MEMORANDUM OF UNDERSTANDING

between

THE HON. LORD WEIR, CHAIR OF THE ELJAMEL INQUIRY

and

PROFESSOR STEPHEN WIGMORE, CHAIR OF THE INDEPENDENT CLINICAL REVIEW

Background

1. On 7 September 2023 the Scottish Ministers announced an Inquiry which was to be set up under the terms of the Inquiries Act 2005 ("the 2005 Act") and regulated by the Inquiries (Scotland) Rules 2007, to investigate amongst other matters the actions of Mr Sam Eljamel and NHS Tayside ("the Inquiry"). The sponsoring minister of the Inquiry is the Cabinet Secretary for Health and Social Care ("the Minister").

2. The Honourable Lord Weir was announced as Chair of the Inquiry on 29 February 2024 ("the Chair of the Inquiry"). The Chair of the Inquiry is a signatory to this Memorandum of Understanding on behalf of the Inquiry.

3. On 3 April 2025 the Minister published the finalised Terms of Reference of the Inquiry in terms of section 5(1)(b)(i) of the 2005 Act. On 3 April 2025 the Minister specified 3 April 2025 as the setting-up date of the Inquiry in terms of section 5(1)(a) of the 2005 Act.

4. In 2023, the Scottish Ministers announced an Independent Clinical Review ("ICR"), the purpose of which is to offer and coordinate expert clinical reviews of the cases of former patients of Mr Eljamel who (or whose relative/ representative) wish them to be undertaken by independent expert neurosurgeons. On 7 September 2023, the Scottish Ministers announced that ICR would continue alongside the Inquiry. The sponsoring minister of the ICR is the Minister.

5. Professor Stephen Wigmore was announced as Chair of the ICR on 29 February 2024 ("the Chair of the ICR"). The Chair of the ICR is a signatory to this Memorandum of Understanding on behalf of the ICR.

6. On 1 April 2025 the ICR published its finalised Terms of Reference.

Purpose of this Memorandum of Understanding

7. The Inquiry's Term of Reference 15 states that the Inquiry will:

"...liaise with the Independent Clinical Review, which will run in conjunction and cooperation with the Inquiry and [to] set out publicly how the Inquiry intends to work alongside and cooperate with the Independent Clinical Review so as to best discharge the respective terms of reference of each process."

8. The Inquiry's Term of Reference 16 states that the Inquiry will:

"consider any findings of the Independent Clinical Reviews, as the Chair deems appropriate in the fulfilment of these terms of reference".

9. The ICR's Term of Reference 15 states that the ICR:

"...will liaise with the public inquiry and will set out publicly how the ICR intends to work alongside and cooperate with the public inquiry so as to best discharge these terms of reference and to support the public inquiry in its work discharging its own terms of reference".

10. This Memorandum of Understanding ("Memorandum") sets out how the Inquiry and the ICR intend to work together, the principles to which each of the two processes will adhere, and practical steps that the processes will take in adhering to those principles, all in fulfilment of the said Terms of Reference of each process.

Principles

11. The parties to this Memorandum recognise that:

(a) Both the Inquiry and the ICR are processes which require to conduct their work in the fulfilment of their respective Terms of Reference in ways which are independent, and in particular independent of the Scottish Government and of NHS Tayside;
(b) In conducting their work, the Inquiry and the ICR may decide to avail themselves of processes, personnel and facilities of the Scottish Government in a way which allows them to undertake their work in a way which is compatible with the independence of each. The Chairs of each process will use best endeavours to arrange for facilities to be made available to them as necessary and in accordance with the legal obligations of each so as to enable them to fulfil their

various obligations under law, in terms of their respective Terms of Reference, and as set out in this Memorandum;

(c) The ICR exists in part to provide the opportunity for expert review of cases of former patients of Mr Eljamel, and in part to provide clinical reviews of individual cases for the benefit of those former patients (or their relatives or representatives). It will also, in part, inform the systemic investigation with which the Inquiry is charged under its Terms of Reference;

(d) In making any decision as to the procedure or conduct of the Inquiry the Chair of the Inquiry is under an obligation under section 17(3) of the 2005 Act to act with fairness and also with regard to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others). The ICR is also required to act in a way which seeks to maximise value to the public purse;

(e) As the ICR requires to play an important role in the assisting the Inquiry to fulfil its Terms of Reference, in accordance with the Inquiry's obligations under section 17 of the 2005 Act, the two processes require to find ways to work together against this background in a way which assists the Inquiry in the efficient progress of its work but respects the independence and respective roles and obligations of each process; and

(f) Both processes require to undertake their work in a trauma-informed way.

