Subject to Contract – to be documented in NHS Standard Contract

HEADS OF TERMS

IN RELATION TO NHS COVID-19 ARRANGEMENTS

BETWEEN

(1) **NHS England and NHS Improvement** (or "**Funder**"); and

(2) **The Providers** being the independent health sector hospital providers listed in these Heads of Terms,

each a Party and together the Parties

IT IS AGREED as follows:

Service:

Provision of full hospital capacity and services including acute bed capacity (7,925 beds currently identified – further capacity to be included in this arrangement on the same basis by agreement, if and when available), facilities, diagnostics, staffing, management and full organisation capability supplied to the NHS on an open book basis (to include Income and Expenditure as well as balance sheet) for the purpose of supporting the NHS in England during its response to the COVID-19 pandemic. Full cost of provision to be funded centrally by NHS ENGLAND AND NHS IMPROVEMENT. This arrangement does not include the provision of primary medical care services or community services, whether or not provided from the same facilities.

Providers will comply, from 15th April, with the NHS rules for cancellation and prioritisation of elective care published on [insert date]. Until 15 April 2020 Providers may continue to treat any private and NHS patients outside of this arrangement [with costs mitigated against the costs of this arrangement]. On and following 15 April 2020 and until notice of de-escalation Providers shall not treat any patients outside of this arrangement save for specifically agreed patients with long term neurological conditions and urgent oncology cases and who had been receiving treatment from Providers immediately prior to 15 April 2020.

Across the various stages of Term (as defined below), the Service is expected to incorporate the following roles:

A: Inpatient and outpatient (including supporting pathology and imaging), urgent elective and cancer treatment in line with nationally set criteria to offset reduced NHS capacity so the NHS can focus on the most acute cases;
B: Provide NHS inpatient non-elective care (either direct admission or transfer from the NHS);
C: Convert daycase only facilities to provide care as per 'B';
D: Provision of NHS care for COVID-19 infected patients needing high dependency respiratory support on oxygen therapy and NIV therapy (+/-ITU).

During the Term, there will be a mutual best endeavors requirement to maximize efficient use of supply chains for the provision and distribution of supplies and equipment.

During the 'peak surge' period there will be operational flexibility and reasonable efforts on the part of Providers to provide what further services may be required. Led by a local NHS organization nominated by NHS England and NHS Improvement, the NHS and the Providers will agree the local patient workflow and case mix, staffing and equipment deployment collaboratively between the NHS and Provider.

Funders:

NHS ENGLAND AND NHS IMPROVEMENT

Providers:

UK Independent Health Sector hospital providers (the "Providers"), as follows:

- Circle Health Holdings Limited, Company number 10543098 - 32 Welbeck Street, London W1G 8EU (This entity will be the contracting party for both Circle and BMI);
- Spire Healthcare Limited, Company number 01522532 - 3, Dorset Rise, London, EC4Y 8EN
- NUFFIELD HEALTH a Registered Charity Number: 205533 (England & Wales), a Charity Registered in Scotland Number: SC041793 and a Company Limited by Guarantee Registered in England Number 576970 and whose registered office is at Epsom Gateway, Ashley Avenue, Epsom, Surrey KT18 5AL
- Ramsay Health Care UK Operations Limited, Company Number 01532937 - Level 18 Tower 42, 25 Old Broad St, London, EC2N 1HQ
- HCA International Limited, Company number 03020522, 242 Marylebone Road, London, NW1 6JL
- [OTHERS]

Contract structure:

The arrangements in respect of 23 March until the end of the Term will be documented in a single central contract between NHS England and NHS Improvement and each Provider group, contracting via its nominated corporate entity.

That contract will incorporate the terms of the NHS Standard Contract insofar as they relate to acute services and are not specifically agreed to be waived, relaxed or amended as set out in this proposal or otherwise agreed by NHS England and NHS Improvement. Financial sanctions will be waived in line with arrangements for NHS Providers.

Subject to arrangements in respects of Greater London noted below, the relevant existing NHS contracting arrangements (NHS Standard Contracts and sub-contracts) with the Providers shall be suspended from 31 March 2020 for the duration of the Term.

