

## APPENDIX B

**Dated**

- (1) Leicestershire County Council**
- (2) NHS Leicester, Leicestershire, and Rutland Integrated Care Board (LLR ICB)**

## **Variation to Framework Partnership Agreement Relating to the Commissioning of Health and Social Care Services**

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THIS DEED OF VARIATION is made on        day of

## PARTIES

- (1) **LEICESTERSHIRE COUNTY COUNCIL** of County Hall, Glenfield, Leicestershire, LE3 8RA (the "**Council**");
- (2) **NHS LEICESTER LEICESTERSHIRE AND RUTLAND INTEGRATED CARE BOARD** of Room G30, Pen Lloyd Building, County Hall, Glenfield, Leicestershire, LE3 8TB ("**LLR ICB**"); and

The Council and the LLR ICB's are together referred to as the "**Partners**"

## BACKGROUND

- (A) The Partners entered into a Framework Partnership Agreement relating to the commissioning of health and social care services in exercise of the powers referred to in Section 75 of the 2006 Act and/or Section 13Z(2) and 14Z(3) of the 2006 Act as applicable (the "**Partnership Agreement**").
- (B) The Hospital Discharge and Community Support Guidance requires that from 1 April 2022, local areas should adopt discharge processes that best meet the needs of the local population. This could include the 'discharge to assess, home first' approach. Systems should work together across health and social care to jointly plan, commission, and deliver discharge services that are affordable within existing budgets available to NHS commissioners and local authorities, pooling resources where appropriate. Under the Discharge to assess, home first approach to hospital discharge, the vast majority of people are expected to go home (to their usual place of residence) following discharge.
- (C) In accordance with the Hospital Discharge and Community Support Guidance, the Partners have considered the most appropriate model through which to commission discharge services and agreed that Leicestershire County Council shall act as the lead commissioner for the discharge service and shall make recharges as appropriate to Partners in this Deed for the purpose of funding this service.
- (D) The Partners have agreed to vary the terms of the Partnership Agreement as set out in this Deed of Variation.

## AGREED TERMS

### 1 Defined terms and interpretation

- 1.1 In this Deed, expressions defined in the Partnership Agreement and used in this Agreement have the meaning set out in the Partnership Agreement.
- 1.2 Subject to clause 1.1 of this Deed, the following words and expressions shall have the following meanings:

**Hospital  
Discharge  
Scheme**

means the scheme as set out in the Annex to this Deed which implements the Hospital Discharge Guidance on a local level.

<b>Deed</b>	means this Deed of Variation including any schedules and appendices.
<b>Effective Date</b>	means the date of this Deed.
<b>Funded Packages</b>	means new or extended out-of-hospital health and social care support packages provided to patients on or after the 1 <sup>st</sup> April 2022 and on or before the 30 <sup>th</sup> June 2022.

- 1.3 The rules of interpretation set out in the Partnership Agreement apply to this Deed.

## **2 Variation**

- 2.1 The Partners acknowledge agree and confirm that in accordance with clause 30 (Variation) of the Partnership Agreement (which provides that any variation shall be recorded in writing and signed for and on behalf of each of the Partners) that the Partnership Agreement shall be amended on the Effective Date as follows:

- 2.1.1 [The Partnership Agreement shall be varied in accordance with Schedule 1 of this Deed<sup>1</sup>].
- 2.1.2 The Partners have agreed to amend [Part 2 of] Schedule 1 (Agreed Scheme Specifications) to the Partnership Agreement to include a new Scheme Specification for the Hospital Discharge Guidance as set out in Schedule 2 (Amendments to Existing Scheme Specifications) of this Deed.
- 2.1.3 The Partners have agreed to vary Schedule 2 (Governance) to the Partnership Agreement as set out in Schedule 3 (Governance) of this Deed].
- 2.1.4 The Partners have reviewed the financial arrangements contained in the Partnership Agreement and have agreed that the Schedule [3] (Financial Protocol) to the Partnership Agreement shall not apply in respect of the Hospital Discharge Scheme. The financial arrangements in respect of the Hospital Discharge Scheme shall be as set out in Scheme Specification<sup>2</sup>;
- 2.1.5 [The Partnership Agreement shall be varied as set out in Schedule 4 (Other Amendments) of this Deed]<sup>3</sup>.