Role of the ICR in the work of the Inquiry

12. The ICR will investigate and provide reports upon the clinical events and circumstances of cases of former patients of Mr Eljamel as per its Terms of Reference. The ICR will share with applicants for a clinical review reports on their own cases (or, where applicable, relatives or representatives acting on behalf of a former patient) and will also share with the Inquiry (a) those reports, where the applicant has explicitly consented for the ICR to do so, and (b) any overarching analysis of clinical themes emerging from them which the Inquiry may request or the ICR may provide from time to time.

13. The Chair of the Inquiry and the Chair of the ICR and their respective supporting teams will be mindful of each other's said obligations and will assist each other in so far as their own statutory and other legal obligations permit, in light of the principles and objectives set out in this Memorandum.

14. The terms of this Memorandum may require to be updated over time as the work of the Inquiry progresses, in particular as regards what information will be examined by the ICR and what the neurosurgical reports will contain. Both parties will consider

and agree any amendments in writing that may be necessary to update the Memorandum in future.

Inquiry Timetable

15. The Inquiry Team will develop and maintain a provisional timetable relating to key stages and milestones of the Inquiry for the purposes of resource. This will be shared with the ICR, as will significant updates to the Inquiry's planning, as soon as reasonably practicable after they arise, as well as progress against investigation and schedules.

16. The ICR will use its best endeavours to ensure that the work which it is undertaking or overseeing is produced in accordance with the provisions of this Memorandum and in order to allow the Inquiry to adhere to its timetable. The ICR will inform the Inquiry as soon as reasonably practicable if delays in the progress of its work are likely to impact on the Inquiry's timetable.

Staffing of the ICR

17. The Cabinet Secretary has provided an assurance that sufficient funding will be made available for the engagement of a team of administrative staff to support the Chair of the ICR and for the instruction of the expert neurosurgeons who will be instructed by the ICR.

18. The ICR will use best endeavours to ensure that the number and experience of the ICR staff and the expert neurosurgeons will be sufficient to enable the ICR to fulfil its obligations under the provisions of this Memorandum, in reliance on the assurance provided by the Cabinet Secretary.

Engagement of patients/ relatives or representatives of former patients in the ICR process

19. The ICR will seek a statement from former patients of Mr Eljamel or any relative/representative who has made an application to have the relevant case reviewed by the ICR (an "applicant statement").

20. In cases where applicants to the ICR have consented to have information relating to their applications shared with the Inquiry, the ICR will share the applicant statement with the Inquiry. In cases where the applicant has not provided consent for

information relating to the application to be shared with the Inquiry, in the normal course neither the applicant statement nor the neurosurgical review will be provided to the Inquiry by the ICR.

21. The contents of the applicant statement(s) will be considered as part of the individual case review as part of the compilation of a neurosurgical report, as per paras 27 et seq, below.

22. An applicant statement will be compiled by the applicant(s) responding to a standard form applicant statement request containing a questionnaire.

23. In particular, the request for an applicant statement will make it clear to former patients of Mr Eljamel, or their relative/representative (as the case may be), that information included in the individual case reviews (including the information contained in any applicant statement and other documentation provided with it for consideration by the ICR) will be available to the Inquiry, but that such information will not normally be provided to the Inquiry for its consideration and/or use (including publication) in the fulfilment of its Terms of Reference unless the patient, their relative or their representative has explicitly consented to this, and subject always to applicable data protection policies, restriction orders and provisions for anonymity, where claimed.

24. The ICR and the Inquiry will agree the contents of the standard form request for an applicant statement, in order to ensure that the request accords with the requirements of the ICR and also the Inquiry in the fulfilment of their respective Terms of Reference, and does not create unnecessary duplication of matters which the Inquiry may seek to have addressed in its own witness statements.

