Dated…………………………….2018

FUNDING TRANSFER AGREEMENT FOR THE

TRANSFORMING CARE PLAN UNDER

SECTION 256 OF THE NHS ACT 2006

Between

[Insert name of the CCG(s)] CCG(s)

and

[Insert name of the Council(s)] Council(s)

**[Whilst this s.256 Agreement includes references to Dowry Eligible Patients, it is anticipated that CCGs and Local Authorities may wish to use this s.256 to cover other initiations in accordance with its Transforming Care Plan].**

**[Clauses in yellow relate to those sections that will need to reflect local agreement]**

**[Clauses in green relate to those sections that will need to be amended to encompass other elements of the Transforming Care Plan. Please update clause numbers and referencing upon finalisation]**

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THIS AGREEMENT is made the day of 2018

Memorandum of agreement

Section 256

Reference number: …………………………………………………...

Title of Scheme: [ ]

BETWEEN:-

(1) **[xxxx]** Clinical Commissioning Group of [ ] (the “ CCG”)

(2) **[xxxx]** of [ ] (“the Local Authority”);

 each a “Party” and together the “Parties”

**WHEREAS:**

The CCG shall make a Grant (as defined below) to the Local Authority pursuant to Section 256 of the 2006 Act (as defined below) in respect of revenue expenditure for costs associated with the provision by the Local Authority of the Services (as defined below) on the terms and conditions set out in this Agreement (as defined below).

**DEFINITIONS AND INTERPRETATION**

## In this Agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings:-

|  |  |
| --- | --- |
| “the Act” | the National Health Service Act 2006; |
| “Agreement” | this Agreement, including any Schedules attached hereto; |
| "Annual Voucher" | a voucher in the form set out in Schedule 1 (Annual Voucher);  |
| "Contract Manager" | the nominee of the CCG from time to time and the nominee of the Local Authority from time to time or such authorised representative of such nominee as notified to the CCG or the Local Authority as the case may be;  |
| “Data Protection Legislation” | includes:1. The Data Protection Act (1998)
2. Directive 95/46/EC on the protection of individuals with regards to the processing of personal data and on the free movement of such data
3. The Regulation of Investigatory Powers Act 2000
4. The Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699)
5. Directive 2002/58/EC concerning the processing of Personal Data and the protection of privacy in the electronics communication sector;
6. The Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426);
7. The General Data Protection Legislation when it comes into force on 25 May 2018 and any associated legislation and the Data Protection Bill when it is given Royal Assent and
8. All applicable laws and regulations relating to processing personal data and privacy, including the guidance and codes of practice issued by the Information Commissioner, where applicable
 |
|  “Eligible Patient” | [means those dowry-eligible patients whom may have healthcare needs, which the CCGs are obliged to fund and have been in hospital for 5 years or more as at 1 April 2016] ***This s.256 may go beyond the transfer of funds for dowry patients and may include other initiations and Parties should therefore amend the definition of an eligible Patient to encompass those other initiations]***; |
|  “Grant” | the revenue grant payment identified in Clause 5 of this Agreement being the current weekly full cost of inpatient care, starting immediately upon the commencement of the “dowry” patient’s community care placement package, payable by the CCG to the Local Authority under this Agreement to be applied for the purposes of the Scheme; ***This s.256 may go beyond the transfer of funds for dowry patients and may include other initiations and Parties should therefore amend the definition of Grant to encompass those other initiations]***; |
| “Scheme” | means the transfer of funding from the CCG(s) to Local Authority(s) in the TCP area to support the safe and effective discharge of agreed “dowry” inpatients as at 1st April 2016 as further described in Clause 2 of this Agreement ***This s.256 may go beyond the transfer of funds for dowry patients and may include other initiations and Parties should therefore amend the definition of scheme to encompass those other initiations]***; |
| “Services” | means the services in respect of which the Grant is paid which will be provided by the Local Authority as set out in Schedule 2; |
| “Service Specifications” | means the specification as set out in Schedule 2;  |
| “Transforming Care Partnership”  | **[Set out the TCP Partners for this area]**  |
| “Transforming Care Plan”  | The plan agreed by the Transforming Care Partnership to improve health and care services so that more people can live in the community, with the right support, and close to home. |
| “Working Day” | Monday to Friday inclusive in any week but excluding statutory holidays applicable in England and excluding any statutory holidays of the Local Authority.  |