<sup>1</sup>This should be used if the Partners want to make any amends to the main body of the underlying section 75/BCF Agreement. If such amendments are required this Schedule should set out any clauses that will be amended and how they will be amended.

2.2 Except as amended by this Deed and as set out in clauses 2.1.1 to 2.1.5 above and the Schedules of this Deed, the Partnership Agreement shall continue in full force and effect and this Deed shall not release or lessen any accrued rights, obligations or liability of any of the Partners under the Partnership Agreement.

### **3 Term**

The Partners acknowledge agree and confirm that the variations set out in Clause 2 shall take effect as from the Operational Date and shall continue in effect until 30<sup>th</sup> June 2022.

### **4 General**

The provisions of the following clauses of the Partnership Agreement shall apply, mutatis mutandis, to this Deed: clause [15] (Audit and Access Rights), clause [23] (Dispute Resolution Procedure), clause [25] (Confidentiality) clause [26] (Freedom of Information and Environmental Protection Regulations), clause [29] (Notices) and clause [34] (Assignment and Sub-Contracting).

### **5 Severance**

If any provision of this Deed, not being of a fundamental nature, shall be held to be illegal or unenforceable, the enforceability of the remainder of this Deed shall not thereby be affected.

### **6 Third party rights**

Unless the right of enforcement is expressly provided, no third party shall have the right to pursue any right under this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

### **7 Entire agreement**

7.1 The terms herein contained together with the contents of the Schedules constitute the complete agreement between the Partners with respect to the subject matter hereof and supersede all previous communications representations understandings and agreement and any representation

<sup>2</sup> NB: the impact of this is to disapply all the standard financial provisions relating to all schemes in the underlying section 75/BCF agreement and allow for bespoke arrangements as set out in the Scheme Specification.

<sup>3</sup> Schedule 4 can be used to set out any other locally agreed amendments to the section 75/BCF agreement, which are not captured by the suggested amendments referred to in the preceding Schedules of this Deed.

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promise or condition not incorporated herein shall not be binding on any Partner.

- 7.2 No agreement or understanding varying or extending or pursuant to any of the terms or provisions hereof shall be binding upon any Partner unless in writing and signed by a duly authorised officer or representative of the Partners.

## 8 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 Partners shall constitute a full original of this Deed for all purposes.

## 9 Governing law and jurisdiction

- 9.1 This Deed and any dispute or claim arising out of or in connection with it or 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.
- 9.2 Subject to clause 23 (Dispute Resolution) of the Partnership Agreement, the Partners irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to hear and settle any action, suit, proceedings, dispute or claim, which may arise out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).

**IN WITNESS WHEREOF** this Deed has been executed by the Partners on the date of this Deed<sup>4</sup>

THE CORPORATE SEAL of **THE  
COUNCIL OF [ ]**  
was hereunto affixed in the presence of:

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<sup>4</sup> Partners to confirm execution blocks.

Signed for on behalf of [.]  
**NHS LEICESTER, LEICESTERSHIRE, AND RUTLAND INTEGRATED CARE  
BOARD (LLR ICB)**

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Authorised Signatory  
Signed by the authorised signatory of

<sup>5</sup> NB: the Parties executing this Deed will need to be the Partners as existing at the date of execution.

<sup>6</sup> NB: the Parties executing this Deed will need to be the Partners as existing at the date of execution.

