

**BATH & NORTH EAST SOMERSET
COUNCIL**

and

**BATH and NORTH EAST SOMERSET
CLINICAL COMMISSIONING GROUP**

AGREEMENT

2014/15

Transfer of Funding in Bath & North East Somerset.

(MADE UNDER SECTION 256 OF NATIONAL HEALTH SERVICES ACT 2006)

THIS AGREEMENT is made on 1st April 2014

BETWEEN:

(1) BATH and NORTH EAST SOMERSET CLINICAL COMMISSIONING GROUP of St Martins Hospital, Bath, BA2 5RP ("**CCG**"); and

(2) BATH AND NORTH EAST SOMERSET COUNCIL of Guildhall, Bath, BA1 5AW ("**Council**"),

(together the "**Parties**").

WHEREAS:

(A) The CCG is empowered by section 256 of the 2006 Act to make payments to the Council in certain circumstances towards expenditure incurred by the Council

(B) The CCG has agreed to make payment to the Council to contribute towards the costs of 1) Carers, 2) Grants to Voluntary Bodies and 3) Local Reablement] ("**Schemes**") for the benefit of [improving health and wellbeing]

(C) By resolution of the CCG Board - the transfer of funding for the scheme was recommended pursuant to section 256 of the 2006 Act.

(D) The CCG is satisfied that this Grant is in accordance with the 2006 Act and complies with the Directions.

NOW IT IS HEREBY AGREED as follows:

1. **Definitions and Interpretations**

1.1. In this Agreement the following expressions shall unless the context otherwise requires have the meanings herein:

"2006 Act" means the National Health Service Act 2006;

"Annual Voucher" means the statement of compliance with

conditions of Grant and expenditure certification as set out in the Schedule 2;

“**Balance**” means the Total Capital Costs less the Grant;

“**Directions**” means the Directions by the Secretary of State for Health as to the conditions governing payments by health authorities and other bodies under Section 28A of the National Health Service Act 1977 dated 28 March 2000;

“**Financial Year**” means 1st April of one year to 31st March of the following year;

“**Monies**” means the amount of money set out in Schedule 1 payable by the CCG to the Council in respect of the Scheme on the understanding that the Council will meet the costs of the Scheme to the extent that it is not funded by the money;

“**Nominated Officers**” means the Chief Financial Officer for the CCG) Divisional Director – Finance for the Council) or such replacements as may be notified by Party in writing from time to time;

“**Scheme**” means the schemes as more specifically described in Schedule 4; and

- 1.2. The headings in the Agreement are for ease of reference only and shall not affect the construction hereof.
- 1.3. The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the Schedules.
- 1.4. Words in the singular shall include the plural and vice versa.
- 1.5. A reference to any Act of Parliament, Order, Regulation, Statutory Instrument, Directions or the like shall be deemed to include a

reference to any amendment or re-enactment of the same.

- 1.6. Where the words include(s), including or in particular are used in these terms and conditions, they are deemed to have the words without limitation following them and where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.

2. **Conditions relating to the Funds Transfer**

- 2.1. In consideration of the Council entering into the Agreement and subject to the terms of this Agreement, the CCG shall pay the Monies to the Council as described in Schedule 1 and if the Monies are to be paid in instalments, in such instalments as described in Schedule 3.
- 2.2. The Council shall submit an Annual Voucher which has been duly authenticated and certified in accordance with the Directions to the Chief Financial Officer by no later than the 28 days following the end of each Financial Year.
- 2.3. The CCG and the Council shall at any meeting convened under Clause 2.10 consider the payments made in respect of the Scheme and the CCG reserves the right to reduce the amount of any future payments in accordance with section 2(5) of the Directions.
- 2.4. The Council shall use the Monies in respect of the Scheme(s) and shall not use the Monies for any other purpose other than the Scheme and shall repay to the CCG a sum equal to the amount of any part of the Monies which is not so applied.
- 2.5. The Council shall at all times observe the CCG obligation to obtain best value for money.
- 2.6. The Council shall provide any services that are part of the Scheme:
 - 2.6.1. In such way as to secure the most efficient and effective use of the amount paid

- 2.6.2. In accordance with all relevant legislation and the Directions; and
- 2.6.3. In accordance with any policies, performance objectives, eligibility criteria and standards set out at Schedule 4.
- 2.7. Any part of the Monies that remains in the Council's possession following completion of the Scheme and is not expended by the Council on the Scheme in accordance with Clause 2.4 shall be declared to the CCG and both Parties shall use their reasonable endeavours to agree the future use of such remaining funds including, where appropriate
- i. The immediate return of the remaining funds to the CCG.
 - ii. The Re-allocation of the funds to finance identified projects/plans in future years.
- 2.8. The Council shall be responsible for the operational management of the scheme.
- 2.9. The Council shall provide the CCG with the information detailed in Schedule 5 and access to such other information as the CCG may reasonably request.
- 2.10. The CCG and the Council shall meet at such intervals as the Parties agree, having regard to the nature of the scheme, to review the scheme.
- 2.11. Any variation to this Agreement or the scheme must be agreed in writing by an authorised officer of each Party.
- 2.12. Any complaints in relation to the Scheme shall be notified immediately to the Nominated Officers who shall agree an appropriate course of action to ensure that all such complaints are dealt with appropriately.