25. In the normal course, the ICR will be responsible for checking that the draft applicant statement has been completed properly by the applicant and will return the draft along with any comments to the applicant so that the statement can be completed. Where the patient, their relative or their representative has explicitly consented to their applicant statement being shared with the Inquiry, the Inquiry will review the applicant statement and will return the draft along with any comments to the ICR so that the statement can be returned to the applicant for further consideration and completion. That responsibility is assumed by the Inquiry to provide administrative and legal support to the ICR, in the best interests of both processes, to ensure that the provision of applicant statements will be handled in a consistent and trauma-informed way whilst also seeking to adhere to the Inquiry's timetabling requirements and will extend, but not be limited, to checking that the

applicant statement is clear, as full as possible in accordance with the clinicial evidential requirements of the Inquiry and, in particular to ensure that all of the questions in the questionnaire have been answered in full to the satisfaction of the Inquiry. Once all questions have been answered to the best of the patient's or the relative's/representative's ability, the completed applicant statement will be sent to the ICR.

26. In seeking the engagement of former patients of Mr Eljamel or their relatives/representatives, both the Inquiry and the ICR will follow a trauma-informed approach, putting the needs of the patients and their relatives/representative first in balancing the requirement for patient engagement in each and their need to involve patients or their relatives/ representatives in their investigations, and will consider together how best to minimise the impact on those who are called upon to participate in both processes.

Independent expert neurosurgical reports

Instruction and completion of the individual case reviews

27. In terms of its Terms of Reference, the ICR will oversee the compilation of individual case reviews, as requested by former patients of Mr Eljamel or their relatives/ representatives.

28. In order to assist with its work, and where it has obtained the former patient's, relative's or representative's explicit consent, the ICR will provide the Inquiry with copies of the expert neurosurgical reports arising from its individual case reviews, compiled *inter alia* in accordance with the process set out below.

29. The ICR will be responsible for identifying independent expert neurosurgeons to carry out the individual case reviews and the allocation to them of cases for review. The ICR will seek the approval of the Inquiry as regards the final terms under which the expert neurosurgeons are instructed, for the purpose of ensuring that their reports meet the requirements of the Inquiry in the fulfilment of its Terms of Reference. The Inquiry team will offer reasonable assistance to the ICR in the framing of such instructions.

30. The ICR will compile and maintain a list of the individual cases in which it will instruct individual case reviews. The list will contain the names of (a) former patients or their relatives/ representatives who have requested an individual case review from the ICR (b) any former patients or their relatives/ representatives whose

cases have been referred to the ICR for review by the ICR in accordance with paragraph 37 of this Memorandum ("listed cases").

31. In order to assist the expert neurosurgeons instructed by the ICR in the compilation of their individual case reviews in cases where explicit consent has been obtained for information relating to the application to be shared with the Inquiry, the Inquiry will make available to the ICR copies of the following:

(a) Any relevant hospital records relating to the listed cases recovered from NHS Tayside (insofar as not already available to the ICR) or private healthcare provider, as appropriate; and
(b) Any general practice records relating to the listed cases.

32. In order to assist the Inquiry to meet the deadlines in its timetable, the ICR will undertake case reviews and compile neurosurgical reports in accordance with such priority to be given to cases as may be directed by the Inquiry from time to time, in order to ensure that neurosurgical case reviews of the most relevance to the Inquiry's Terms of Reference are compiled and completed as soon as possible.

<u>Terms of the individual case review reports</u>

33. In order to assist the ICR, the Inquiry will share with it at the earliest opportunity, a List of Issues and areas that will be investigated by the Inquiry in order to assist the ICR in selecting matters on which to report of relevance to the Inquiry's Terms of Reference, along with any updates to that List of Issues which may from time to time be made.

