NHS England

NHS Standard Contract

Variation Agreement

Contract/Variation Reference: COVID-19 Service

Proposed by: NHS England

Date of Variation Agreement: 15 Oct 2020

Save for words and phrases defined in this Variation Agreement, capitalised words and phrases in this Variation Agreement have the meanings given to them in the Contract referred to above.

1. In consideration of their respective obligations under the Contract (as varied by this Variation Agreement) the Parties have agreed the Variation summarised below:

1. Not used

2. Guaranteed minimum £ value for Private Patients Offset

The average monthly value of the Private Patients Offset (as determined in accordance with the existing paragraph 2.14.1 of Schedule 3B Part 1) for the period 1 July 2020 – 30 November 2020 will be no less than £[redacted] The monthly value of the Private Patients Offset (as determined in accordance with the existing paragraph 2.14.1 of Schedule 3B Part 1) for the period 1 December 2020 – 31 December 2020 will be no less than 50% of £[redacted]

To effect this, the following wording will be added to the existing paragraph 2.14 of Schedule 3B Part 1:

*"2.14.3 With effect from 1 July 2020 and until 30 November 2020, unless the Contract terminates earlier in which case the date of termination (the **First Period**):*

2.14.3.1 in respect of each complete Accounting Period falling within the First Period, the amount of the Private Patients Offset will (averaged over the First Period) be not less than £[redacted] and

2.14.3.2 in respect of each incomplete Accounting Period falling within the First Period, the amount of the Private Patients Offset will (averaged over the First Period) be not less than £[redacted] (N/30), where N = the number of days within that incomplete Accounting Period.

*2.14.4 With effect from 1 December 2020 and until 31 December 2020 (the **Second Period**):*

2.14.4.1 in respect of each complete Accounting Period falling within the Second Period, the amount of the Private Patients Offset will be not less than 50% of £[redacted] and

2.14.4.2 in respect of each incomplete Accounting Period falling within the Second Period, the amount of the Private Patients Offset will be not less than 50% of £[redacted] x (N/30), where N = the number of days within that incomplete Accounting Period.

*(The aggregate of those sums set out in paragraphs 2.14.3 and 2.14.4 above being the **Minimum Private Patient Offset Amount**)."*

If, from time to time, the Commissioner exercises its right to terminate this Contract in respect of one or more of the Provider's Premises, in respect of each Accounting Period or part of an Accounting Period falling after the date on which that termination becomes effective the sums set out in paragraphs 2.14. 3 and 2.14.4 will be reduced by a percentage that is equal to percentage of the Provider's Private Patients Offset for the month of June 2020 (calculated in accordance with paragraph 2.14.1 of Schedule 3B Part 1) that is accounted for by the aggregate net private patient income earned by the Provider at the Provider's Premises to which the termination relates to during the month of June 2020. There will be a corresponding percentage reduction applied to the actual £ figure that is included in section 3(i) and 3(ii) of this Variation Agreement in respect of the same periods falling after the date on which the termination becomes effective. For the avoidance of doubt the percentage reductions will be applied in respect of the period that commences on the day following the day on which the termination is effective (as stated in the relevant termination notice).

For reconciliation of the Minimum Private Patient Offset Amount, see paragraph 4 (Reconciliation of Private Patient Offset) below.

3. The Private Patients Offset percentage in respect of net revenue in excess of the Revenue Required to Produce the Minimum Private Patient Offset Amount

The Parties acknowledge that the application of this paragraph 3 is subject to paragraphs 2.14.3 and 2.14.4 above. For the avoidance of doubt, this means that if the figure that results from the application of this paragraph 3 is less than the Minimum Private Patient Offset Amount, the Private Patients Offset will continue to be the Minimum Private Patient Offset Amount and will not be reduced in any way.

The Parties agree that the figures in paragraphs 2.14.3 and 2.14.4 above used to calculate the Minimum Private Patient Offset Amount represent 85% of a specific level of net private patient revenue. The Minimum Private Patient Offset Amount therefore represents 85% of a specific level of net private patient revenue. For the purposes of sections 3 and 4 of this Variation Agreement, the level of net private patient revenue of which the Minimum Private Patient Offset amount represents 85% is the **Revenue Required to Produce the Minimum Private Patient Offset Amount**.

