Hardware from Oxehealth's suppliers and signature of this Agreement
- **Stage 2 - "Blind" Running Period:** Oxehealth will remotely monitor the installation, tune algorithms and parameters to the Rooms as necessary to ensure the Oxehealth System is running as expected. This Stage is intended to last approximately 4-6 weeks (extendable if Oxehealth are not satisfied the Oxehealth System is ready; in accordance with Clause 14.2.5, Oxehealth may terminate this Agreement on thirty (30) days' notice in the event that Oxehealth deems the Blind Running Period of the pilot phase of the Services to be unsuccessful or otherwise not fit for operation).
- **Stage 3 – Training:** Partner Personnel training & procedures will take place – led by a Partner team with Oxehealth support as necessary.
- **Stage 4 – Go-Live:** Oxehealth Software will go live in the Rooms ("Go-Live")
- **Post Go-Live:** Oxehealth will provide software patches and upgrades to the Oxehealth Software as they are released. Additional Functionality may also be offered to Partner in accordance with Clause 2.3.

*the above proposed schedule will be followed for each room install

Schedule 4 (Data)

Data Category	Description
Anonymised Video Data	Oxehealth will anonymise the camera feed so that the individual is not identifiable from the video. Oxehealth will compress and encrypt this feed and supply it securely to its secure servers. Anonymised Video Data is required for Oxehealth to debug and improve the Oxehealth Software for the Purpose. The Anonymised Video Data cannot be viewed by unauthorised persons because it is encrypted and – even were it decrypted - the anonymisation prevents the individual being identified. Oxehealth may delete Anonymised Video Data at its election unless notified by Partner that it should retain the Anonymised Video Data and must do so at such time as Partner may direct.
Algorithm Processed Data	These are mathematical results from various processing stages of the algorithms, including the final log file. Algorithm Processed Data are used in conjunction with the Anonymised Video Data to debug and improve the Oxehealth algorithms used for the Purpose. These data are also encrypted and sent to Oxehealth's secure servers. These data cannot identify an individual.
Alert Data	When the algorithm has completed its processing of the camera feed, saving the information to the log file, it extracts room status reports ("**Alert Data**") which are supplied to the output server ("**User Module**"). These Alert Data are recorded by the User Module and drive the audible alerts and screen displays ("**Alerts**"). Alert Data supplied to the User Module shall be the property of Partner. For the avoidance of doubt Alert Data does not include any Oxehealth Intellectual Property Rights in the User Module, user interface or any other part of the Oxehealth Software.
Partner Input Data	As part of the Oxehealth Services, the Oxehealth Software enables Partner Personnel to log their responses to Alerts in the user interface. They can also log or comment on noteworthy events which they would like investigated in the user interface (for example the Oxehealth Software did not Alert to an incident or they observed an incident and would like Oxehealth to examine the algorithm outputs created during it). Partner warrants that no personal data shall be contained within the Partner Input Data.
Salient Video Data	As part of the Services, the Oxehealth Software enables Customer Personnel to be able to tag time periods during which events of interest to them have occurred and for which they would like to be briefed on the algorithm's performance and potential. The raw video for these periods is called Salient Video Data. Oxehealth's algorithms or Oxehealth Personnel

	may also identify Salient Video Data required fully to debug the system or which may present additional interesting insights to the Customer as part of the Purpose. This data is encrypted and held separately to the Anonymised Video Data and Algorithm Processed Data. Oxehealth will periodically collect the Salient Video Data and transport it by hand to Oxehealth's offices. Oxehealth will undertake periodic reviews with the Customer of the Salient Video Data held and the purpose for retention. In contrast to Anonymised Video Data, Salient Video Data is encrypted but not anonymised because unanonymised data is required fully to investigate the algorithm's performance. In contrast to Anonymised Video Data, Salient Video Data will be short episodes so the total volume of video is expected to be low. Oxehealth may delete Salient Video Data at its election unless otherwise notified by Customer and must do so at such time as Customer may direct.
Oxehealth Data Annotations	Oxehealth staff may create notes and other commentaries ("Oxehealth Data Annotations") relating to Salient Data, Anonymised Data, Algorithm Processed Data, Partner Input Data or Alert Data. Oxehealth shall own all right, title and interest in the Oxehealth Data Annotations and the same shall vest in Oxehealth on creation.

Oxehealth

Schedule 5
Caldicott Guardian Approval

I am the Partner's Caldicott Guardian.

I have reviewed Oxehealth's process and procedures, documentation, the Service Agreement between Partner and Oxehealth and the Oxehealth Services (as defined therein) to be delivered, Oxehealth's Privacy Impact Assessment and the Caldicott Principle Statements and I am satisfied they comply with Partner's implementation of the Caldicott Principles.

Signed .....

Name: PROFESSOR CATHERINE EVANS

Caldicott Guardian for and on behalf of
Kent & Medway NHS and Social Care Partnership Trust

Date: 2.10.18

AGREED by the parties through their duly authorised representatives on the date written at the top of the first page of this Agreement:

For and on behalf of
Oxehealth Limited

Signed: .....

Full Name: S. HARDMAN

Job Title: COO

Date: 2.8.18

For and on behalf of
Kent & Medway NHS and Social Care Partnership Trust

Signed: .....

Full Name: CHRISTINA CALLER

Job Title: HEAD OF PROCUREMENT

Date: 19/9/18