34. In particular, and in addition to any matters which the neurosurgical reports will cover for the benefit of the applicant and as set out in the ICR's Terms of Reference, the neurosurgical reports will address the following issues, insofar as possible and relevant in any individual case based on the materials which are available and which will be analysed under the ICR's Terms of Reference:

(a) A chronology of the key events, including the patient's presenting medical issue, broad medical history, diagnosis, key dates and key details of key consultations and surgeries;
(b) Identification of key clinical personnel involved in the case and an explanation as to the actions taken by Mr Eljamel and those undertaken by other medical staff;
(c) An analysis as to whether the care/ treatment provided were sub-standard, including whether they accorded with applicable clinical guidelines, including but not limited to:

- Any issues with informed consent arising from the case;
- Any issues with accuracy or completeness of information provided to the patient more generally;
- Any cases of misdiagnosis;
- Any steps which would normally be taken prior to surgery (such as investigations including tests, scans etc) which were not;
- Any issues with the execution of the surgery, including unperformed or incomplete surgery or surgery performed at the wrong site;
- Any unnecessary surgeries or surgeries not carried out as explained to/ agreed with the patient; and
- Any issues arising from the surgical aftercare provided to the patient, including the accuracy/completeness of information provided to the patient, candour about anything which had gone wrong, the way in which issues raised by the patient about the treatment/care which had been received were dealt with.

(d) Any relevant issues relating to instruction, supervision or training provided to surgical staff working under Mr Eljamel, including any pressure applied to them by Mr Eljamel;
(e) Any relevant issues relating to the work pressures on Mr Eljamel and their impact on the quality of care provided, including pressures created by his involvement in private practice or his employment with the University of Dundee;
(f) An analysis of the key physical sequelae for the patient and an analysis of those caused by the surgery/substandard care;
(g) Issues with the apparent accuracy and comprehensiveness of the available hospital medical records, including any material discrepancies between hospital and primary care records/ the applicant statement;
(h) Any information revealed about the role of any research in the case, and the appropriateness of any research undertaken;
(i) The nature, content, and outcome of any complaint made about the care/ treatment;
(j) Any limitations on the reviewer's ability to compile the report, based on the material provided;
(k) Any other matters arising from the clinical review which appear to the reviewer to be relevant to the Inquiry's Terms of Reference or List of Issues; and
(l) Any further information or analysis reasonably requested by the Inquiry in connection with a case review.

35. The matters which the Inquiry will require the ICR to cover in its neurosurgical reports may expand as further information becomes available around themes which are relevant to the Inquiry's Terms of Reference and are practical for the ICR and expert neurosurgeons to comply with. The Inquiry will keep the ICR appraised of any additions to the list of matters at paragraph 34 above which should be covered in the reports.

36. In the normal course, the ICR will recover medical records via a consent form provided by the applicant, consistent with the voluntary principle upon which the ICR will operate. The Inquiry will recover records using its statutory powers of document recovery. The ICR and the Inquiry will liaise with each other and with the providers of medical records in order to ensure the consistency of the records to which each process has access and to facilitate consistent cataloguing and referencing of medical records.

37. In the event that individual cases not already submitted to the ICR for review come to the attention of the Inquiry but which the Inquiry deems to be of particular relevance to its Terms of Reference, the Inquiry will be entitled to instruct the ICR to undertake reviews of such cases. In such cases, the ICR will instruct a neurosurgical report, to be compiled in accordance with the matters ordinarly covered in such reports as per the provisions of this Memorandum and associated letter of instruction. In the absence of any consent from the relevant patient, relative or representative for the ICR to work with, the Inquiry will recover the relevant medical records in such cases, which it will pass to the ICR for a neurosurgical review to be conducted, subject to compliance with applicable data protection law and the data protection policies of each process.

38. The ICR will provide interim reports, as requested by the Inquiry from time to time, and a final report on themes arising from the expert neurosurgical reports. Such thematic reports will be compiled by the Chair of the ICR, with such assistance as he considers necessary from members of his team.

39. Though the contents of the individual case reports and any thematic reports are primarily matters for the ICR to oversee, where consent of the applicant patient, family member or representative has been obtained to provide the report to the Inquiry, the ICR will consult the Inquiry as regards their content before they are finalised in order to ensure that they are suitable for the purposes of the Inquiry in fulfilling its Terms of Reference. Where the Inquiry wishes certain changes to the report to be considerd by its author, the Inquiry team will offer reasonable

assistance to the ICR in the process of ensuring that all matters necessary for its purposes are addressed in the finalised reports. The same process will apply to the thematic reports, which will be prepared by the ICR so as to maintain the confidentiality of applicants and cases where consent has not been provided by the applicant to share information with the Inquiry.