If:

a) the total value of the net private patient revenue (calculated as set out in the existing paragraph 2.14.1 of Schedule 3B Part 1) earned by the Provider over the First Period and (if applicable) the Second Period is greater than the Revenue Required to Produce the Minimum Private Patient Offset Amount; and

b) the Provider has delivered the Services at the Provider's Premises in response to referrals and transfers of Service Users under this Contract and/or has made available each of the Provider's Premises for the delivery of NHS services by NHS Trusts and NHS Foundation Trusts to the full extent in aggregate of the NHS Capacity Limit or the London NHS Capacity Limit or the Inner M25 Area NHS Capacity Limit (as applicable) at all of the Provider's Premises (subject to paragraph (iii) below),

then for the purposes of paragraph 2.14.1 of Schedule 3B Part 1:

(i) the figure 85% will be applied to the average month value of net private patient revenue earned by the Provider over the First Period and (if applicable) the Second Period to a maximum of the revenue required to produce £[redacted] and

(ii) the figure 60% (rather than 85%) will be applied to the amount by which that average month value of net private patient revenue earned by the Provider over the First Period and (if applicable) the Second Period exceeds the revenue required to produce £[redacted]

but:

(iii) where the Provider fails to satisfy the condition set out in paragraph (b) above in respect of one or more of the Provider's Premises (but no more than 25% of the Provider's Premises by number), the revised mechanism set out in paragraphs (i) and (ii) above shall still apply, but only in respect of the remainder of the Provider's Premises (and the provisions of paragraph 2.14.1 of Schedule 3B Part 1 will continue to apply to those of the Provider's Premises in respect of which the Provider has failed to satisfy the condition set out in paragraph (b) above)

For the avoidance of doubt, the Private Patients Offset mechanism from 1 July 2020 is intended to operate as summarised below:

- 85% will be applied to the Provider's net private patient income until an offset of £[redacted] is reached.
- 60% will be applied to the provider's further private patient income above this level.
- This will give the total amount of offset.
- If the total amount of the offset is lower than £[redacted] then £[redacted] will be deducted from the qualifying costs.
- If the total calculated offset is equal to, or above £[redacted] then both parties will retain the respective proportions as set out above.

Operational expectations on the Provider applicable to paragraph (b) above and a process for escalation and resolution of disputes (including as to the application of paragraph (iii) above) will be set out in operational policies relevant to this Contract and to be issued as: *'Operational implementation of national IS contracts'* dated 12 August 2020 and with reference 'v1 final'. For the avoidance of doubt, the dispute resolution procedure set out in GC14 (*Dispute Resolution*) of the Contract will continue to apply to Disputes.

For the avoidance of doubt, the NHS Capacity Limit or the London NHS Capacity Limit or the Inner M25 Area NHS Capacity Limit (as applicable) referenced in paragraph (b) above shall not apply for the purposes of determining the reduced offset in excess of the Minimum Private Offset Amount for the period between 1 July 2020 and 31 August 2020.

For the avoidance of doubt, as stated in paragraph 2.14.1 of Schedule 3B Part 1 and for the purposes of that paragraph and the additional provisions noted above, net revenue means the total invoiced revenue excluding VAT and private consultant costs incurred in earning such revenue to the extent such cost is not itself a Qualifying Cost. It does not mean the EBITDA of or net profit on that revenue.

Paragraph 2.14.1 of Schedule 3B Part 1 will be read in light of this paragraph.

For reconciliation of Private Patients Offset (including adjustment to Private Patients Offset percentage) see section 4 below.

4 Reconciliation of Private Patients Offset

Deductions in respect of the Private Patients Offset will continue to be made as determined and otherwise in accordance with the existing paragraph 2.14.1 of Schedule 3B Part 1 for the remainder of the Contract, with any sums due to or from the Provider to reflect the minimum monthly values referred to in paragraph 2 (Guaranteed minimum £ value for Private Patient Offset) above and/or the Private Patients Offset percentage in respect of net revenue in excess of the Revenue Required to Produce the Minimum Private Patient Offset Amount referred to in paragraph 3 (The Private Patients Offset percentage in respect of net revenue in excess of the Revenue Required to Produce the Minimum Private Patient Offset Amount) above to be reflected in the Draft Final Statement and the Final Adjustment payment to be made to or by the Provider.

5 Mitigation of Qualifying Costs

The Provider will continue to use best endeavours to manage and mitigate the Qualifying Costs.

The Parties agree that:

(a) Qualifying Costs incurred by the Provider will vary according to the volume and casemix of activity delivered and accommodated at the Provider's Premises. It is to be assumed that Qualifying Costs incurred and claimed in respect each month from 1 July 2020 will reflect those claimed and authorised in respect of the three Accounting Periods to end April, end May and end June 2020 subject only to (i) reasonable and proportionate variation to variable costs to reflect changes in activity volumes and casemix, and (ii) paragraph (b) below, and (iii) increases reflecting premises rent reviews in accordance with third party premises leases, annual inflationary staff salary reviews and supplier contract pre-determined price increases in accordance with contractual terms. Where any costs claimed as Qualifying Costs are materially higher than the corresponding costs for April, May and June 2020, the NHS Accountant (acting reasonably) will conduct an assessment of those costs against actual activity and will not assess excess costs as Qualifying Costs if and to the extent not reflective of (i), (ii) or (iii) above. In support of any claim for Qualifying Costs the Provider will, if required by the NHS Accountant, demonstrate their reasonableness by producing the previous six months' historical trend data for the relevant costs.

