

Dated _____ 2020

(1) **THE MAYOR AND COMMONALTY AND CITIZENS
OF THE CITY OF LONDON**

- and -

(2) **NHS CITY AND HACKNEY CLINICAL
COMMISSIONING GROUP**

**DEED OF VARIATION
TO THE
FRAMEWORK SECTION 75 AGREEMENT FOR
THE DEVOLUTION OF HEALTH AND SOCIAL CARE SERVICES
IN THE CITY OF LONDON (INCLUDING THE BETTER CARE FUND)**

THIS DEED is made on

2020

PARTIES

- (1) **THE MAYOR AND COMMONALTY AND CITIZENS OF THE CITY OF LONDON** a corporation by prescription of Guildhall, PO Box 270, London EC2P 2EJ (the "**City**")
 - (2) **NHS CITY AND HACKNEY CLINICAL COMMISSIONING GROUP** of 3rd Floor, Block A, St Leonard's Hospital, London, N1 5LZ (the "**CCG**")
- each a "**party**" and together the "**parties**".

BACKGROUND

- A This Deed is supplemental to the framework Section 75 Agreement for the devolution of health and social care services in City of London (Including the Better Care Fund) entered into by the parties on 5 July 2019 and as subsequently varied by the parties on 13 December 2019 to incorporate the new Better Care Fund Plan for 2019 and 2020 (the "**Agreement**").
- B The Initial Term of the Agreement was extended for a further year until 31st March 2021 (the Extended Term) pursuant to Clause 2.1 of the Agreement by way of a letter (the Extension Letter) signed on behalf of the parties. A copy of the Extension Letter is appended to this Deed as Schedule 2.
- C In accordance with the Agreement, each of the parties has agreed to amend the Agreement as set out in this Deed.

AGREEMENT:

1. DEFINITIONS AND INTERPRETATION

Unless otherwise provided the words and expressions defined in, and the rules of interpretation of, the Agreement shall have the same meaning in this Deed.

2. AMENDMENTS TO THE AGREEMENT

The parties agree that the Agreement is amended as set out in Schedule 1.

3. VARIATION DATE

The parties agree that the amendments set out in this Deed shall have effect from 19th March 2020.

4. AGREEMENT IN FULL FORCE AND EFFECT

This Deed is supplemental to the Agreement and, subject to the amendments described in this Deed, the Agreement shall remain in full force and effect.

5. CONFIRMATION AND INCORPORATION

The parties further agree and declare that the terms of the Agreement except as varied by this Deed are confirmed as if the same were set out in this Deed in full and that such terms as so varied shall for all purposes (including but without limitation for the purposes of s2 of the Law of Property (Miscellaneous Provisions) Act 1989) be deemed to be incorporated in this Deed.

6. COUNTERPARTS

This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all parties shall constitute a full original of this Deed for all purposes.

7. GOVERNING LAW

This Deed and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

8. JURISDICTION

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Deed, its subject matter or formation (including non-contractual disputes or claims).

EXECUTED as a deed by the parties and delivered on the date set out at the start of this Deed.

Executed as a Deed by affixing the
common seal of **THE MAYOR AND
CITIZENS OF THE CITY OF LONDON**

in the presence of:

.....
Authorised Signatory

Executed as a Deed by the CCG acting by
DAVID MAHER under delegated authority
from the Accountable Officer

.....
David Maher
Managing Director
NHS City and Hackney
Clinical Commissioning Group

in the presence of:

.....

Name:

Address:

Occupation:

SCHEDULE 1 VARIATION

The parties agree to amend the Agreement in accordance with this Schedule 1.

1. The parties acknowledge that since the Deed of Variation dated the 13th December 2019 was entered into, the provisions of clause 35 “Change in Law” of the Agreement have come into effect following the introduction of the “2020 Act”. In accordance with the provisions of sub-clause 35.2 of the Agreement, the parties are therefore agreeing the following amendments to the Agreement as a result of a Change of Law.

The definitions are added to the Agreement at clause 1 (Defined Terms and Interpretation) of the Agreement as the following:

***2020 Act** means the Coronavirus Act 2020 granting the UK Government emergency powers to handle the 2020 coronavirus pandemic and which received Royal assent on the 25th March 2020 and came into effect on that date.*

***COVID-19** shall have the meaning set out in the 2020 Act, and shall also mean the COVID emergency referred to in the COVID -19 Hospital Discharge Service.*

2. The definition of COVID-19 Hospital Discharge Service is added to the Agreement at Clause 1 (Defined Terms and Interpretation) of the Agreement as the following:

***COVID-19 Hospital Discharge Service** means the discharge flow arrangements put in place as part of the COVID-19 response as defined at Part Five of Schedule 1 of this Agreement and the HM Government document ‘COVID-19 Hospital Discharge Service Requirements’.*

3. Schedule 1 (Integrated Commissioning Strategies and Budget Contributions) is amended to include the additional COVID-19 Hospital Discharge Service specification set out in Annex 1 of this Deed at Part Five or Schedule 1 of this Agreement.