# **INTERPRETATION**

## In this Agreement:-

### "person" includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency, unincorporated body of persons or association and a reference to a person includes a reference to that person's successors and permitted assigns;

### a "Party" means any party to this Agreement individually and "Parties" refers to all of the parties to this Agreement collectively. A Party shall include all permitted assigns of the Party in question;

### a statutory provision includes a reference to that provision as modified, replaced, amended and/or enacted from time to time (whether before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it.

## The Schedules are an integral part of this Agreement and shall be interpreted accordingly.

## Unless otherwise expressly defined in this Agreement, the words used in this Agreement shall bear their natural meaning.

## The headings used in this Agreement shall not affect the interpretation or construction of its terms.

## In this Agreement, words importing any particular gender include all other genders.

## In this Agreement, words importing the singular only shall include the plural and vice versa.

## References to a Recital, Clause or Schedule are references to recitals, clauses and schedules of this Agreement.

## Where anything in this Agreement requires the mutual agreement of the Parties, then unless the context otherwise requires, such agreement must be in writing.

1. BACKGROUND
	1. **[INSERT]** CCG(s) and **[INSERT]** Council(s) are committed to transforming care for people with a learning disability and/or autism who display behaviour that is challenging, in line with the national strategy *Building the right support* (2015).
	2. This includes reducing the number of people cared for in hospital settings (funded by NHS England or CCGs), and providing more care and support in the community (funded by CCGs and Local Authorities).
	3. To achieve this change, *Building the right support* sets out the expectation that commissioners will use the total sum of money they spend as a whole system on people with a learning disability and/or autism to deliver care and support in a different way that achieves better results. This will include:
		1. NHS England transferring funds to CCGs as reductions in use of NHS England-funded hospital care are achieved. This will be affected via a Funding Transfer Agreement [link] between NHS England and CCGs.
		2. CCGs transferring funds or pooling resources with Local Authorities to help fund the costs of community alternatives to hospital, relating both to community infrastructure/service costs and for individual packages of care and support.
		3. In particular, *Building the right support* commits the NHS to make contributions to cover the social care costs of Eligible Patients.
	4. The approach in **[INSERT TCP/LOCAL AREA NAME]** to managing these funding flows is set out in the local Transforming Care Plan which shall include the finance plan, agreed by all parties.
	5. This Agreement relates to one part of the Parties approach, and is particularly intended to support the delivery of transfers of money forEligible Patients (as per clause 1.3.3 above.)
2. THE SCHEME
	1. The Grant will secure more health gain than an equivalent expenditure of money on the national health service by:
		1. **[To be inserted]**
	2. The CCG is satisfied that the use of the Grant, as described in Clause 2.1 above, will secure the most efficient and effective use of the public funds than the deployment of an equivalent amount in the NHS as the Grant will **[To be inserted]**.
	3. The CCG(s) wish to make payments to the Local Authority(s) as a contribution to the social care costs of Eligible Patients and are empowered to do so under Section 256 of the Act.
	4. This Agreement specifically relates to social care costs, rather than healthcare costs. When discharged from hospital, some Eligible Patients may have healthcare needs, which the CCGs are obliged to fund.
	5. Funding of care and support packages following discharge from hospital settings must be informed and led by relevant, established national guidance and direction such as Continuing Health Care, s.117 Mental Health Act 1983 and “Who Pays” guidance.
	6. Where Eligible Patients also have social care costs, this Agreement governs what financial support the CCGs will make available to the Local Authority to help meet those costs.
	7. The CCG(s) are satisfied that the purpose for which the payments are made fulfil the objectives of the local Transforming Care Plan as specified in clause 1.4 and its trajectories.
	8. The Parties have entered into this Agreement in compliance with directions made by the Secretary of State relating to section 256 of the Act.
	9. The CCG is satisfied that the payments are likely to secure a more effective use of public funds than the deployment of an equivalent amount on the provision of services under other sections of the Act and that the Local Authority(s) intend(s) to meet the costs of the Scheme (see clause 2.1 and 2.2) to the extent that they are not covered by the payment(s) and for so long as the CCG(s) and the Local Authority(s) consider that the agreement is necessary or desirable.
3. SCOPE
	1. The Transforming Care Partnership is committed to reducing reliance on inpatient care for people with a learning disability and/or autism. This will include discharging **[INSERT NUMBER OF PATIENTS]** Eligible Patients by March 2019. These patients are listed in the table below.
4. DURATION
	1. The parties enter into this Agreement for one financial year only, commencing 1st April 2018 unless terminated earlier in accordance with clause 12, with the intention of reviewing and renewing the Agreement for subsequent financial years.
	2. The Parties shall undertake a review 2 months prior termination of the Agreement to review and develop the Agreement in the light of working experience.
5. PAYMENT OF GRANT AND USE OF GRANT PAYMENT [DN: It will be important that the service specification specifies exactly what the grant should be used for].
	1. The CCG agrees pursuant to its powers under Section 256 of the 2006 Act to pay the amount(s) set out this clause on the payment date(s) set out against such amount(s) in the same Clause.
	2. No Grant shall be paid unless and until the CCG is satisfied that such payment will be used for proper expenditure in the delivery of the Scheme.
	3. The amount of the Grant shall not be increased in the event of any overspend by the Local Authority in its delivery of the Scheme.
	4. The Local Authority agrees to expend the Grant only to procure and/or provide the Services.
	5. The Grant shall be paid annually and the dowries will be recurrentand shall be linked to individual patients The CCGs hereby commit to transferring to the local authorities the sums set out in the table below, pro rata, at the point of discharge.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Patient reference number | CCG | LA | Expected discharge date | Annual funding to transfer from CCG to local authority |
| 1 |  |  |  |  |
| 2 |  |  |  |  |
| 3 |  |  |  |  |
| 4 |  |  |  |  |
| 5 |  |  |  |  |