(b) In recognition of the Provider guaranteeing a minimum value of the Private Patients Offset from 1 July 2020, as set out in paragraph 2 (Guaranteed minimum £ value for private Patients Offset) above, reasonable costs reasonably and necessarily incurred by the Provider in respect of the period from 1 July 2020 until the expiry or termination of the Contract in the delivery and management of private patient pathways (including costs reasonably and necessarily incurred in relation to Covid-19 staff and patient testing and PPE costs, in each case in accordance with Guidance and as necessary for the delivery of those private patient pathways) and private patient payors fall within the definition of Qualifying Costs whether or not they did so in respect of the period prior to 1 July 2020. Where it is determined that there are material issues that are generally relevant to the contracted IS providers, the Commissioner and the Independent Healthcare Providers Network will have regular discussions to resolve differences of opinion as to Qualifying Costs and produce guidance to clarify reasonable treatment of Qualifying Costs.

Any costs incurred in breach of this obligation to manage and mitigate Qualifying Costs, and/or not in accordance with these agreed matters, will be treated as Excluded Costs (and therefore irrecoverable).

For the avoidance of doubt:

(i) costs reasonably and necessarily incurred in relation to Covid-19 staff and patient testing and PPE costs, in each case in accordance with Guidance and as necessary for the provision of the Services will continue to be Qualifying Costs;

(ii) all costs that are Excluded Costs within the definition set out in paragraph 2.12 of Schedule 3B Part 1 shall continue to be Excluded Costs. In order to facilitate easier contractual interpretation and operation, the Parties have agreed that the following costs are Excluded Costs: brand marketing spend, private patient advertising (including but not limited to PPC, billboards, TV, fliers, print media), legal costs in respect of private patient claims or private patient cost recovery, legal costs incurred in relation to disputes or claims relating to this contract, costs associated with business strategy and new business ventures. For the avoidance of doubt, the illustrative list set out in this paragraph 5(b)(ii) is not an exhaustive list of Excluded Costs, and the principles of paragraph 2.12 of Schedule 3B Part 1 shall continue to apply.

This change is effected by amendment to existing paragraph 2.12 of Schedule 3B Part 1.

6 Release of capacity for private patient activity

Subject to the next two paragraphs, the Provider may request a limit on capacity available for NHS work of not below 75% (the **NHS Capacity Limit**), which may be set separately for each of its Provider's Premises, and within each Provider's Premises separately for theatre (including endoscopy and OP procedure rooms), for diagnostic imaging and for outpatient consulting capacity. The Commissioner will not refuse any request for an NHS Capacity Limit for any of the Provider's Premises of 75% or above. The remaining capacity above the agreed NHS Capacity Limit will be available to the Provider for private patient activity.

The Parties agree that in respect of the Provider's Premises in the London area as specified in Appendix A of this Variation Agreement, the Provider may request a limit on capacity available for NHS work of not below 70% (the **London Area NHS Capacity Limit**) and in respect of those of the Provider's Premises in the London area the provisions of the paragraph above will be construed accordingly. The Commissioner will not refuse any request for a London Area NHS Capacity Limit of 70% or above.

The Parties agree that in respect of the Provider's Premises in the inner M25 area as specified in Appendix B of this Variation Agreement, the Provider may request a limit on capacity available for NHS work of not below 60% (the **Inner M25 Area NHS Capacity Limit**) and in respect of those of the Provider's Premises in the inner M25 area the provisions of the first paragraph above of this paragraph 6 will be construed accordingly. The Commissioner will not refuse any request for an Inner M25 Area NHS Capacity Limit of 60% or above.

The NHS Capacity Limit (and London Area NHS Capacity Limit and the Inner M25 Area NHS Capacity Limit) are to be applied as a percentage of the **Total Staffed Capacity Target** of the Provider, calculated on a site by site basis. The **Total Staffed Capacity Target** describes the total number of units of capacity (units of currency described below) that can be operated for each service function per week during the Contract Term, based on the aggregate total monthly employed (whether full time or part time and not including bank workers or agency staff) clinical staff contracted hours of the Provider's Premises taking into consideration standard annual leave as appropriate.

Capacity units' currencies

Theatres/Endoscopy Rooms/Outpatient procedure Rooms; Sessions (half day or evenings - may add local agreement on patient numbers target)

MRI. CT other Imaging: Sessions (half day or evenings – may add local agreement on patient numbers target)

Outpatients: Sessions (half day or evenings – may add local agreement on patient numbers target)

The Total Staffed Capacity Target has been calculated and agreed between the Provider and Local NHS Lead and is documented in Appendix C of this Variation Agreement**.**

This calculation of the defined split of NHS/private capacity is solely for reporting and tracking purposes during the remainder of the Contract Term and must not be used to set out specific times in the day or week that are only available for NHS or private work, creating inflexibility in scheduling for either Party. Local NHS Lead and the Provider must work collaboratively and with flexibility on scheduling of NHS and private work to ensure the most suitable access for patients and clinicians delivering services and in doing so that the split of capacity measured over time reflects the NHS Capacity Limit or the London Area NHS Capacity Limit or the Inner M25 Area NHS Capacity Limit (as applicable) for each of the Provider's Premises.