40. For the avoidance of doubt, in carrying out its functions under paragraph 39 above, the Inquiry will provide such assistance to seek to ensure that the neurosurgical reports are clear, consistently approached, address all of the questions addressed to the expert, are based on a proper assessment of the available materials, are compliant with the duties of the independent neurosurgical experts and are otherwise in accordance with the evidential requirements of the Inquiry. In particular, the Inquiry will, in providing such assistance, respect the clinical independence of the expert neurosurgeons and the author(s) of any thematic reports and their right to express their professional opinions in their reports.

Engagement between the Inquiry team and the ICR team

41. Representatives of the Inquiry and the ICR will liaise with each other at appropriate intervals in the interests of the fulfilment of the terms of this Memorandum, including, where necessary, for the purpose of addressing any issues which require resolution to enable the ICR to meet the Inquiry's requirements. The processes will agree appropriate remedial action to meet the obligations of each, including their commitments under this Memorandum.

42. The Inquiry and the ICR will nominate key points of liaison within their teams.

43. Any change in these key points of liaison will be notified to the other process as soon as possible.

44. The Inquiry and the ICR will, through their regular liaison, keep this Memorandum under review to ensure that it remains fit for purpose and will work together to agree any variations that may become necessary over the lifetime of the two processes.

Enquiries

45. The Inquiry is responsible for answering queries received by it about how the Inquiry operates, what stage the Inquiry is at, and the activities of the Inquiry.

46. The ICR is responsible for answering queries received by it about how the ICR operates, what stage the Inquiry is at, and the activities of the ICR.

47. Where there is any uncertainty over whether it is for the Inquiry or the ICR to answer any enquiry, both processes will intimate to the other its intentions with regard to issuing a response and seek to agree the most appropriate course to be taken to deal with the respective responsibilities of each process relating to accountability to the public, their stakeholders (including the Inquiry's Core Participants), other interested parties and the Minister.

Data Protection and anonymity

48. The ICR and the Inquiry shall each be controllers of the personal data relating to patients, family members and/or representatives that they process.

49. The ICR and the Inquiry will each develop a data protection policy which will take account of their respective legal responsibilities as regards data protection.

50. Such respective policies will set out appropriate safeguards in order to ensure compliance with the legal responsibilities of each in that regard.

51. The ICR and the Inquiry will share any information received which is thought to be of particular relevance to the other's Terms of Reference where possible, subject to compliance with applicable data protection law and appropriate data sharing agreements being in place.

52. In particular, the Inquiry and the ICR will liaise to ensure consistency and legal sufficiency of their processes for the anonymisation of data which may ultimately be disclosed or published, including obtaining consent from applicants where this is required and making provision for the ability of applicants to the ICR to express their views in that regard.

53. All information shared between the Inquiry and the ICR via this Memorandum is shared on a confidential basis, though information and material shared between the processes may ultimately be disclosed to interested parties or otherwise published, subject to and in accordance with the data protection policies of each process and appliable data protection law.

54. To address the obligations under data protection law, the Inquiry and the ICR will assess any risks in their collection and processing of personal data received from or shared with the other. As personal data may be processed by the Inquiry or the ICR

for the purposes of their operation, the respective Chairs will each determine any action each process should take to comply with their respective obligations under data protection law, including registration with the Information Commissioner's Office as controllers.

Legal Effect of Memorandum of Understanding

55. This Memorandum does not confer any legally enforceable powers or responsibilities on the Chair of the Inquiry, the Chair of the ICR, or their teams, but instead sets out how the Inquiry and the ICR will work together. The arrangements described in the Memorandum may be amended by written agreement between the Inquiry and the ICR at any time.

..... 03.04.2025

The Hon. Lord Weir, Chair of the Inquiry

03.04.2025

.....

Professor Wigmore, Chair of the ICR