ANNEX 1

PART FIVE – COVID-19 Hospital Discharge Service

A. Introduction

The Government has agreed to fully fund the cost of new or extended out-of-hospital health and social care support packages from 19th March 2020, for people being discharged from or who would otherwise be admitted into it, for a limited time, to enable quick and safe discharge and more generally reduce pressure on acute services.

The funding will also cover the costs of additional short term residential, domiciliary, reablement and intermediate care capacity to reduce hospital admissions.

During the period of operation of the Covid-19 Hospital Discharge Service there is a temporary suspension of the obligation of the need to carry out Continuing Healthcare assessments for patients on the acute hospital discharge pathway and in community settings as well as a suspension of the usual patient eligibility criteria.

The packages which are covered by this Covid-19 Hospital Discharge Service funding are defined as:

- a) New packages of care entirely covered by Covid-19 funding for:
 - Individuals who are discharged with a new package of care.
 - Individuals at home with no care package who deteriorate and require a social care package to prevent admission to hospital.
 - Individuals who are self-funding or local authority funded in a care home placement but deteriorate and require a new nursing home placement to prevent admission to hospital.
- b) Extended packages of care partly covered by Covid-19 funding for:
 - Individuals who are discharged and retain an existing package of care but now have an additional package of care to prevent admission.
 - Individuals who are in the community with an existing social care package and require additional support to prevent admission.
 - Individuals who are in a CHC funded (including fast track) that deteriorate and require an additional package of care to prevent admission.

Individuals on existing health and social care support packages that are not modified, or that are modified but not to prevent admission to Hospital, are not funded by the Covid-19 Hospital Discharge Service funding.

Local authorities have been instructed to pool existing funding for discharge support with this additional money. The additional funding should be identifiable separately and support and spending from this new funding should be recorded for each person discharged and supported under these arrangements.

Once pooled, funding should be treated as a single pooled fund and used to deliver the appropriate care for individuals to be discharged under these new arrangements.

The use of the term 'pool' in the Government guidance refers to a pool created within a council, rather than a pooled fund that would usually be created between an NHS body and a council through a section 75 Agreement. In that respect the City adding or not adding additional funds to the amount it will receive from the CCG will be a matter for the City to decide. The City's current intention is not to pool any additional funds and simply to record on the template the Covid-19 costs associated with hospital discharge (and avoiding hospital admittance) and claim via CCG pursuant to the arrangements hereunder.

The City will provide financial reporting information to CCG on the correct template and will only record the Covid-19 costs relating to the specific headings set out on the reporting template. The CCG will then

reclaim those costs and pass them back to the City. This arrangement is set out in more detail at sections F, G and H.

B. Requirements of the COVID-19 Hospital Discharge Service

The requirement of the COVID-19 Hospital Discharge Service is included at Appendix 1 of Part Five of Schedule 1.

The COVID-19 Hospital Discharge Service funding arrangement is being established specifically for the purpose of accelerating discharge and increasing admission avoidance.

The City, the CCG, University College London Hospitals NHS Foundation Trust and Whittington Health NHS Trust have agreed a system for patient discharge that is to operate locally.

C. Duration of the COVID-19 Hospital Discharge Service

The COVID-19 Hospital Discharge Service arrangement defined by this Part Five will commence on 19th March 2020 and will continue in force until such time as the CCG and the City is notified by NHS England or the Department of Health and Social Care that the additional funding allocated to CCGs ceases and therefore this arrangement is no longer applied to new patients discharged from hospital.

D. Extent of Funding

The aim of the COVID-19 Hospital Discharge Service is to ensure that the Government fully fund additional costs associated with the COVID 19 impacted packages of support.

Funding should cover the following:

- The full or enhanced cost of care packages agreed at the point of discharge and delivered in the community, both domiciliary and non-domiciliary, and from a range of providers (including hospices).
- The additional cost of care for those who would ordinarily be deemed 'self-funding' during the period of the process if they were a hospital discharge during the emergency period or if their needs increased and required a new care setting.
- Enhancements to existing packages of care.
- It will also cover the cost of any loss of 'means tested' income from this cohort by the local authority.
- The costs of providing community health services to the homeless and rough-sleepers, wherever this accommodation may be situated.
- It also includes the cost of onward care both stepping up and stepping down packages of care intensity throughout the period covered by these arrangements

Funding is not intended to cover:

- Existing funded packages of care (prior to 19th March 2020) that will remain funded on the normal basis, but that if there are material changes to the package, they will then fall within scope of these new arrangements.
- Additional administrative burden on commissioners such as staffing and non-pay related costs incurred by CCGs and local authorities. CCG funding for this should be covered under the

“workforce” element of the COVID 19 response work.

