

27th May 2020

Dear Sirs,

PROVIDER'S FULL NAME:	<p>.....</p> <p>(Provider to insert its full name as it appears in its current contract(s) with the Authority)</p>
PROVIDER'S COMPANY NUMBER:	<p>.....</p> <p>(Provider to insert its company number (as registered at Companies House) if incorporated)</p>

The contract(s) described in Schedule 2 to this Variation between (1) GLOUCESTERSHIRE COUNTY COUNCIL (the "Authority") and (2) the PROVIDER whose name and (if appropriate) company number is set out above (the "Provider") relating to the supply of adult social care services (the "Contract(s))"

Provider relief due to COVID-19 in accordance with Procurement Policy Note 02/20

1 We refer to the Contract(s) described above to the extent only that each such Contract exists in full force and effect between the Authority and the Provider on the Variation Date. Unless otherwise defined, terms defined in such Contract(s) and used in this letter shall have the meaning set out in the Contract(s).

Background

2 The purpose of this Variation is for the Authority to give relief to the Provider on the terms of this Variation. The Authority and the Provider acknowledge that the relief is given in accordance with the policy set out in PPN 02/20 and that both parties shall act in good faith and work together towards the principles set out in PPN 02/20. The Provider acknowledges that any relief given to it is at the sole discretion of the Authority.

3 The Authority reasonably anticipates that the Procurement Regulations will apply to this Variation and the Parties shall ensure that there is lawful basis for agreeing the Variation under the Public Contracts Regulations 2015 and/or any applicable procurement rules. Due to the current COVID-19 pandemic, this may include in particular justifications under Regulation 72 and Regulation 32 of the Public Contracts Regulations 2015 or such other applicable or equivalent provision.

- 4 The Contract(s), including any previous variations, will remain effective and unaltered except as amended by this Variation.

Variation

- 5 The following terms shall have the meaning as set out below and shall be incorporated into the Contract(s):

“**Charges**” means the charges (howsoever defined in the Contract(s)) payable by the Authority to the Provider as specified in the Contract(s) in consideration of the Provider providing the Goods and/or Services.

“**Contract(s)**” shall bear the meaning attributed to it in clause 1.

“**Covid Related Hardship**” means that as a result of the COVID-19 pandemic the Provider’s ability to meet its contractual obligations under the Contract(s) have been adversely affected.

“**Covid Relief Period**” means the period from the Variation Date until the Relief Expiry Date.

“**Deliverable**” means any thing to be delivered by the Provider in the performance of the Services (howsoever defined in the Contract(s)) as identified as a deliverable in the Contract(s).

“**Goods**” means the goods, if any, (howsoever defined in the Contract(s)) to be provided by the Provider under the Contract(s) as set out in the Contract(s).

“**Interim Payment Plan**” means interim payment plan set out in Schedule 1 hereto containing details of the agreed variations to the payment profile and/or other terms of the Contract(s) to support the Provider’s cash flow position during the Covid Relief Period.

“**Open Book Interim Data**” means the complete and accurate financial and non-financial information which is required by the Authority to enable the Authority to understand all COVID-19 related relief, grants, interventions or other measures received by the Provider from the Government and to verify the Charges paid or the Charges which would have been paid during the Covid Relief Period, including:

- (a) the Provider’s costs broken down against each Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;
- (b) operating expenditure relating to the provision of the Goods and/or Services including an analysis showing:

- (b) operating expenditure relating to the provision of the Goods and/or Services including an analysis showing:
- i. the unit costs and quantity of consumables and bought-in services;
 - ii. staff costs broken down into the number and grade/role of all Provider Personnel who continue to be engaged in the provision of Goods or Services, together with a list of agreed rates against each manpower grade;
 - iii. reimbursable expenses;
 - iv. overheads;
 - v. all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;
 - vi. full details of the payment of employee wages;
 - vii. full details of the payment of Sub-contractors; and
 - viii. all other revenue expenditure (including, without limitation, cost of service user placements and other Service specific costs).

“Procurement Regulations” means the Public Contracts Regulations 2015 and the Defence and Security Public Contracts Regulations 2011.

“Provider Financial Return” means the form set out in Schedule 3 hereto which the Provider is required to complete and submit to the Authority.

“Provider Personnel” means all persons (howsoever defined in the Contract(s)) employed by the Provider that are engaged in the performance of the Contract(s).

“PPN 02/20” means Procurement Policy Note 02/20 as updated or amended from time to time setting out information and guidance for public bodies on how they may amend payment provisions in contracts or consider other contractual relief in order to assist providers to combat the impact of COVID-19.