At the Provider's request, the Provider and Commissioner may make agreed adjustments to the NHS Capacity Limit or London Area NHS Capacity Limit or the Inner M25 Area NHS

Capacity Limit (as applicable) for any of the Provider's Premises for the remaining Contract Term in light of NHS activity data forecasts from time to time. The agreement of a maximum NHS Capacity Limit or London Area NHS Capacity Limit or the Inner M25 Area NHS Capacity Limit from time to time is designed to protect sufficient capacity during core hours for private work to maintain the ability of the Provider to deliver private work in support of commitments to the Minimum Private Patient Offset Amount.

It is recognised that agreeing a maximum 75% NHS Capacity Limit or 70% London Area NHS Capacity Limit or 60% the Inner M25 Area NHS Capacity Limit for each of the Provider's Premises may limit capacity for NHS work to a level below the current actual activity level. Each Party must notify the other if it becomes aware at any time (including before this Variation Agreement is effected) of that possibility.

The Provider may request an NHS Capacity Limit greater than 75% or London Area NHS Capacity Limit greater than 70% or Inner M25 Area NHS Capacity Limit greater than 60% or request no NHS Capacity Limit at all, and may request an adjustment or introduction of an NHS Capacity Limit or London Area NHS Capacity Limit or Inner M25 Area NHS Capacity Limit at any time during the remainder of the Contract Term. The Provider cannot, however, request a NHS Capacity Limit below 75% or London NHS Capacity Limit below 70% or Inner M25 Area NHS Capacity Limit below 60% (as applicable) at any stage.

The capacity below the agreed NHS Capacity Limit (whether that is 75% or higher) and the London Area NHS Capacity Limit (whether that is 70% or higher) and the Inner M25 Area NHS Capacity Limit (whether that is 60% or higher) is available to be used entirely for treatment of NHS patients (whether Trust-deployed, Trust or CCG patients transferred or via eRS). In the event that the actual or forecast NHS activity does not account for all of that 75% or 70% or 60% (as applicable) (or whatever higher limit may be agreed) of Provider capacity, the Local NHS Lead and Provider will work collaboratively to book or transfer NHS work to use the remaining capacity.

Equally, for so long as the NHS work remains below the 75% NHS Capacity Limit or 70% London Area NHS Capacity Limit or 60% Inner M25 Area NHS Capacity Limit (as applicable) (or whatever higher limit may be agreed), the Provider can instead use this capacity to treat private patients and will accordingly be entitled to allocate for private patients theatre, bed, diagnostic and outpatient capacity which has not been filled by scheduled NHS work (for named NHS patients) by reasonable advance notice (being not less than 7 days for procedures, and subject always to the requirement for flexibility of scheduling noted above).

In the London Area and Inner M25 Area additional safeguards apply to scheduling of Trust deployed NHS work, whereby procedures must be confirmed with named patients booked for the session no less than 7 days in advance; and if failure to do so repeatedly results in unnecessarily unused sessions then the Provider may trigger a review of advance notice provisions and/or seek partial relief from the London NHS Capacity Limit or the Inner M25 Area NHS Capacity Limit (as applicable) for a period of the Contract Term. The review will be undertaken by the Commissioner on escalation by the Local NHS Lead.

The Provider shall make available and use for NHS activity (whether Trust-deployed, Trust or CCG patients transferred or via eRS) at least 75% NHS Capacity Limit or 70% London Area NHS Capacity Limit or 60% Inner M25 Area NHS Capacity Limit (as applicable) of the Total Staffed Capacity Target based on the aggregate total monthly employed clinical staff contracted hours at the Provider's Premises, adjusted for standard leave, supports.

The Total Staffed Capacity Target shall be used subject to the following:

a) The Provider must use its best endeavours to accommodate NHS clinical teams who are working in the Provider's Premises in their NHS-contracted time, during the Monday-Friday 9am-5pm working week;

b) Within any remaining Monday -Friday 9am-5pm capacity, and in the periods outside of the Monday-Friday, 9am-5pm working week, the Provider may allocate the use of the Total Staffed Capacity Target across its Provider's Premises for any type of service including NHS, private insured and self pay);

c) Despite such prioritisation in paragraph (a) above, where there is insufficient NHS activity to utilise the NHS share of the Total Staffed Capacity Target (per principle set forth in the two immediately preceding paragraphs) the Provider may re-allocate capacity supported by employed clinical staff to undertake private activity;

d) Total Staffed Capacity Target applies to capacity supported only by employed staff, and not bank or agency staff. The Total Staffed Capacity Target has been agreed between the Parties and is set out in Appendix C of this Variation Agreement; and

e) the Commissioner shall undertake to remove barriers preventing achievement of the Total Staffed Capacity Target, e.g., unavailability of anaesthetists, stricter clinical protocols, further lockdown measures, and other such conditions affecting pathways and volumes.