- Any extra costs associated with COVID 19 virus testing.

The extent of the funding should be read together with the definition at paragraph A.

E. The CCG role in providing Funding and the Funding flow from NHS England

To enable funding flows to be as simple as possible, aspects of the current NHS ‘Who Pays?’ guidance are being set aside for the duration of the Covid-19 emergency.

New rules will apply on NHS responsibility for paying for services to support hospital discharge and prevent avoidable admissions, as described in this document and in COVID-19 Hospital Discharge Service Requirements. NHS England is mandating these new rules using its powers under section 14Z7 of the NHS Act 2006 (as amended in 2012).

The new rules on NHS payment responsibility are as follows.

- a) For a service being contracted for directly by a CCG (rather than by a local authority), NHS responsibility for paying for a particular service will rest with the CCG in whose geographical area the service in question is physically located. Where a service is being provided in an individual’s own home, the physical location of the individual’s home will determine responsibility.
- b) For a service being contracted for by a local authority using a pooled fund, NHS responsibility for paying for a particular service will rest with the CCG which is agreed locally to be the “host CCG” for the local authority in whose geographic area the service in question is physically located. Where a service is being provided in an individual’s own home, the physical location of the individual’s home will determine responsibility.

For the purpose of the COVID-19 Hospital Discharge Service NHS City & Hackney CCG is the ‘host CCG’ for the City of London area.

Funding will flow from NHS England to the CCG direct to the host CCG for the City of London area, to be passed on to the City under this Agreement the City has been identified locally as the lead commissioner, and thus on to the relevant providers.

F. The City role in providing Funding, the Funding flow from the CCG and the pooled budget

The CCG will receive a cash-backed funding allocation related to patients under this arrangement. This funding shall be pooled with City funding as follows:

- The City shall pool existing funding already allocated for care and support packages from the City social care budget. The additional funding should be identifiable in reporting.
- Once pooled, funding should be treated as a single pooled fund and used to deliver the appropriate care for individuals to be discharged under these new arrangements.
- The budget set by the City should be at a level that would have been expected to reasonably cover the costs of packages if COVID had not occurred.
- The City must place an appropriate portion of their existing funding dedicated to adult social care into the pooled budget with the CCG, to ensure that there is no risk of debates about which fund should pay. This should include existing funding dedicated to discharge to assess spending.

- The City is expected to ensure that an appropriate market-rate is paid for support and will work together with the CCG to agree an approach to ensuring the market can sustain a rapid and significant increase in supply. This appropriate market-rate may need to reflect that some patients and the capacity being utilised would previously have been self funded.
- The market rate should reflect that a) providers' realistic additional costs are covered so they are sustainable and b) that what is paid during an emergency can be adjusted after that emergency.
- For hospital discharges, it is expected that third party top-up fees would not be payable by residents as an appropriate market-rate for care would be paid to the providers of care.

G. The CCG and City role in requesting cash reimbursement from NHS England for the cost of the COVID-19 Hospital Discharge Service

1. The CCG will submit a monthly non-ISFE return to NHS England, by the required deadline that incorporates the actual spend on the COVID-19 Hospital Discharge Service in the preceding month. Following the monthly reconciliation carried out by the CCG and the Local Authority, any over/under claiming in a month will be adjusted in the following month's Non-ISFE submission.
2. The CCG will submit requests for cash funding in the monthly drawdown request to NHS England based on the CCG estimate of required funding and the Non-ISFE return.
3. CCG allocations will be amended using the following:
 - a. for 2019/20 the CCG should submit the COVID "19/20 cost reimbursement template" (final collection) and provide further details of the programme spend in the CCG's month 12 non ISFE return.
 - b. for 2020/21 the CCG should include the COVID cost collection within the CCG's monthly non ISFE return that has been modified to include a new tab to collect actual spend in the month. The "non ISFE return" is included at Appendix 2 of Part Five of Schedule 1.

The City must complete the Local Authority Spend reimbursement template on a monthly basis; this template is included at Appendix 3 of Part Five of Schedule 1. The CCG cannot take responsibility for completing the Local Authority Spend reimbursement template or the accuracy of the information contained within it. If the Local Authority Spend reimbursement template is not returned on time to the CCG, the CCG will not be able to submit the Non-ISFE return on time and this will delay payment to the City.

