

APPENDIX 1

**NHS LEEDS NORTH CCG**

**AND**

**LEEDS CITY COUNCIL**

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**SECTION 256 FUNDING AGREEMENT:**

**Timely Transfers of Care – dementia and complex needs**

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**THIS AGREEMENT** is made the 5th day of May 2017

**BETWEEN:-**

1. **NHS LEEDS North CCG (“the CCG”)**, on behalf of the three NHS Leeds Clinical Commissioning Groups, whose principal offices are at WIRA House, Wira House, Wira Business Park, Leeds LS16 6EB  
  
and
2. **LEEDS CITY COUNCIL (“the Council”)** whose principal offices are at Leeds Civic Hall, Calverley Street Leeds LS1 1UR.

**BACKGROUND**

- (A) The CCG and the Council are required by virtue of section 82 of the National Health Service Act 2006 (“the 2006 Act”) to co-operate with one another in order to secure and advance the health and welfare of the people of Leeds.
- (B) The CCG is empowered by section 256 of the 2006 Act to make payments to the Council towards expenditure to be incurred by the Council in connection with the performance of any of the Council’s functions which in the opinion of the CCGs:
  - (a) have an effect on the health of any individuals;
  - (b) have an effect on or are affected by any NHS functions; or
  - (c) are connected with any NHS functions.
- (C) The CCG and the Council have agreed that the Council will commission new service developments and individual packages of care to support the transition from hospital and ongoing care needs for people with dementia. In particular, to offer options for recovery and care for people with more complex needs, who are at risk of delays leaving acute and specialist hospitals.
- (D) In consideration of the Council commissioning the services the CCG has agreed to make a contribution to the Council to support the development and provision of the ‘Timely Transfers Of Care – Dementia’ programme for the Leeds population on the terms set out in this Agreement.

## 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement these words and expressions have these meanings where the context allows:

“Accounting Year”	the period from 1 April in one year to 31 March in the next year;
“Agreement”	this S256 funding agreement;
“Annual Voucher”	the statement of compliance with conditions of grant and expenditure certification as set out in Schedule 2;
“Commencement Date”	The date upon which the Agreement takes effect;
“Contract”	the contracts , where applicable, entered into between the Council and the Provider(s) for the provision of the Services;
“Legislation”	any Act of Parliament or subordinate legislation within the meaning of section 21(i) of the Interpretation Act 1978, any exercise of the Royal Prerogative and any enforceable community right within the meaning of section 2 of the European Communities Act 1972, in each case in the United Kingdom;
“Provider”	the organisation(s) which have been engaged by the Council to provide the Services, this may also include Leeds City Council acting as a provider of services.
“Services”	the services and/or programmes which are to be commissioned to achieve the aims and objectives set out in Schedule 3;
“Specified Purpose”	The aims and objectives of the Health Inequalities fund – as set out in Schedule 3.
“Term”	the period during which the Agreement remains in effect;
“Termination Event”	the termination of the Agreement under Clause 6.2, 6.3 or 6.5;
“Transferred Sum”	the sum of money set out Schedule 1 and payable by the CCG to the Council in accordance with Clause 4;

"Working Day"	Monday to Friday inclusive in any week but excluding statutory holidays applicable in England.
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1.2 In this Agreement

- 1.2.1 The expressions "the CCG" and "the Council" shall include their respective successors in title and assigns.
- 1.2.2 References to any Legislation, statute, statutory provision, statutory instrument or direction shall be construed as a reference to that Legislation, statute, statutory provision, statutory instrument or direction as replaced amended extended or re-enacted from time to time and shall include any subordinate legislation made under any Legislation, statute or statutory provision.
- 1.2.3 The headings are inserted for convenience only and shall be ignored in construing the terms and provisions of this Agreement.
- 1.2.4 References in this Agreement to any Clause or Sub-Clause Schedule or Paragraph of a Schedule without further designation shall be construed as a reference to the clause sub-cause schedule or paragraph of a schedule to this Agreement so numbered.
- 1.2.5 Words importing the singular include the plural and vice versa.
- 1.2.6 Words importing any gender include any other gender.

**2. COMMENCEMENT**

- 2.1 This Agreement shall come into effect on the Commencement Date of xxxxxxxx 2018
- 2.2 Subject to Clause 6, this Agreement shall remain in force for a period of up to 1 year from the Commencement Date, to allow for monitoring and evaluation of the Services.