For the avoidance of any doubt, the overall obligation is for the Parties to work together in accordance with all the provisions of the Contract (as varied) and in collaboration between the NHS and the Provider to deliver NHS patient activity (whether Trust-deployed, Trust or CCG patients transferred or via eRS) in order to achieve full utilisation of the NHS Capacity Limit or the London Area NHS Capacity Limit or the Inner M25 Area NHS Capacity Limit (as appropriate).

Operational expectations on the Provider applicable to this paragraph 6 and a process for escalation and resolution of disputes relating to this paragraph 6 are set out in the following operational policies relevant to this Contract: *'Operational implementation of national IS contracts'* issued on 20 August 2020 and '*Independent Sector - Capacity definitions and baseline guide' dated 17 August 2020*.

This change is effected by amendment to paragraph 1.2 of Schedule 2A.

7 Commissioner may trigger return to Peak Surge

Paragraphs 6 and 7 of Schedule 2A shall be interpreted in accordance with the following:

The Commissioner may at any time on 7 days' notice trigger a return to Peak Surge on a national, regional or local (STP/ICS) basis if the following conditions apply: COVID infection rates and actual and forecast COVID-related hospital admissions, in the view of the local and regional NHS organisations, necessitate the suspension of most or all routine elective care to facilitate an expansion of NHS COVID care capacity which in turn requires the diversion of NHS staff resources to support such escalation of COVID related capacity (the **Peak Surge Conditions**).

Any such notice must specify the Provider's Premises affected. With effect from the expiry of any such notice, the Provider must ensure that 100% of its capacity at the named Provider's Premises is available to be fully applied to the delivery of the (NHS) Services (but not care for COVID-19 infected Service Users needing high dependency respiratory support on oxygen therapy, NIV therapy, or mechanical ventilation). As far as practicable, where there is capacity not required for delivery of the (NHS) Services, the Provider may use that unused capacity for treatment of private patients.

A return to the De-escalation Period may subsequently be effected in accordance with the regime set out in paragraph 7 of Schedule 2A.

For the avoidance of doubt, any notice to trigger a return to Peak Surge or thereafter to resume the De-escalation Period will be effective only if served by a member of the Commissioner's regional team at Director level or from the Commissioner's central team itself at Director level, and not if by the Local NHS Lead or the Commissioner Representative.

During:

(a) any return to Peak Surge, or

(b) any period in respect of which Peak Surge has not been triggered but the Peak Surge Conditions nevertheless apply, and as a direct result of that restrictions are applied nationally, regionally or locally which have a material adverse impact on the availability of consultants or anaesthetists for private patient work at the affected Provider's Premises,

the application of the provisions in relation to the Minimum Private Patient Offset Amount and the Private Patients Offset percentage above that amount (as described in paragraphs 2 and 3 above) will be suspended in relation to the affected Provider's Premises until resumption of the De-escalation Period. Where either paragraphs (a) or (b) above applies in relation to a Provider's Premises, the Minimum Private Patient Offset Amount will be reduced pro rata.

8 De-escalation

In respect of the current De-escalation Period, and in respect of any De-escalation Period triggered following a return to Peak Surge on a national, regional or local basis, any agreement permitting the resumption of routine elective work must apply equally and without condition to all routine elective work (NHS and private), regardless of specialty, sub-specialty or patient group.

This change is effected by amendment to paragraph 7.4 of Schedule 2A.

9 Fees payable to clinicians

Since 23rd March 2020, the fees paid by the Provider to surgeons and anaesthetists involved in delivery of the Services have been governed by *Guidance on Payments to Consultants by IS Providers*.

With effect from 13 July 2020, and then for the remainder of the Contract Term, where the Provider is responsible for procuring medical staff to undertake an NHS procedure or other service, the Provider will no longer be subject to fee limits set out in that Guidance and may pay fees to Consultants for both NHS (regardless of source of referral or transfer) and private patient work at rates (per session/per procedure, as appropriate) not exceeding the average rates which it paid for the same NHS or private activities/specialties during 2019/20, verified by rate card and on an open book basis.

This change is effected by addition to paragraph 2.4 of Part 1 of Schedule 3B.

10 Contract Expiry

It is agreed that the Contract will continue until it is terminated in accordance with GC17 *(Termination*) but in any event will expire at 23.59 on 31 December 2020.

Any notice to terminate the Contract or any Service in respect of any one or more of the Provider's Premises which is served by the Commissioner on or after 1 October 2020 will take effect on the later of:

(a) the date for termination specified in that notice (being no less than one month following the date of service of that notice); and

(b) the date on which the proposed framework for acute services to be announced by PIN (2020/S 159-386840) becomes operational but in any event no later than 23:59 on 31 December 2020.