It is intended that the effective suspension of the existing NHS contracting arrangements shall cease immediately following the termination of the arrangements set out in these Heads of Terms. The terms of those suspended contracts will then be revived and shall continue unless or until replaced by a new NHS Standard Contract agreed by the parties. Relief will be available under those contracts for

knock-on effects, for example in terms of waiting times breaches, of the arrangements set out in these Heads of Terms, as Events of Force Majeure.

Term:

The arrangements shall commence on 23 March 2020 and shall continue for period of 14 week and then on a rolling basis terminable by NHS England and NHS Improvement on 1 month's notice. Funding however will be for a period of 13 weeks initially, commencing 30 March 2020.

In week 1 (commencing 23rd March) all Provider hospitals in Greater London (a list of which is to be agreed as soon as possible) will be paid for all NHS work delivered on a cost per case episode, based on national NHS tariff plus MFF or as otherwise provided in suspended local contracts. For the avoidance of doubt, in these hospitals in London in Week 1:

- Existing NHS contracts will be suspended and will be replaced with this national contract
- Between 23rd March and 15th April (the date of final implementation of the elective prioritisation criteria) all hospitals are able to continue to deliver any elective private work and NHS elective work without restriction
- Priority is expected to be given to mobilising NHS activity arising directly from COVID related activity

NHS England and NHS Improvement shall use its best endeavors to serve notice to terminate simultaneously with the notice of release of elective restrictions, ensuring that Providers have a minimum of 1 month's notice to resume services under original NHS contracts and for private patients.

NHS England and NHS Improvement and the Providers shall use best endeavors to share all relevant forecasting information in relation to activity and demand enabling the de-escalation phase to be triggered and planned for appropriately.

The Term is to be comprised of three separate "periods": (1) Escalation; (2) Peak 'Surge'; and (3) De-escalation.

(1) Escalation

From 23 March – 15 April 2020, (1) continue provision of NHS and private electives and (2) make capacity available for provision of (a) HDU & oxygen/NIV (NHS); (b) non-elective inpatient care (NHS); (c) urgent elective and cancer surgery and oncology treatment (NHS & Insured); or such other activity as is needed or agreed by the NHS e.g. outpatient care. By 15 April 2020 all routine elective activity regardless of funding source (ie NHS commissioned or private) will be suspended and Providers will transition (including operational planning, training of staff, room assessments and the delivery of NHS elective care) to deliver solely : (a) HDU & oxygen/NIV (NHS); (b) non-elective inpatient care (NHS); (c) urgent elective and cancer surgery and oncology treatment (NHS & Insured); or such other activity as is needed or agreed by the NHS e.g. outpatient care Some unused capacity is expected to remain.

Timing This is the period from 23 March 2020 to the date on which NHS England and NHS Improvement triggers the Peak Surge period [at the point when Provider capacity is at 100% utilization but in any event by no later than 15 April 2020.] The commencement date of the Escalation period is to apply to Providers and facilities nationwide.

(2) Peak Surge

During the Peak Surge period, 100% of Provider capacity will be available to be fully applied to the delivery of (a) HDU & O2/NIV (NHS); (b) non-elective inpatient care (NHS); (c) urgent elective and cancer surgery and oncology treatment (NHS & Insured); or such other activity as is needed and agreed by the NHS e.g. outpatient care

Timing: This is the period from the date on which NHS England and NHS Improvement triggers the Peak Surge period [at the point when Provider capacity is expected to be needed at 100% utilisation] and which shall continue until NHS ENGLAND AND NHS IMPROVEMENT triggers the de-escalation period.

(3) De-escalation

The De-escalation Period will see some unused capacity return to Provider facilities, however routine elective care will not be undertaken without the express consent of NHS England and NHS Improvement. Delivery will still focus on: (a) HDU & oxygen/NIV (NHS); (b) non-elective inpatient care (NHS); (c) urgent elective and cancer surgery and oncology treatment (NHS & Insured); or such other activity as is needed and agreed by the NHS e.g. outpatient care (insured).

Timing: This is the period from the date on which NHS England and NHS Improvement triggers the de-escalation period to the date the arrangement terminates.

Arrangements in relation to utilisation of the independent sector by the NHS following termination of this arrangement is not within scope of this proposal. The parties will work together collaboratively to ensure resumption of normal operation. This shall include arrangements in relation to the transfer of patients to local authorities, community and acute NHS organisations. NHS England and NHS Improvement shall reimburse the Providers in respect of stranded patients from the termination date at national tariff prices (plus MFF where applicable) or as otherwise provided in suspended local contracts.