“Relief Expiry Date” means 30 June 2020, or such other date as may be notified by the Authority to the Provider prior to or on 30 June 2020.

“Services” means the services (howsoever defined in the Contract(s)), including without limitation any Deliverables, to be provided by the Provider under the Contract(s) as set out in the Contract(s).

“Sub-contract” means any contract or agreement (howsoever defined in the Contract(s)) between the Provider and any third party relating to the Contract(s), including the supply of Goods and/or Services.

“Sub-contractor” means any third party (howsoever defined in the Contract(s)) with whom the Provider enters into a Sub-contract or its servants or agents and any third party with whom that third party enters into a sub-contract or its servants or agents.

“Variation” means the terms set out in this variation.

“Variation Date” means the date the second party signs this Variation

“Working Day” means any day (howsoever defined in the Contract(s)) other than a Saturday, Sunday or public holiday in England and Wales.

6 In consideration of each of the Parties entering into this Variation (such consideration being agreed by the Parties to be good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged and agreed), the Parties agree, notwithstanding any other term of the Contract(s), to vary the Contract(s) by incorporating the following terms into the Contract(s):

6.1 It is acknowledged that the Provider is subject to Covid Related Hardship and the parties have therefore agreed to change to the Contract(s) with the aim of providing interim relief and support to the Provider, pursuant to the aims and principles set out in PPN 02/20.

6.2 Pursuant to the aims and principles set out in PPN 02/20 and subject to this Variation, the Provider agrees and undertakes to observe and comply with the Interim Payment Plan.

6.3 The Provider further agrees and undertakes that it shall:

6.3.1 at the Authority's request, promptly provide a certificate which sets out the Provider's actual costs, expenses, cash flow and profits of providing the Goods and/or Services over the 3 months prior to the Variation Date or such number of months that the Contract(s) has been effective if it was entered into between the Parties within the 3 month period prior to the Variation Date;

6.3.2 ensure that the payments set out in the Interim Payment Plan are promptly and solely applied to the purposes set out in Schedule 1 for which they are paid, which may include payments to Provider Personnel who continue to be engaged in the provision of Goods and/or Services and workers in the Provider's Contract(s) supply chain (to include, without limitation, Sub-contractors' employees); who are working on deliverables to be provided under or in connection with the Contract(s) so as to reduce the adverse effect of Covid Related Hardship;

6.3.3 complete and submit to the Authority no later than the 10th day of each calendar month a fully completed Provider Financial Return containing details of its COVID-19 staff-related expenditure for the relevant period;

6.3.4 make available to the Authority upon request any further information and/or evidence (including the Open Interim Book Data) which the Authority may reasonably require in order to:

- i. verify and assure that the Provider has applied the monies set out in the Interim Payment Plan, including copies of accounts, ledgers, cash-flow forecasts and statements, balance sheets, profit and loss accounts and any other documentary evidence;
- ii. verify and assure that monies intended for Provider Personnel and Sub-contractors' employees performing the Contract(s) have been properly and promptly paid; and
- iii. pay invoices submitted by the Provider's Sub-contractors and supply chain immediately on receipt;

and

6.3.5 maintain full records and a written audit trail of all Interim Payment Plan activity in accordance with the general financial records provisions in the Contract(s) (and such records shall be made available promptly to the Authority on reasonable request).

6.4 The Provider shall not be entitled:

6.4.1 to include any profit arising from the Interim Payment Plan to the extent that such profit might apply to elements of the Contract(s) that are undelivered by the Provider during the Covid Relief Period;

6.4.2 to receive any payments under the Interim Payment Plan where there is no contractual volume commitment under the Contract;

6.4.3 to combine the Interim Payment Plan with any other government and/or public sector COVID-19 related relief, grant, intervention or other measure (including, without limitation, relief under the Coronavirus Job Retention Scheme ("CJRS")) which results in the Provider and/or any of its Sub-contractors receiving more than one benefit/relief for the same underlying cash-flow issue.

6.5 The Authority may at any time and in its sole discretion designate one or more additional Covid Relief Periods by notice to the Provider from time to time. Any such notice shall specify which, if any, PPN contains the applicable rules and principles for the relevant Covid Relief Period.