This change is effected by amendment to pages 2 and 8 of the Particulars.

11 Qualifying NHS work

All activity in respect of NHS patients who are referred or transferred to the Provider for NHS treatment (other than in respect of services specifically excluded under the provisions of paragraph 2 of Schedule 2A of the Contract) by whatever means is covered by the Contract. For the avoidance of doubt this includes patients referred via the Choose and Book and eRS systems prior to, during and since the COVID surge, as well as those transferred from NHS Trusts, referred by CCGs and provided with care in the Provider's Premises by NHS staff in their contracted time.

During the remaining Contract Term, the Provider may schedule and diagnose and treat those patients on NHS waiting lists it holds from eRS referrals, subject to priority order consistent with local System prioritisation criteria where applicable. The Commissioner confirms that eRS referral processes will be enabled as soon as practicable, based on a nationally-agreed policy and direction. Precise communication and roll-out timetables for such eRS and waiting list progression are to be agreed with the IS Providers collectively and managed according to the following associated operational policies relevant to this Contract: *'Operational implementation of national IS contracts'* issued on 20 August 2020.

12 Services

Unless Peak Surge is reactivated in respect of any or all of the Provider's Premises (in which case the provisions of paragraph 1.1 and 6 of Schedule 2A will apply), the Services required of the Provider under the Contract for the remainder of the Contract will be confined to:

(a) NHS inpatient and outpatient (including full supporting pathology, imaging and other diagnostics) services and urgent and routine elective care and cancer treatment to Service Users in line with nationally set criteria; and

(b) any other services required pursuant to paragraph **Error! Reference source not found.** of Schedule 2A.

This change is effected by amendment to paragraph 1.1 of Schedule 2A.

13 Accommodation of training

Recognising the transition to business-as-usual in both NHS and IS facilities, and the need to ensure that that NHS clinicians in training do not miss opportunities to train in elective and complex NHS activity because that NHS activity will take place in IS facilities, NHS Standard Contract GC5.7 (omitted previously to reflect the unique demands of Peak Surge) will be restored to the Contract, as follows:

"The Provider must cooperate with the LETB and Health Education England in the manner and to the extent they request in planning the provision of, and in providing, education and training for healthcare workers, and must provide them with whatever information they request for such purposes. The Provider must have regard to the HEE Quality Framework."

14 IPC Guidance

For the avoidance of doubt, the obligations of the Provider set out at SC2 (*Regulatory Requirements*) of the Contract include an obligation to comply with Guidance in relation to infection prevention and control issued by Public Health England or any other Regulatory or Supervisory Body.

15 Service Users not medically fit for transfer or discharge on expiry or termination of the Contract

In order to ensure both clinically appropriate care for Service Users following the end of the Block Booking Period and appropriate recompense for the Provider in respect of that care, the Parties agree that:

(a) The Provider will use all reasonable endeavours to ensure the discharge or transfer of all admitted Service Users who are medically fit for discharge or transfer, in accordance with its obligations under SC11, before 23.59 on the date on which the Contract terminates or expires in relation to the relevant Provider's Premises.
(b) The Commissioner will pay the Provider in respect of admitted Services Users who are not medically fit for discharge or transfer, and therefore remain in the relevant Provider's Premises after 23.59 on the date on which the Contract terminates or expires in relation to the relevant Provider's Premises at the maximum per day long stay payment rate set out in 2019/20 National Tariff (being £456 per day) plus MFF. No trim point will apply: the rate will be calculated on whole or part days from 00:00 on the day following the day on which the Contract terminates or expires in relation to the relevant Provider's Premises until the Service User is discharged or transferred.
(c) The Provider must agree and implement a Care Transfer Plan in accordance with SC11.3 in respect of any admitted Service User who is medically fit for discharge or transfer, and therefore remains in the relevant Provider's Premises after 23.59 on the date on which the Contract terminates or expires in relation to the relevant Provider's Premises, within 7 days following that date.
(d) None of the above in any way affects the Provider's obligations to accept transfers and referrals, deliver the Services, and make the Provider's Premises available, in accordance with the Contract (as varied by this Variation Agreement) up to and including the date on which the Contract terminates or expires in relation to that Provider's Premises.

2. Notwithstanding GC1 *(Definitions and Interpretation)*, if there is any conflict or inconsistency between the provisions of the Contract immediately prior to this Variation Agreement and the provisions of this Variation Agreement, the provisions of this Variation Agreement will prevail. The drafting provided on the face of this Variation Agreement may not be exhaustive in order to give effect to the stated principles in this Variation Agreement. Where further consequent amendment to the Contract are required to give effect to the stated principles in this Variation Agreement, then the Parties shall interpret the Contract to give effect to the stated principles.