* 1. An annual reconciliation will be carried out, led by the required annual voucher referred to in Schedule 1, between the CCG and Local Authority, and funds retained in a ring-fenced budget, and carried-forward, should there be a surplus at year-end.
1. MONITORING AND REVIEW
	1. The Local Authority will keep proper records in relation to the Scheme in accordance with the arrangements referred to in this Agreement.
	2. The Local Authority will allow the CCG and/or its representatives to inspect all such records and will supply copies on request. The Local Authority will acknowledge such a request from the CCG within five (5) days of receiving the request and will allow the CCG to inspect all such records and/or shall provide copies within ten (10) days of receiving the request from the CCG.
	3. The Local Authority shall prepare monthly reports evidencing how its use of the Grant is achieving the objectives set out in clause 2 and its performance against the Service Specifications, including but not limited to reporting against each patient specified in clause 5.5 above. The Local Authority shall forward a copy of the report to the CCG monthly from the Commencement Date.
	4. The Local Authority will prepare and submit to the CCG an annual schedule of outcomes against the objectives set out in Clause 2 for each Service area by each provider. The annual schedule shall be sent to the CCG within twenty eight (28) days of the anniversary of the Commencement Date.
	5. The Parties agree to hold meetings to discuss matters arising in connection with the Grant and such meetings shall be convened at the reasonable written request of either Party at a time and place to be agreed.
	6. The Local Authority shall complete and submit the Annual Voucher to its external auditor by no later than 30th September following the end of the financial year in which the Grant is paid and arrange for these to be authenticated and certified by the director of finance (or responsible officer) of the Local Authority and submitted to the CCG by no later than 31st December in that year.
	7. The Parties agree to hold an annual review to discuss the Local Authority’s performance of the Services and the outcomes set out in the Service Specifications and the Local Authority shall provide such information as the CCG may reasonably require in connection with the review. As part of the annual review, the CCG will assess and analyse:
		1. whether or not the Grant money continues to meet the needs set out in Clause 2 above;
		2. whether or not the amount of Grant money set out in Clause 5 above is set at the appropriate level and/or
		3. whether or not any changes are required to the Service Specifications.
	8. Adherence to this Agreement will be monitored and reviewed by the Transforming Care Partnership and this Agreement will be formally evaluated every 6 months and any proposed changes agreed by the Transforming Care Partnership.