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## **Schedule 1 Amendments to the Partnership Agreement<sup>7</sup>**

*[To be populated where the Partners have agreed changes to the main body of the Partnership Agreement.]*

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<sup>7</sup> This Schedule should be used if the Partners are making any changes to the main body of the section 75/BCF Agreement. The Partners should set out what, if any, drafting is being deleted and what is being inserted.



## **Schedule 2 Individual Scheme Specifications**

The Partners have agreed the following new Individual Schemes and agreed the Scheme Specification as annexed to this Schedule:

- Hospital Discharge Scheme.

### **Schedule 3 Governance**

1. The Partners agree that the provisions<sup>8</sup> of Schedule 2 of Partnership Agreement (excluding Paragraphs 10 and 13) do not apply to the Hospital Discharge Scheme and that the governance arrangements relating to that Scheme are as set out in the Scheme Specification.

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<sup>8</sup> If it is not all provisions specify which it is.

**Schedule 4 Other Amendments**

*[Include here any amendments to any other Schedules that the Partners have agreed. Where general positions are to be overridden wording such as that in Schedule 3 above can be used and tailored as relevant.]*

## ANNEX HOSPITAL DISCHARGE SCHEME SPECIFICATION

Unless the context otherwise requires, the defined terms used in this Scheme Specification shall have the meanings set out in the Agreement.

### 1 OVERVIEW OF INDIVIDUAL SERVICE

- 1.1 This Service shall be known as Hospital Discharge Scheme.
- 1.2 The Partners have reviewed the Discharge Guidance and determined that the arrangements as set out in this Scheme Specification will permit them to implement the Discharge Guidance
- 1.3 **Leicestershire County Council** will be the lead commissioner for this Service and shall comply with the requirements of this Scheme Specification.
- 1.4 A quarterly reimbursement process will be established whereby the Lead Commissioner will identify total expenditure on the Service to date and the level of contributions to be made by each of the Partners. Invoices will be raised to the LLR ICBs to facilitate the transfer of funds for this Service.

### 2 AIMS AND OUTCOMES

### 3 THE ARRANGEMENTS

- 3.1 The Partners have agreed to implement the following arrangements in relation to the Hospital Discharge Scheme:
- 3.1.1 lead commissioning; and
- 3.1.2 the recharge process to Partners has been established and is summarised below;

#### Timing/Invoicing

- Information will be provided on discharge costs monthly, but calculated on a weekly basis.
- Information will be sent over by the end of the first full week after month end.
- To agree the amounts with Health prior to raising the invoice

#### Identification of recharge

- Packages which are either COVID hospital avoidance or COVID hospital discharge are being entered on the system with a new type of funding arrangement (LLR ICB's)
- Actual costs will be used to recharge Health
- The amount recharged will be the net of the new COVID package less any existing provision
- The report will identify cumulative cost to date of all (netted off) COVID packages and then deduct amounts previously invoiced – to take account of late loading of data and payment of actuals (up to 7 weeks delay for Home Care provider payments)

- The last full week of service prior to a COVID funding arrangement will be used as the value of the “pre-COVID” package – going back a maximum of 10 weeks.

#### 4 FUNCTIONS

- 4.1 For the purposes of implementing this Scheme the LLR ICB delegates to the Council its functions under:
- 4.1.1 section 3(1)(b) of the 2006 Act of arranging for the provision of other accommodation for the purpose of any service provided under the 2006 Act;
- 4.1.2 section 3(1)(e) of the 2006 Act of arranging for the provision of such other services or facilities for the prevention of illness, the care of persons suffering from illness, and the after-care of persons who have suffered from illness as are appropriate as part of the health service; [and
- 4.1.3 In each case in so far as the Council considers such services/provision to be necessary to meet the requirements of the person for whom the care and support is provided.
- 4.2 The Partners agree that the above delegation from the LLR ICB to the Council will:
- 4.2.1 likely lead to an improvement in the way in which these functions are discharged and
- 4.2.2 improve health and well-being.<sup>10</sup>

#### 5 SERVICES

- 5.1 The Council shall arrange the provision of discharge services to:
- 5.2.1 those persons the LLR ICB has responsibility to provide services for under Sections 3(1A) and 3(1B) of the 2006 Act; and
- 5.2.2 those persons the Council has responsibility to provide services for
- and whose requirement for a Funded Package arises during period 1<sup>st</sup> April 2022 to 30<sup>th</sup> June 2022.