3. The Variation shall be deemed to have taken effect on 1 July 2020.

IN WITNESS OF WHICH the Parties named below have signed this Variation Agreement on the date(s) shown below

Signed by	Sandra Easton
for and on behalf of NHS ENGLAND	
Signature	Section 40(2) Sandra Easton (Oct 15, 2020 13:31 BST)
Title	Director of Operational Finance & Performance
Date	15 Oct 2020

Signed by	Natalie-Jane Macdonald
for and on behalf of	Nuffield Health
Signature	Section 40(2)
Title	Chair Natalie-Jane Macdonald (Oct 15, 2020, 8:38am)
Date	15 Oct 2020

APPENDIX A
Provider's Premises in London Area

Nuffield Health Guildford Hospital, Stirling Road, Guildford, Surrey GU2 7RF
Nuffield Health Woking Hospital, Shores Road, Woking, Surrey, GU21 4BY
Nuffield Health Brentwood Hospital, Shenfield Road, Brentwood, Essex, CM15 8EH

APPENDIX B
Provider's Premises in Inner M25 Area

No Provider's Premises

APPENDIX C
Total Staffed Capacity Target

				Theatres and Procedures			Outpatients	Diagnostics			
				Number of theatre sessions *(half day day-time or evening session)*	Number of endoscopy room (and any non-endoscopy outpatient treatment rooms) sessions	Number of cath lab sessions	Number of outpatient consulting sessions* *(half day and evening sessions)* *Physio OP sessions should be included	Number of MRI sessions *(half day and evening sessions)*	Number of CT sessions* *(half day and evening sessions)* *To include SPECT	Number of non-obstetric US sessions	Number of X-ray sessions* *To include DEXA scans
Provider	**Site**	**Region**	**STP**	**Total Staffed Capacity Target (sessions)**	**Total Staffed Capacity Target (sessions)**	**Total Staffed Capacity Target (sessions)**	**Total Staffed Capacity Target (sessions)**	**Total Staffed Capacity Target (sessions)**	**Total Staffed Capacity Target (sessions)**	**Total Staffed Capacity Target (sessions)**	**Total Staffed Capacity Target (sessions)**
NUFFIELD HEALTH	Bournemouth (Nuffield Health)	South West	Dorset STP								
NUFFIELD HEALTH	Brentwood (Nuffield Health)	East of England	Mid and South Essex STP								
NUFFIELD HEALTH	Brighton (Nuffield Health)	South East	Sussex Health & Care Partnership STP								
NUFFIELD HEALTH	Bristol (Nuffield Health)	South West	Bristol, North Somerset and South Gloucestershire STP								
NUFFIELD HEALTH	Cambridge (Nuffield Health)	East of England	Cambridgeshire and Peterborough STP								

[redacted] Section 43(2), Section 41(1)

				Theatres and Procedures			Outpatients	Diagnostics			
				Number of theatre sessions *(half day day-time or evening session)*	Number of endoscopy room (and any non-endoscopy outpatient treatment rooms) sessions	Number of cath lab sessions	Number of outpatient consulting sessions* *(half day and evening sessions)* *Physio OP sessions should be included	Number of MRI sessions *(half day and evening sessions)*	Number of CT sessions* *(half day and evening sessions)* *To include SPECT	Number of non-obstetric US sessions	Number of X-ray sessions* *To include DEXA scans
Provider	**Site**	**Region**	**STP**	**Total Staffed Capacity Target (sessions)**	**Total Staffed Capacity Target (sessions)**	**Total Staffed Capacity Target (sessions)**	**Total Staffed Capacity Target (sessions)**	**Total Staffed Capacity Target (sessions)**	**Total Staffed Capacity Target (sessions)**	**Total Staffed Capacity Target (sessions)**	**Total Staffed Capacity Target (sessions)**
NUFFIELD HEALTH	Cheltenham (Nuffield Health)	South West	Gloucestershire STP								
NUFFIELD HEALTH	Grosvenor (Nuffield Health)	North West	Cheshire and Merseyside STP								
NUFFIELD HEALTH	Chichester (Nuffield Health)	South East	Sussex Health & Care Partnership STP								
NUFFIELD HEALTH	Derby (Nuffield Health)	Midlands	Joined Up Care Derbyshire STP								
NUFFIELD HEALTH	Exeter (Nuffield Health)	South West	Devon STP								
NUFFIELD HEALTH	Guildford (Nuffield Health)	South East	Surrey Heartlands Health & Care Partnership (STP)								
NUFFIELD HEALTH	Haywards Heath (Nuffield Health)	South East	Sussex Health & Care Partnership STP								