The consolidated monthly report will be submitted by the CCG (in accordance with the timetable at H) so that the CCG and the City are funded for the preceding month in a timely manner. This means that the City submission of expenditure reporting to the CCG will need to be incorporated into the CCG submission to NHS England.

H. The Timetable for monthly activities relating to the COVID-19 Hospital Discharge Service

When	Party responsible	Action
During the preceding month	City of London	Accurately records expenditure on the COVID-19 Hospital Discharge Service on the Local Authority Spend reimbursement template
At the end of the preceding month	City of London	Close Local Authority Ledger for the preceding month
Working Day 7 of the month	CCG	Close CCG Ledger for the preceding month
Midday, Working Day 8 of the month ^{1, 2}	City of London	Submit final Local Authority Spend reimbursement template to the CCG
COP, Working Day 8 of the month ²	CCG	Complete and Submit final Non-ISFE return to NHS England
Working Day 9 of the month	City of London	Send Invoice to CCG for COVID-19 Hospital Discharge Service monthly amount – the invoice should be marked for the attention of Sunil Thakker, Director of Finance
Working Day 16 of the month	CCG	Complete and Submit cash drawn down request to NHS England
Working Day 17 of the month	City of London and the CCG	Carry out a retrospective month-end reconciliation to ensure the actual costs submitted in the Non-ISFE reconcile back to the local authority and CCG actual, allowable COVID-19 hospital discharge service costs.
Working Day 1 of the following month	NHS England	Release cash to the CCG Bank Account
Next available BACS run	CCG	Pay invoice / transfer money to LBH

NOTES

1. Date has been confirmed as 21st April in Month 1 of 2020 due to bank holidays however this would usually be on WD8.

2. The Working Day 8 deadline are:

Year	Reporting Month	Deadline (WD8) 12 pm
2019/20	March 20	20/04/2020
	April 20	14/05/2020
2020/21	May 20	10/06/2020
	June 20	10/07/2020
	July 20	12/08/2020
	August 20	10/09/2020
	September 20	12/10/2020
	October 20	11/11/2020
	November 20	10/12/2020
	December 20	13/01/2021
	January 21	10/02/2021
	February 21	10/03/2021
	March 21	14/04/2021

3. The CCG will submit a monthly non-ISFE return to NHS England, by the required deadline that incorporates the amount spent on the COVID-19 Hospital Discharge Service in the preceding month. If deadlines are altered the CCG will notify the City as soon as possible after the CCG becomes aware of the change.

I. Financial Reporting

Expenditure will be recorded under the following Expenditure Categories:

Expenditure Categories	Definition
Care Home	A registered residential or nursing home
Other care accommodation	Other bed-based accommodation (excluding hospice). This may be in hotels or other buildings that temporarily house discharged patients.
Domiciliary/home care	Services provided in a person's home.
Reablement / intermediate care	Services are generally provided in the person's own home or care home, is intervention that involves intensive, time-limited assessment and therapeutic work over a period of time.
Day Care	Day Care Facilities may be called Day Hospitals, Centres, Facilities or Units.
Respite care	term used for services designed to give home carers a break from caring.
Hospice	Care, treatment, and support can be provided in accommodation or in the community. It can be long or short-term care, on an inpatient basis or provided through day care, day therapy or outreach services.
Transport	Any separate transport costs such as patient transport (PTS), volunteer drivers, taxis, local authority transport to enable the hospital discharge or meet the ongoing packages of support.
Other	Typically, equipment and adaptations.

J. Consequences of the ending of the COVID-19 Hospital Discharge Service

Funding will continue for these individuals for a short period during the post-cessation phase, and NHS England will work with the CCG and the City to ensure that an appropriate amount of time is allowed for a smooth transition for individuals to return back as safely as possible to pre-COVID-19 health and living standards with agreed funding arrangements.

The care needs and financial assessment would be undertaken for all COVID-19 related individuals at the cessation of this agreement to provide a baseline going forward. Individuals provided with care packages under these arrangements must not face any requirement to refund commissioners retrospectively for the period in question.

The commissioners will plan throughout the period that the enhanced discharge support process is running to ensure appropriate processes and governance are in place for the period following cessation of the enhanced discharge support process with the expectation that commissioner will endeavour to end this arrangement within two (2) months. As part of this, planning conversations should be taking place with patients and their families about the possibility that they will need to pay for their care later, as appropriate.

APPENDIX 1 - COVID-19 Hospital Discharge Service Requirements



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discharge_service_re

APPENDIX 2 - non ISFE return template for financial reporting



Section 75 non ISFE
- Hospital Discharge

APPENDIX 3 – Local Authority spend reimbursement template



Section 75 Local
Authority Template \

SCHEDULE 2
EXTENSION LETTER



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