Termination

NHS England and NHS Improvement ability to terminate on 1 months' notice, or such longer notice period as may be agreed by the parties, expiring at any time following the end of the first 3 month period.

Funding:

During the Escalation, Peak 'Surge', and De-escalation periods, funding is based on actual cost of provision. There are six elements to actual cost of provision: (1) Operating costs (2) Rent (3) Capex costs; (4) Finance costs; (5) Infrastructure cost; (6) De-commissioning costs.

(1) Operating costs:

Operating costs incurred in order to run the Service, including but not limited to staffing, consumables, organizational operating costs etc, excluding intra-group charges for non-service items and other non-operating non-cash items such as impairments.

(2) Rent excluding intra-group charges

(3) Capex costs:

Capex costs incurred in order to implement and run the Service, e.g. use of capital equipment, modifications etc. Any stand-alone capital equipment purchased in accordance with these

arrangements (i.e. ventilators) to be owned by NHS England and NHS Improvement for use by the Providers without charge. Capex to be approved by NHS England and NHS Improvement prior to costs being incurred, via agreed scheme of delegation.

(4) Finance costs:
Costs required in order to function as a business e.g. interest, cash leasing costs excluding intra-group interest payments

(5) Infrastructure cost:
Based on a percentage of base Operating costs (1 above) at an industry average rate with reference to 2019 (to be determined by independent Big4 auditor)

(6) De-commissioning costs

Costs incurred by the Providers in restoring premises and equipment that has been adapted for the purposes of the Service to its prior condition, as approved by NHS ngland and NHS Improvement in advance.

Funding on account to commence at agreed weekly rate weekly in advance with effect from 30 March 2020 (ie week 2). It is acknowledged that utilisation will ramp up during Escalation Period.

Funding requirement pending achievement of 100% utilisation is required to cover (1) operating, rent, capex, finance and infrastructure costs in relation to capacity and (2) Provider's operating, rent, capex, finance and infrastructure costs in relation to unused capacity, recognising the need to use facilities and train/re-roster staff in preparation for redeployment, acquire and/or relocate equipment/ stock/consumables, and is subject to cost mitigation and reconciliation as described elsewhere in these Heads of Terms.

Private patients offset – net revenue in respect of all private patients, including long-stay, at all Provider locations in England, less 15%

Cost Mitigation:

Providers are keen to show ways to mitigate cost for the NHS and as such any ability for the sector to use capacity for non-NHS elective activity in the Escalation, Peak 'Surge', and De-escalation periods, where national elective care criteria allow this, would be used to offset cost burden on the NHS in accordance with the Private Patient offset.

Coordination, Audit and Reconciliation

A Big4 firm (to be confirmed 20 March 2020) will coordinate funding and liquidity models. A Big4 firm will support in the finalising of the arrangements, provide monthly ongoing financial details and conduct an audit and reconciliation of actual costs incurred by each Provider during the Relevant Period. A reconciliation payment will be made to NHS England and NHS Improvement including the Private Patient offset. All arrangements shall be on an open book accounting basis covering both I&E and balance sheets.

The Providers shall use their best endeavours to adhere to the NHS agency fee cap and other appropriate cost controls in line with NHS providers. NHS England and NHS Improvement shall use its best endeavours to enable Providers to access to NHS agency staff rates and NHS temporary staffing framework agreements.

Funding Terms:

Weekly payments in advance for week 2 onwards, to start 30 March 2020, with initial payment to be made at commencement of the Relevant Period to ensure sufficient forward liquidity to cover initial increase in working capital, payroll, rent, suppliers etc. ("Initial Payment"). Service enablement / set-up costs to be included within the Initial Payment.

Cost-base for Initial Payment will be determined by the appointed Big4 firm, and based on Board-approved monthly budgeted figures for the Providers. An adjustment will be made to account for any additional costs expected to be incurred when running the service at full capacity, e.g. one-off reconfiguration costs, increased staffing costs, diagnostics etc.

During the Relevant Period, if costs incurred are significantly higher than the agreed monthly payment on account, and the relevant period is more prolonged than expected, a further payment may be requested before the end of the relevant period following a review by Big4 firm of actual costs incurred to date.

Other Requirements:

A clear commitment from NHS England and NHS Improvement to procure access to available appropriate qualified medical personnel (e.g. consultants and anaesthetists) where needed to deliver the agreed service mix and to explore access to NHS supply chain.