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				Theatres and Procedures			Outpatients	Diagnostics			
				Number of theatre sessions *(half day day-time or evening session)*	Number of endoscopy room (and any non-endoscopy outpatient treatment rooms) sessions	Number of cath lab sessions	Number of outpatient consulting sessions* *(half day and evening sessions)* *Physio OP sessions should be included	Number of MRI sessions *(half day and evening sessions)*	Number of CT sessions* *(half day and evening sessions)* *To include SPECT	Number of non-obstetric US sessions	Number of X-ray sessions* *To include DEXA scans
Provider	**Site**	**Region**	**STP**	**Total Staffed Capacity Target (sessions)**	**Total Staffed Capacity Target (sessions)**	**Total Staffed Capacity Target (sessions)**	**Total Staffed Capacity Target (sessions)**	**Total Staffed Capacity Target (sessions)**	**Total Staffed Capacity Target (sessions)**	**Total Staffed Capacity Target (sessions)**	**Total Staffed Capacity Target (sessions)**
NUFFIELD HEALTH	Hereford (Nuffield Health)	Midlands	Herefordshire and Worcestershire STP								
NUFFIELD HEALTH	Ipswich (Nuffield Health)	East of England	Suffolk and North East Essex STP								
NUFFIELD HEALTH	Leicester (Nuffield Health)	Midlands	Leicester, Leicestershire and Rutland STP								
NUFFIELD HEALTH	North Staffordshire (Nuffield Health)	Midlands	Staffordshire and Stoke on Trent STP								
NUFFIELD HEALTH	Oxford (Nuffield Health)	South East	Buckinghamshire, Oxfordshire and Berkshire West STP								
NUFFIELD HEALTH	Plymouth (Nuffield Health)	South West	Devon STP								
NUFFIELD HEALTH	Shrewsbury (Nuffield Health)	Midlands	Shropshire and Telford and Wrekin STP								

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				Theatres and Procedures			Outpatients	Diagnostics			
				Number of theatre sessions *(half day day-time or evening session)*	Number of endoscopy room (and any non-endoscopy outpatient treatment rooms) sessions	Number of cath lab sessions	Number of outpatient consulting sessions* *(half day and evening sessions)* *Physio OP sessions should be included	Number of MRI sessions *(half day and evening sessions)*	Number of CT sessions* *(half day and evening sessions)* *To include SPECT	Number of non-obstetric US sessions	Number of X-ray sessions* *To include DEXA scans
Provider	**Site**	**Region**	**STP**	**Total Staffed Capacity Target (sessions)**	**Total Staffed Capacity Target (sessions)**	**Total Staffed Capacity Target (sessions)**	**Total Staffed Capacity Target (sessions)**	**Total Staffed Capacity Target (sessions)**	**Total Staffed Capacity Target (sessions)**	**Total Staffed Capacity Target (sessions)**	**Total Staffed Capacity Target (sessions)**
NUFFIELD HEALTH	Taunton (Nuffield Health)	South West	Somerset STP								
NUFFIELD HEALTH	Tunbridge Wells (Nuffield Health)	South East	Kent and Medway STP								
NUFFIELD HEALTH	Warwickshire (Nuffield Health)	Midlands	Coventry and Warwickshire STP								
NUFFIELD HEALTH	Wessex (Nuffield Health)	South East	Hampshire and the Isle of Wight STP								
NUFFIELD HEALTH	Woking (Nuffield Health)	South East	Surrey Heartlands Health & Care Partnership (STP)								
NUFFIELD HEALTH	Wolverhampton (Nuffield Health)	Midlands	The Black Country and West Birmingham STP								
NUFFIELD HEALTH	Leeds (Nuffield Health)	North East and Yorkshire	West Yorkshire and Harrogate (Health & Care Partnership) STP								

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				Theatres and Procedures			Outpatients	Diagnostics			
				Number of theatre sessions *(half day day-time or evening session)*	Number of endoscopy room (and any non-endoscopy outpatient treatment rooms) sessions	Number of cath lab sessions	Number of outpatient consulting sessions* *(half day and evening sessions)* *Physio OP sessions should be included	Number of MRI sessions *(half day and evening sessions)*	Number of CT sessions* *(half day and evening sessions)* *To include SPECT	Number of non-obstetric US sessions	Number of X-ray sessions* *To include DEXA scans
Provider	**Site**	**Region**	**STP**	**Total Staffed Capacity Target (sessions)**	**Total Staffed Capacity Target (sessions)**	**Total Staffed Capacity Target (sessions)**	**Total Staffed Capacity Target (sessions)**	**Total Staffed Capacity Target (sessions)**	**Total Staffed Capacity Target (sessions)**	**Total Staffed Capacity Target (sessions)**	**Total Staffed Capacity Target (sessions)**
NUFFIELD HEALTH	Newcastle upon Tyne (Nuffield Health)	North East and Yorkshire	North East and North Cumbria STP								
NUFFIELD HEALTH	Tees (Nuffield Health)	North East and Yorkshire	North East and North Cumbria STP								
NUFFIELD HEALTH	York (Nuffield Health)	North East and Yorkshire	Humber, Coast and Vale STP								

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Signable

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Date	Action
Thu, 15 Oct 2020 13:51:24 +0100	The envelope has been signed by all parties. (Section 40(2))
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Thu, 15 Oct 2020 08:38:16 +0100	Natalie-Jane Macdonald signed the envelope. (Section 40(2))
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