3. Authority

- 3.1. Both Parties warrant that all required approvals and any necessary delegated authority which a Party may be responsible for ensuring,

shall be put in place and complied with regarding the execution and performance of this Agreement.

4. **Dispute Resolution**

4.1. Both Parties agree that it would be in their best interests for any disagreement to be resolved locally as soon as possible and shall use their reasonable endeavours to negotiate in good faith and settle any disagreement arising out of or relating to this agreement.

4.2. If any disagreement is not resolved through ordinary negotiations it shall be referred to the Chief Executive of the CCG and the Chief Executive of the Council for discussion and resolution. If the disagreement is not resolved, the Parties shall use reasonable endeavours to settle it by mediation in accordance with the Centre for Effective Dispute Resolution Model Mediation Procedure. To initiate a mediation a Party must give notice to the other Party requesting a mediation in accordance with Clause 4.2. The cost of the mediation shall be met in equal shares by the Parties and the outcome of such mediation shall be binding on both Parties.

5. **Cancellation and reimbursement**

5.1. The Council shall inform the CCG in writing should the Scheme come to an end or the Council ceases to carry out those functions in connection with which the Monies are paid.

5.2. Should the Scheme come to an end or the Council ceases to carry out those functions in connection with which the Monies are paid prior to completion of transfer of the Monies, then the CCG shall be under no obligation to pay the Monies or make further instalments of the Monies.

5.3. If the Council does not use the total amount of the Monies in connection with the Scheme, then the Council shall reimburse to the CCG any part of the Monies which the Council has received and which has not been used in connection with the Scheme and shall provide details in writing as to why such part of the Monies was not used. The Parties, acting reasonably, shall meet to review how the unused part of the Monies shall be treated.

5.4. In the event the CCG ceases to pay the Monies or the Council is obliged to reimburse the Monies in accordance with this Clause , the CCG and the Council shall work together to ensure there is minimal disruption to individuals benefiting from the Scheme.

6. Contracts (Rights of Third Parties) Act 1999

6.1. The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and nothing in this Agreement shall confer to purport to confer or operate to give any third party any benefit or any right to enforce any term of this Agreement except as expressly provided in this Agreement.

7. Communication

7.1. Except as otherwise provided in this Agreement all notices which are required to be given under this Agreement shall be in writing and shall be sent to the address of the Nominated Officer or such other address in England as the recipient may designate by notice given in accordance with the provisions of this Clause. Any such notice may be delivered personally or by first class pre-paid letter and shall be deemed to have been served on the day of delivery if delivered by hand when delivered and if by first class post 48 hours after posting.

8. No Agency

8.1. The Parties are independent and nothing in this Agreement is intended to, or shall operate to, create a partnership or any employment relationship between the Parties, or to authorise either Party to act as agent for the other, and neither Party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

9. Freedom of Information

9.1. The Parties acknowledge that they are and each other is subject to the requirements under the Freedom of Information Act 2000 (‘the

FOIA') and shall assist and cooperate with each other free of charge to enable them to comply with these information disclosure requirements.

9.2. The Parties acknowledge that they may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of the FOIA, be obliged to disclose information:

9.2.1. Without consulting with the other Party, or

9.2.2. Following consultation with the other Party and having taken its views into account.

10. Assignment

10.1. This Agreement is personal to the Council and the Council shall not assign or transfer (or purport to assign or transfer) the benefit or burden of this Agreement to the other Party.

11. Governing Law

11.1. This Agreement shall be governed by and construed in accordance with English Law.

Schedule 1

Memorandum of Agreement

Section 256 transfer

Reference number: B&NES CCG S256 – 2014/15]

Title of Scheme:

- 1) Carers
- 2) Grants to Voluntary Organisations
- 3) Local Reablement

1. How will the section 256 transfer secure more health gain than an equivalent expenditure of money in the NHS?

1.1. This is funding from the National Health Service and is to invest in social care services to benefit health and to improve health gain.

1.2. Towards this aim, the agreement for the transfer is made between the CCG and the Council. The Council will use the monies to ensure the sustainability and development of services for both health and social care and jointly support the agreed priorities within the Scheme.