<sup>9</sup> Ensure reference is made to the specific functions being delegated. The drafting here is an ~~example and should be checked~~ it aligns with locally agreed arrangements or otherwise amended/supplemented.

<sup>10</sup> It will also be necessary to include any limitations on the delegation and these should be set out here.

<sup>11</sup> This should be considered in the context of the Discharge Guidance. There is also a significant issue around individuals who are the responsibility of the local authority but not the LLR ICB and vice versa this should be considered and reference to how it is addressed in the underlying section 75/BCF agreement.

<sup>12</sup> NB: this should include high level description or name of services. The services falling within this Scheme that it would ordinarily fall to either/both the Council and the LLR ICB to provide.

## 6 COMMISSIONING, CONTRACTING, ACCESS

### 6.1 Commissioning Arrangements

- 6.1.1 The Council shall ensure that when commissioning Funded Packages, it makes the patient and their families and/or carers aware that following the end of the funding period the patient may be required to pay for all or some of their future care needs.<sup>13</sup>
- 6.1.2 The Scheme is specifically for service users being discharged from acute or community hospitals and excludes mental health discharges.

## 7 FINANCIAL CONTRIBUTIONS<sup>15</sup>

- 7.1 The cost of care packages or enhancements to existing packages under the Hospital Discharge Scheme shall be fully funded by LLR ICB. [However, the Council is making contributions to the Pooled Fund as set out in paragraphs 7.6 below]<sup>16</sup>.
- 7.2 The Partners shall:
- 7.2.1 comply with any guidance issued by HM Government and/or the NHS relating to the Hospital Discharge Guidance.
- 7.2.2 work together in good faith to give effect to any such guidance.
- 7.3 The exact level of the LLR ICB's contribution to Scheme is not known at this time. The LLR ICB's contribution will be based on the monthly expenditure submissions to NHS E&I and completed by the LLR ICB and the Council.

<sup>14</sup> This drafting should be included along with other relevant drafting in this section to give effect to the Discharge Guidance.

<sup>15</sup> This section needs to be tailored to reflect the contributions the LLR ICB will be making to the pooled fund. The Council may or may not be making any contributions but if so, this should be set out here. Where the exact allocation is unknown at this time the section should describe how the allocations will be paid/determined.

<sup>16</sup> Delete if not relevant.

7.4 The LLR ICB shall transfer their contributions to the Council within 30 days following receipt of the Invoice.

7.5 The Partners shall in reaching agreement on the level of Council funding to be provided take into account the cost of new and enhanced packages of care and other relevant costs as agreed between the Partners and support that the Council would ordinarily have expected to fund during this period.

7.6 Information on the level of County Council contributions to the packages put in place will be provided to Partners

## **8 FINANCIAL GOVERNANCE ARRANGEMENTS**

8.1 The financial governance arrangements for Individual Schemes as set out in the Partnership Agreement shall not apply to the Hospital Discharge Scheme. The financial arrangements for the Hospital Discharge Scheme are as follows:

### **8.2 Audit Arrangements**

*All Partners shall promote a culture of probity and sound financial discipline and control. The Council shall arrange for the audit of the accounts of the revenue expenditure by a suitably qualified independent auditor.*

*All internal and external auditors and all other persons authorised by the Partners will be given the right of access by them to any document, information or explanation they require from any employee, member of the Partner in order to carry out their duties. This right is not limited to financial information or accounting records and applies equally to premises or equipment used in connection with this Agreement. Access may be at any time without notice, provided there is good cause for access without notice.*