|  |  |  |  |
| --- | --- | --- | --- |
| Partner | Authorised official | Address | Email |
| CCG  |  |  |  |
| Local Authority  |  |  |  |

1. CCG’S(S’) REPRESENTATIONS AND WARRANTIES
	1. The CCG(s) hereby warrants and represents:
		1. that it is (they are) satisfied that the Grant is to be used by the Local Authority(s) solely for the purposes of the Scheme;
		2. that it (they) believe(s) that in making the decision to recommend the Grant, the Local Authority(s) has (have) complied with all requirements imposed upon it by the Act and any directions made by the Secretary of State relating to the exercise of the powers conferred by section 256 of the Act.
2. LOCAL AUTHORITY’S (S’) REPRESENTATIONS AND WARRANTIES
	1. The Local Authority warrants and represents that:
		1. it has available, and shall commit adequate funding and resources of its own, for the Services to the extent not funded by the Grant for the duration of this Agreement;
		2. it has the power to enter into and perform its obligations under this Agreement and has taken all the necessary actions to authorise the execution and delivery and performance of the Agreement;
		3. it has the power to provide or procure the Services; and
		4. it is not aware of any act, matter or thing which will or is likely to affect adversely its ability to comply with its obligations under this Agreement.
3. LOCAL AUTHORITY’S (S’) OBLIGATIONS
	1. The Local Authority(s) covenant(s):
		1. to apply the Grant solely for the purposes of the Scheme;
		2. to complete and provide an Annual Voucher to the Local Authority's external auditor annually as soon as possible after 31 March but by no later than 30 September following the end of the financial year in question in any event for certification by such external auditor;
		3. to provide the certified Annual Voucher to the CCG as soon as possible after 31 March, but by no later than 31 March following the end of the financial year in question in any event;
		4. to enter into a legal charge in favour of the CCG upon the occurrence of any Termination.

**(Please delete singular/plural references etc to CCG and Local Authority, as necessary, throughout DEFINITIONS – OBLIGATIONS above, depending on who is in this TCP area).**