2. Description of Scheme

2.1. Funding via the NHS to mutually benefit social and healthcare services.

2.2. The funding will aid the commissioning of a range of services as detailed in question 4 below.

3. Financial details and timescales:

Total amount of revenue funding to be transferred and amount in each year:

Funding Stream	Year	£	Invoicing Dates
S256 Carers	2014/15	£266,000	1 April 2014

S256 Grants to Voluntary Organisations	2014/15	£234,000	1 April 2014
S256 Local Reablement	2014/15	£900,000	1 April 2014

4. Please state the evidence you will use to indicate that the purposes described at questions 1 and 2 have been secured.

- 4.1. CCG will ensure that appropriate governance frameworks are put into place to demonstrate that the pre-determined health and social care outcomes are achieved. This is to be carried out in a transparent and efficient manner with the Council to keep CCG informed of the progress in delivery.
- 4.2. The Council will keep complete and accurate records in relation to the scheme and will allow the CCG/s representatives to inspect all such records and will supply copies on request.
- 4.3. The Parties will have regular meetings for the purpose of discussing the spend and outcome measures and how it is delivering Health and Social Care benefits in the economy.
- 4.4. The Parties shall agree key performance indicators or measures to evidence success for the Scheme.
- 4.5. The key outcomes that the Scheme is seeking to achieve include:
 - 4.5.1. Funds are transferred to support carers as agreed
 - 4.5.2. Grant Payments are made to the agreed Voluntary Organisations
 - 4.5.3. Investment in local Reablement and improvement projects for reablement are undertaken and business cases sighted

Schedule 2

Annual Voucher

PART 1 STATEMENT OF GRANT EXPENDITURE FOR THE YEAR 2013/14

Proposed used for the NHS Funding for Social Care

Proposal	£	Health benefit
<u>Carers</u> 2014/15	£266,000	To provide sustainable support to those carers providing care to service users with Health needs, so reducing the need for admission or social cares services
<u>Voluntary Organisations</u> 2014/15	£234,000	To contribute on behalf of the CCG to those voluntary organisations that provide direct or indirect support for the delivery of the Health & Social Care Agenda
<u>Local Reablement</u> 2014/15	£900,000	To provide funds locally to support and enhance local reablement, in addition to the national funding. So as to provide investment funds and support those services which will reduce the demand on Secondary Care Services, or reduce the length of stay in such services.
TOTAL – 2014/15	£1,400,000	

PART 2 STATEMENT OF COMPLIANCE WITH CONDITIONS OF TRANSFER

I certify that the above expenditure has been incurred in accordance with the conditions, including any cost variations, for each Scheme agreed by the CCG in accordance with the Directions made by the Secretary of State under section 256 of NHS Act 2006.

Signed Date

Divisional Director of Finance

Certificate of Auditor

The Statement of Responsibilities of grant-paying bodies, authorities and appointed auditors in relation to grant claims and returns, issued by the Audit Commission, sets out the respective responsibilities of these Parties, and the limitations of our responsibilities as appointed auditors.

I/We have:

- Examined the entries in this form (which replaces or amends the original submitted to me/us by the authority dated)* and the related accounts and records of the authority in accordance with Certification Instruction A1 prepared by the Audit Commission for its appointed auditors; and
- Carried out the tests specified in Certification Instruction [.....] prepared by the Audit Commission for its appointed auditors, and I/we have obtained such evidence and explanations as I/we consider necessary.

(Except for the matters raised in the attached qualification letter dated)*

I/we have concluded that the entries are

- Fairly stated; and
- In accordance with the relevant terms and conditions

Signature Name (black capitals)

Date

*Delete as necessary

Schedule 3

Financial details and timescales:

Total amount of revenue funding to be transferred each year and instalments due (if this is subsequently changed, the memorandum must be amended and re-signed):

Funding Stream	Year	£	Invoicing Dates
S256 Carers	2014/15	£266,000	1 April 2014
S256 Grants to Voluntary Organisations	2014/15	£234,000	1 April 2014
S256 Local Reablement	2014/15	£900,000	1 April 2014
TOTAL		£1,400,000	

Schedule 4

Description of Schemes (see Schedule 2 PART 1)

- i. These Schemes provide for the transfer of the social care funds given to the CCG in to the Council to support the sustainability and development of its services and related health and social care activities.
- ii. The funding will aid the commissioning of a range of services to support the outcomes as detailed in Section 4 of Schedule 1.

Schedule 5

Management Information

The Council shall keep complete and accurate records in relation to the Scheme and shall allow the CCG's representatives to inspect all such records and shall supply copies on request and other such information as CCG may reasonably request.

The Parties will use the Joint Commissioning Leadership Team, for the purpose of discussing the spend and how it is delivering health and social care benefits in the economy.

IN WITNESS whereof the Parties have signed this Agreement

Signed by

On behalf of **Bath and North East Somerset Clinical Commissioning Group**

Title: Chief Finance Officer

Name: Sarah James

Signed by

On behalf of **BATH AND NORTH EAST SOMERSET COUNCIL**

Title: Chief Finance Officer

Name: Tim Richens