### **8.4 Financial Management<sup>17</sup>**

The Council shall ensure that:

8.4.1 all support provided under the Hospital Discharge Scheme is recorded at Individual level

8.4.2 all agreed budgets funded through the Hospital Discharge Scheme are recorded at individual level;

8.4.3 any local authority funding, whether existing or new, is separately identifiable and the support purchased with it is separately recorded;

8.4.4 existing systems will be used by the Council to record the support put in place and expenditure incurred at an individual level on the Service;

<sup>17</sup> Please note this will need to set out the specific requirements in relation to the monitoring required for this funding as set out in guidance issued by HM Government and/or the NHS. This drafting should be reviewed and amended/supplemented where necessary.

8.4.5 the process to be followed to identify recharges to Partners and raise invoices will be agreed in advance of any financial information or documentation being issued

8.4.6 all monitoring and/or reporting information required by the LLR ICB to report to NHSE&I or the Department of Health and Social Care is provided to the LLR ICB promptly. In order to comply with LLR ICB and NHSE/I reporting deadlines, this monthly information must be supplied to LLR ICBs by close of play on the 5th working day of the following month. In practice this may require a cut off date within the local authority for extracting data from relevant systems ahead of the calendar month end being claimed for. Any resultant data lag leading to incomplete data will be included in the following month's data and supported by the LLR ICBs.

## 9 VAT

**THE PARTNERS SHALL AGREE THE TREATMENT OF THE REVENUE EXPENDITURE FOR VAT PURPOSES IN ACCORDANCE WITH ANY RELEVANT GUIDANCE FROM HM CUSTOMS AND EXCISE.**

**13.2 SUBJECT TO THE CLAUSE ABOVE THE PARTNERS AGREE TO ADOPT "PARTNERSHIP STRUCTURE (A)" AS DESCRIBED IN THE VAT GUIDANCE THROUGH WHICH THE PARTNERS AGREE THAT GOODS AND SERVICES WILL BE PURCHASED IN ACCORDANCE WITH THE COUNCIL'S VAT REGIME**

## 10 GOVERNANCE ARRANGEMENTS

10.1 Governance will be discharged by the Integration Finance and Performance Group

## 12 STAFF

**Council staff to be made available to the arrangements**

**LLR ICB staff to be made available to the arrangements**

## 13 ASSURANCE AND MONITORING<sup>22</sup>

*Roles of the Discharge Cell and the IFPG to be confirmed.*

<sup>22</sup> This is likely to be different to what the Partners ordinarily include given the nature of the Individual Scheme but should be included as relevant in any event.

<sup>23</sup> This is unlikely to be relevant as the costs of the care packages under the Individual Scheme are being fully funded by health.



**14 LEAD OFFICERS**

Partner	Name of Lead Officer	Address	Telephone Number	Email Address	Fax Number
Council					
LLR ICB					

**15 INTERNAL APPROVALS**

*Consider the levels of authority from the Council's Constitution and the LLR ICB's standing orders, scheme of delegation and standing financial instructions in relation to the Individual Scheme.*

- *Consider the scope of authority of the Pool Manager and the Lead Officers.*
- *Has an agreement been approved by cabinet bodies and signed?*

**16 RISK AND BENEFIT SHARE ARRANGEMENTS<sup>23</sup>**

16.1 The cost of new and extended packages under the Scheme will be met by the LLR ICBs and therefore no risk sharing arrangements are required.

16.2 The risk to the LLR ICBs is limited to a maximum of four weeks funding for each service user receiving a new or enhanced package of care.

**17 REGULATORY REQUIREMENTS**

*Are there any regulatory requirements that should be noted in respect of this particular Individual Scheme?*

**18 INFORMATION SHARING AND COMMUNICATION**

The Information Sharing Agreement (ISA) in the main Section 75 shall apply.

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