7 If, in the reasonable opinion of the Authority, the Provider:

7.1 fails to meet any obligation set out in this Variation;

7.2 receives any payment and fails to apply it to meet the requirements of the Interim Payment Plan;

7.3 takes undue advantage of any relief;

7.4 reduces the number of Provider Personnel that are engaged in the provision of Goods and/or Services or makes any Provider Personnel redundant or permits its Sub-contractor to make any of its employees engaged in performing the Contract(s) redundant without seeking the Authority's prior written approval; or

7.5 fails to act transparently and with integrity,

the Authority may take all action necessary to recover any payments made to the Provider during the relevant Covid Relief Period, including without limitation retaining or setting-off payment of any amount it owes to the Provider at any time under this Contract(s) or any other contract, to the extent that clauses 7.1 to 7.5 apply to such payments.

8 If, in the reasonable opinion of the Authority, the Provider has acted fraudulently by claiming under the Coronavirus Job Retention Scheme ("CJRS") (or other COVID-19 support schemes) for Provider Personnel and/or other workers that are being paid under the Contract(s) as varied by this Variation (to include, without limitation, Sub-contractors' employees engaged in the performance of the Contract(s)) the Provider shall be excluded from future public contracts on grave professional misconduct grounds under regulation 57(8)(c) of the Public Contracts Regulations 2015.

Miscellaneous

9 The terms of this Variation shall be effective from the Variation Date.

10 Except to the extent set out in this Variation, this Variation shall not constitute a waiver of any right or remedy of the Authority or the Provider arising before, during or after this Variation.

- 11 The Authority and the Provider agree that any event arising from COVID-19 shall not give rise to any force majeure or frustration rights set out in the Contract(s) to the extent that such rights are mitigated by any Interim Payment Plan.
- 12 If there is an inconsistency between any of the provisions of this Variation and the provisions of the Contract(s), the provisions of this Variation shall prevail.

SCHEDULE 1

Interim Payment Plan

1. All payments made by the Authority to the Provider under this Interim Payment Plan will be made in respect of care home beds and community based care (including supported living) packages currently commissioned by the Authority for itself and on behalf of NHS Gloucestershire Clinical Commissioning Group under the Contract(s) identified in Schedule 2, with the exception of day services and FNC placements.
2. With effect from 1st April 2020, the Authority shall in addition to the Charges pay to the Provider an additional sum equal to 10% of the usual monthly Charges payable under the relevant Contracts (the "Additional Payment") calculated with reference to a snapshot of charges paid by the Authority under the Contract(s) taken on the 21st day of each month for care packages under the Contract(s) that were open during the preceding month. For the purposes of such calculation, a month shall be (a) the usual 28-day payment block for providers of community based care packages (including supported living); and (b) a calendar month for providers of care home beds. The weekly cost of a care package under the Contract(s) over the relevant monthly period shall be used by the Authority to calculate an average daily cost which shall then be multiplied by the number of days that such care package is commissioned during the relevant monthly period to give the usual monthly fee for that month.
3. With effect from 1st April 2020 and throughout the Covid Relief Period the Additional Payments shall be processed by the Authority on or before the last working day of each month. Such sums should arrive in the Provider's account within 3 working days following the date on which they are processed.
4. Additional Payments made by the Authority to the Provider under this Interim Payment Plan shall be used by the Provider solely for the purposes of:
 - (a) increasing the wages of Provider Personnel in view of additional responsibilities relating to Covid 19;
 - (b) increasing the capacity of the Provider to provide the Services by the use of additional personnel, for example from an agency, if required;
 - (c) purchasing personal protective equipment (PPE) for the use of Provider Personnel in the performance of the Services;
 - (d) contributing towards Provider Personnel recruitment costs; and

(e) contributing towards any additional resource costs caused by supply issues related to Covid 19, in each case, incurred by the Provider on or after 1st April 2020.

5. The Provider shall observe and comply with the process and conditions set out in the Provider Guidance which has been sent to the Provider and receipt whereof the Provider hereby acknowledges.
6. The Additional Payments are made on the condition that all Provider Personnel shall be retained and paid in full (including, where appropriate, full sick pay) during the Covid Relief Period (including Provider Personnel who have Covid 19 symptoms and self-isolate in accordance with government guidance).

SCHEDULE 2

The Contract(s)

The following contracts/agreements to the extent only that each such contract/agreement exists in full force and effect between the Authority and the Provider on the Variation Date:

1. Pre-Placement Contract for the Provision of Care (Personal and/or Nursing Care in a Care Home);
2. Contract for the Provision of Care and Support Services for People with a Learning Disability, Physical Disability and/or Mental Health Problems;
3. Care and Support Contract for Complex and Challenging Services;
4. Framework Agreement relating to the provision of Support Services in Shared Accommodation;
5. Framework Agreement relating to the provision of Support Services for People with Complex Needs;
6. Framework Agreement relating to the provision of Floating / Visiting Support Services;
7. Framework Agreement relating to the provision of Live-In Support Services;
8. Terms and Conditions relating to the Supply of Home Care and Continuing Health Care Services;
9. Framework Agreement relating to the supply of home care and continuing health care services in Gloucestershire Urban Zones (Cheltenham and Gloucester);
10. Urban Purchasing System for Community based support services in the home for Health and Social Care in Gloucester and Cheltenham;
11. Rural Purchasing system relating to community based services in the home for Health & Social care in rural areas of Gloucestershire; and
12. Any Individual Service Contract(s) (ISC(s)) or Individual Service Agreement(s) (ISA(s)) entered into under or pursuant to any of the contracts listed in paragraphs 1 to 11 of this Schedule,

For the avoidance of doubt, the Provider shall not be entitled to receive any payments under the Interim Payment Plan in respect of any contracts/agreements that are not in full force and effect between the Authority and the Provider on the Variation Date.

SCHEDULE 3

Provider Financial Return

COVID - 19 PROVIDER FINANCIAL RETURNS

APRIL - MAY (ACTUALS AND FORECASTS)

PROVIDER NAME :

DATE:

AMOUNT RECEIVED

£

APRIL
MAY

0
0

TOTAL _____ 0

BED CAPACITY

GCC/CCG FUNDED BEDS
OTHER
VACANCIES

0
0
0
0

	ACTUAL £	FORECAST £	TOTAL £	% OF AMOUNT RECEIVED
STAFFING COSTS				
CARE STAFF				
Permanent Care Staff	0	0	0	0
Agency Care Staff	0	0	0	0
NURSING STAFF				
Permanent Nursing Staff	0	0	0	0
Agency Nursing Staff	0	0	0	0
TRANSPORT/TRAVEL COSTS				
	0	0	0	0
PERSONAL PROTECTIVE EQUIPMENT				
	0	0	0	0

CLEANING	Additional Cleaning	0	0	0
	Professional Cleaning	0	0	0
IT EQUIPMENT		0	0	0
MEDICAL SUPPLIES		0	0	0
FOOD		0	0	0
OTHER (PLEASE LIST)		0	0	0
		0	0	0
		0	0	0
TOTAL		0	0	100%

NHS
Gloucestershire
Clinical Commissioning Group

mmunities

COVID - 19 PROVIDER FINANCIAL RETURNS

JUNE (ACTUALS AND FORECASTS)

PROVIDER NAME :

DATE:

AMOUNT RECEIVED

JUNE

£

0

TOTAL

0

BED CAPACITY

GCC/CCG FUNDED BEDS

OTHER

VACANCIES

0

0

0

0

EXPENDITURE	ACTUAL £	FORECAST £	TOTAL £	% OF AMOUNT RECEIVED
STAFFING COSTS				
CARE STAFF				
Permanent Care Staff	0	0	0	0
Agency Care Staff	0	0	0	0
NURSING STAFF				
Permanent Nursing Staff	0	0	0	0
Agency Nursing Staff	0	0	0	0
TRANSPORT/TRAVEL COSTS				
	0	0	0	0
MEDICAL SUPPLIES				
	0	0	0	0
PERSONAL PROTECTIVE EQUIPMENT				
	0	0	0	0

CLEANING	Additional Cleaning	0	0	0
	Professional Cleaning	0	0	0
IT EQUIPMENT		0	0	0
FOOD		0	0	0
OTHER (PLEASE LIST)		0	0	0
		0	0	0
		0	0	0
TOTAL		0	0	100%



One Gloucestershire
Transforming Care. Transforming Communities.

To the best of our knowledge and having carried out appropriate checks, we have compiled with the conditions set out in the letter's received from Gloucestershire County Council and this summary accurately reflect where the funding has been incurred

Signed by:
Title:

Contact details for queries : Name, telephone number and email

DETAIL/COMMENTS/EXPLANATION

Please provide details relevant to your figures



Please confirm your acceptance of this Variation countersigning this letter and returning a scanned copy by e-mail to CBOP@gloucestershire.gov.uk.

If you have any queries, please contact Brenda Yearwood by e-mail at brenda.yearwood@gloucestershire.gov.uk.

Yours faithfully,

A handwritten signature in cursive script, appearing to read 'Jenny Cooper', written in black ink.

Jenny Cooper
Interim Head of Integrated Commissioning (Older People)
For and on behalf of the Authority

We hereby acknowledge receipt and accept the terms of this Variation.

Signed: _____

Name: _____

For and on behalf of the Provider

Position (delete as appropriate): [Director]/[Authorised Signatory]

Date: _____