There is a clear commitment from the Providers to use all of their resources and management available to support the NHS through the delivery of the Service.

NHS England and NHS Improvement and the Providers shall use their best endeavors to enable access to NHS frameworks/prices for supplies.

Other:

Ongoing conversations in relation to competition law requirements in respect of independent provision of healthcare, including PHIN compliance.

Governance – mixed staffing teams will work side by side under the direction and control of Providers on their premises where directed by local coordinating NHS organisation. There will be tiers of decision making to include strategic (staffing and patient allocation) and operational (to include individual patient care decisions) and overarching governance. Further details to be agreed, and may vary from location to location. Decisions on allocations shall be on the basis that everyone uses their best endeavors to maximise coverage and utilisation.

Reporting requirements (including relaxation of normal requirements where appropriate) to apply during the current incident are being developed for NHS providers by NHS England and NHS Improvement. Requirements for the Providers will be in broad parity with those for NHS organsiations during the Term (except in relation to reporting on costs, on which see above).

CQC and Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (e.g. service restrictions lifted, dispensation for Registered Managers): separate discussion ongoing, with which NHS England and NHS Improvement will assist where possible.

All other appropriate dispensations for Registered Managers: NHS England and NHS Improvement to explore and assist where possible.

Indemnities:

- Providers will use their best endeavours to secure CNST membership and cover in respect of clinical negligence arising in the performance of NHS-funded services contemplated by these arrangements. To the extent that a Provider has CNST cover in place in respect of any claim arising in relation to such services, the standard indemnity position set out in GC11.2 of the NHS Standard Contract will apply.
- If and to the extent that a Provider does not have CNST cover in respect of any such claim, or to the extent that a Provider's CNST cover does not fully cover that claim, NHS England and NHS Improvement will indemnify the Provider in respect of excess damages, costs, expenses and liabilities.
- NHS England and NHS Improvement will indemnify each Provider in respect of any costs incurred in securing run-off cover via CNST in respect of any such claim made after the expiry of these arrangements, and/or in respect of any increase in CNST contributions payable for subsequent years as a consequence of its claims history relating to these arrangements.
- NHS England and NHS Improvement will, to the extent enabled by the Coronavirus emergency legislation or otherwise, indemnify each Provider against any uninsured loss, damages, costs, expenses, claims, actions or proceedings in respect of employer's liability arising as a direct consequence of these arrangements and the delivery of services under them.
- Providers will be under a duty to minimize and mitigate losses, damages, costs and expenses covered by the indemnities to be provided by NHS England and NHS Improvement.

The principle of parity between treatment of NHS staff and Provider staff, which shall include examples such as keyworker designations, free meals, hotel accommodation and access to Covid-19 testing, will be pursued wherever possible

Any dispute arising between the parties to these Heads of Terms arising out of or in connection with them, or between the parties to any Contract entered into as envisaged by these Heads of Terms arising out of or in connection with that Contract, will be determined in accordance with the provisions of GC14 (Dispute Resolution) of the NHS Standard Contract 2020/21. However, where any such dispute relates to payment, funding, costs, cost mitigation or related matters, the dispute must immediately be referred to the Big4 firm, which will act as Expert in accordance with GC14.

Any dispute or other issue which arises between any Provider and any NHS Trust, NHS Foundation Trust or CCG in connection with the local operational implementation of the arrangements described in these Heads of Terms and/or any Contract entered into as envisaged by these Heads of Terms will immediately be referred to the NHS England and NHS Improvement regional team (Command and Control Centre), whose determination and instructions will be final and binding and must be followed.

The terms of these arrangements are confidential and shall not be disclosed without the agreement of NHS England and NHS Improvement.

These Heads of Terms may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one Heads of Terms.

SIGNATURE PAGE TO THE HEADS OF TERMS

SIGNED by

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for and on behalf of NHS ENGLAND AND NHS IMPROVEMENT

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Authorised Signatory

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Date of Signature

SIGNED by

JOHN REAY. . . . . .

for and on behalf of HCA HEALTHCARE UK

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Authorised Signatory

20 January 2020

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Date of Signature

SIGNED by

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for and on behalf of [Provider]

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Authorised Signatory

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Date of Signature

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for and on behalf of [Provider]

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