1. VARIATION
	1. There shall be no variation to this Agreement without the prior written consent of all Parties.
2. DISPUTE RESOLUTION
	1. If a dispute arises between the Parties in relation to any matter under this Agreement (including any question regarding its existence, validity or termination) that cannot be resolved by the Contract Managers, either of them may refer such dispute to the dispute resolution procedure set out below.
	2. In the first instance, each of the Parties shall arrange for a more senior representative than those referred to in the previous clause to meet solely in order to resolve the matter in dispute. Such meeting shall be minuted and shall be chaired by the CCG (but the chairman shall not have a casting vote). Such meeting shall be conducted in such manner and at such venue (including a meeting conducted over the telephone) as to promote a consensual resolution of the dispute in question at the discretion of the chairman.
	3. If the meeting referred to in clause 11.2 does not resolve the matter in question, then either or both of the Parties shall refer it to be finally settled by arbitration under the Rules of the London Court of International Arbitration, which Rules are deemed to be incorporated by reference into this Clause.
3. TERMINATION EVENTS
	1. This Agreement shall terminate if and when the person listed in the table at clause 5.5 above returns to long-term inpatient care, dies, or becomes 100% Continuing Health Care funded.
	2. In the event a person listed in the above table moves or moves to another local authority, if applicable their funding shall transfer in accordance with National protocols.
	3. The CCG may terminate this Agreement upon one (1) months written notice to the Local Authority in the event:
		1. the Local Authority fails to comply with the conditions of the Grant, as set out in Clause 5 above;
		2. the Local Authority is served with notice of termination under Clause 15 (Prevention of Corruption); and/or
		3. the Local Authority fails to provide evidence that it has used the Grant money to achieve the objectives as set out in Clause 2 above.
		4. the Local Authority fails in a material way (after reasonable prior notice in the case of a breach capable of remedy) to perform and observe any of its obligations under this Agreement;
		5. the Local Authority uses the Grant or any part thereof for purposes other than for the Scheme without the prior written consent of the CCG (such consent not to be unreasonably withheld).
4. REPAYMENT
	1. If this Agreement is terminated by reason of the Local Authority failing to comply with the conditions of the Grant, as set out in Clause 6 above, the CCG may at its absolute discretion require repayment of the Grant as set out in Clause 13.2 below by giving notice of repayment to the Local Authority.
	2. Subject to Clause 13.1 above, the Local Authority shall within fourteen (14) Working Days on service of the notice specified in Clause 13.1 above repay to the CCG:
		1. in the event there is any part of the Grant which remains unused.
		2. a sum equal to the amount of any part of the Grant spent for any purpose other than procuring and/or providing the Services.
	3. The Local Authority shall repay any overpayment or erroneous payment received by it from the CCG within fourteen (14) Working Days of it becoming aware (by itself or by notice from the CCG) of any such overpayment or erroneous payment being made.
5. FREEDOM OF INFORMATION AND DATA PROTECTION
	1. The Parties shall be entitled to publish and/or release any and all terms or conditions of this Agreement and/or the contents of any documents and/or information relating to the formation of this Agreement under the provisions of the Freedom of Information Act 2000 (FOIA), Environmental Information Regulations 2004 (EIR) and/or the Data Protection Legislation and in accordance with the Code of Recommended Practice for Local Authorities on Data Transparency.
	2. Each party shall:
		1. co-operate and supply to the other all necessary information and documentation required in connection with any request received by the other Party under FOIA, EIR and the Data Protection Legislation; and
		2. supply all such information and documentation to the other Party within five (5) Working Days of receipt of any request at any pre-arranged or agreed costs.
	3. The Parties shall comply with the Codes of Practice on the Discharge of Public Authorities’ Functions and on the Management of Records (issued under sections 45 and 46 of the FOIA respectively), and the EIR as may be amended, updated or replaced from time to time and any other applicable codes of practice and guidance applicable from time to time to the extent that they apply to the functions of the Parties under the Agreement.
6. PREVENTION OF CORRUPTION
	1. If the Local Authority, any of its employees or officers or anyone acting on behalf of the Local Authority (with or without the Local Authority’s knowledge):
		1. makes a gift or some other consideration to any person with the intent of obtaining some benefit in relation to this Agreement; and/or
		2. puts pressure on any person with the intent of obtaining some benefit in relation to this Agreement; and/or
		3. commits any offence under the Bribery Act 2010; and/or
		4. commits any other similar offence under any subsequent legislation then the CCG shall have the right to terminate this Agreement by giving notice of termination to the Local Authority to take effect immediately on service of such notice except where (in the reasonable opinion of the CCG):
		5. the action or offence described in Clause 15.1.1 to 15.1.3 is an isolated infrequent or uncommon incident; and
		6. the Local Authority has taken reasonable steps to avoid the commission by any of its officers, employees or anyone acting on its behalf of any such action or offence and the Local Authority has taken reasonable steps (including where appropriate the dismissal of any employee or officer) to prevent the future commission by any of its officers or employees or anyone acting on its behalf of any such action or offence; and
		7. such action or offence has not been authorised endorsed or condoned by the Local Authority.
7. GENERAL
	1. Severability

If any provision of this Agreement is agreed or held to be invalid, unenforceable or void, such provision may be severed and shall not have the effect of invalidating or rendering void the remainder of this Agreement and the Parties agree that they shall immediately commence in good faith negotiations to vary the terms of this Agreement in order to remedy such invalidity, unenforceability or illegality.

* 1. Assignment

This Agreement is personal to the Local Authority(s) and it (they) shall not assign or transfer the benefit of the Agreement to any other person save to any successor of all or part of its functions, property, rights and liabilities without the prior written consent of the CCG(s).

**(Please use singular or plural in GENERAL clauses above, depending on who is in the TCP area.)**

* 1. Notices

Any notice required to be served under the terms of this Agreement shall be given in writing and sent by pre-paid first class registered post to the addressee at its address set out above or to such other address as may be notified in writing to the other Party for that purpose and any notice so served shall be deemed to be received forty-eight (48) hours after the time at which it was posted and in proving service it shall be sufficient to prove that the notice was properly addressed and posted.

* 1. Waiver

The failure by either Party to insist upon the strict performance of any provision, term or condition of this Agreement or to exercise any right or remedy consequent upon the breach thereof shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.

* 1. No partnership

Nothing in this Agreement shall be construed as establishing or implying a partnership or joint venture between the Parties or shall be deemed to constitute either Party as the agent of the other or allow either Party to hold itself out as acting on behalf of the other.

* 1. Nothing in this Agreement shall be construed as an endorsement by:
		1. The CCG(s) of the Local Authority's (s’), its employees', agents', or sub-contractors' activities and the Local Authority(s) agree(s) that it (they) shall not do, cause or permit anything to be done which might lead any person to believe otherwise; or
		2. the Local Authority(s) of the CCG's (s’), its employees', agents', or sub-contractors' activities and the CCG(s) agree(s) that it (they) shall not do, cause or permit anything to be done which might lead any person to believe otherwise.

***(Amend to suit singular or plural CCG(s) and/or Local Authority(s) in “endorsement” paragraphs immediately above).***

* 1. Third party rights

A person who is not a Party to this Agreement shall have no right pursuant to the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

* 1. Reliance

The Parties acknowledge that in entering into the Agreement neither of the Parties has relied on any representation or statement which is not expressly included in this Agreement. All representations (save in respect of fraudulent misrepresentation), warranties, conditions and other terms whether implied by statute or otherwise which are not expressly included in this Agreement and which might otherwise relate to this Agreement are hereby excluded.

* 1. Further assurance

Each Party shall from time to time upon the request of the other Party, execute any additional documents and do any other acts or things which may reasonably be required to implement the provisions or the purposes of this Agreement.

* 1. Law and jurisdiction

This Agreement shall be considered as a contract made in England and shall be subject to the laws of England.

 Agreement signed by **(*from each authorised official from each partner CCG and Local Authority)*:**

Name

Organisation

Role/Position

Date

Name

Organisation

Role/Position

Date

SCHEDULE 1
Annual Voucher

PART 1 STATEMENT OF EXPENDITURE FOR THE YEAR 31 MARCH 2018

(If the conditions of the payment have been varied, please explain what the changes are and why they have been made.)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| *Patient ref no/identification* | *Description of Community Placement* | *Start of Placement (if in-year)* |  | *Total Annual Expenditure* |
|  |  |  |  |  |
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|  |  |  |  |  |
|  | *Total* |  |  |  |

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 NHS England in accordance with Directions made by the Secretary of State relating to section 256 of the NHS Act 2006.

Signed………………………………………………………………………….

Date…………………………………………….

Local Authority Chief Financial Officer (Section 151 Appointment), other relevant chief financial officer, or Chairman of voluntary sector organisation, as appropriate (see paragraph 6(2) of Directions).

**Certificate of independent auditor**

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 Local Authority and
* carried out such tests and 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
* the expenditure has been properly incurred in accordance with the relevant terms and conditions.

Signature\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name (block capitals) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Company / Firm \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*(\*Delete as necessary)*

Schedule 2
Service Specification