**3. CONDITIONS OF TRANSFER**

- 3.1 In consideration of the Council entering into Contract(s) with the Provider(s), the CCGs shall pay to the Council the Transferred Sum in accordance with Clause 4, subject to the following conditions and Clauses 7, 8 and 13:

- 3.1.1 that the Transferred Sum shall be used by the Council for the Specified Purpose and for no other purpose whatsoever without the prior written authorisation of the CCG;
- 3.1.2 that the Council shall regularly and frequently consult with the CCG over the content and operation of the Contract(s) between the Council and the Provider(s) which are to be funded;
- 3.1.3 that the Council shall promptly at the CCG written request enforce a Provider's obligations in the Contract(s) in relation to the Services on the CCG's behalf as though the CCG were itself a party to the Contract;
- 3.1.3 that receipt of the Transferred Sum shall be accounted for by submission of the Annual Voucher in accordance with Clause 5.

#### **4. THE TRANSFERRED SUM**

- 4.1 The CCGs shall pay the Transferred Sum to the Council as a single non-recurrent payment, in accordance with Schedule 1.
- 4.2 Unless otherwise stated all sums stated in this Agreement (including but not limited to the Transferred Sum) are inclusive of all applicable Value Added Tax (if any) or of any successor tax.

#### **5. APPLICATION OF TRANSFERRED SUM AND PRODUCTION OF VOUCHERS**

- 5.1 The Council shall sign the memorandum of agreement set out at Schedule 4. The Council shall re-sign the memorandum of agreement if required by the CCGs to take account of any subsequent additions to the sums of money to be paid under this Agreement.
- 5.2 At the end of each Accounting Year the Council shall complete an Annual Voucher in the form set out at Schedule 2. This shall be authenticated on behalf of the Council by the officer responsible under s151 of the Local Government Act 1972 for the administration of its financial affairs. The Council shall pass the completed voucher to its external auditor by no later than 30 September following the end of that Accounting Year. The Council shall arrange for the voucher to be certified by the auditor appointed under the provisions of the Audit Commission Act 1998 and submitted to the CCGs by no later than the following 31 December.

## **6. TERMINATION**

- 6.1 The Council or the CCG may terminate this agreement on the terms set out below.
- 6.2 The parties shall be entitled to terminate this Agreement immediately if as a result of any change in relevant Legislation, direction or guidance from any Secretary of State the CCG ceases to be empowered to provide funding under this Agreement
- 6.3 Either party shall be entitled to terminate this Agreement forthwith if the other party(s) is in material breach of its obligations under this Agreement and has been served with a written notice to remedy such breach within a reasonable time (not being less than thirty days) but it has failed to do so.
- 6.4 Where the CCG is terminating this Agreement for a breach of the Agreement or one of the specific provisions in this clause 6 it may rely on a single breach or on a number of breaches or repeated breaches that taken together constitute a material breach.
- 6.5 Either Party may terminate this Agreement by serving 6 months written notice on the other party.
- 6.6 Upon termination of this Agreement any provisions of this Agreement relating to any Accounting Year (or portion of an Accounting Year) prior to termination of this Agreement shall remain in full force notwithstanding termination and such termination shall be without prejudice to both parties' rights in respect of any antecedent breaches of this Agreement.
- 6.7 The termination of this Agreement shall not affect the coming into force or the continuation in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination or expiry.

## **7. REPAYMENT**

- 7.1 Upon the happening of a Termination Event, the Council shall repay to the CCG any unexpended portion of the Transferred Sum less any amounts which are properly due to the Provider(s) under the Contract(s).

- 7.2 If, in breach of Clause 3.1.1, the Council uses any of the Transferred Sum for anything other than the Specified Purpose then the Council shall repay the proportion of the Transferred Sum used other than for the Specified Purpose immediately to the CCGs.
- 7.3 If the Services are reduced or delayed under a Contract funded or part-funded through the Transferred Sum then the Council shall notify the CCG via the Governance structure described in Schedule 3, so that arrangements for managing any financial slippage can be agreed.

## **8. MEETINGS AND RECORDS**

- 8.1 The Council shall invite the CCG to attend relevant meetings between the Council and the Provider(s) in relation to the provision of the Services. The Council shall keep full and accurate minutes of every such meeting which is not attended by the CCGs.
- 8.2 The Council shall allow the CCG on reasonable notice to inspect all records, documents, correspondence with the Provider and other information as the CCG may reasonably require for the purpose of verifying the Council's observance and performance of the conditions of this Agreement.

## **9. EXCLUSION OF PREVIOUS ARRANGEMENTS**

The parties agree that this Agreement represents the entire agreement and understanding between the parties relating to the payment of the Transferred Sum to the exclusion of any other arrangements or understanding informal or otherwise between the parties.

## **10. NOTICES**

- 10.1 Any notice required to be given by any party to another shall be in writing and shall be served by sending the same by registered post or facsimile transmission/E-mail or by delivering the same by hand to the other party's principal address and any notice shall be deemed to have been served:
- 10.1.1 48 hours after posting if sent by registered post; and

10.1.2 2 hours after transmission if a notice is sent by facsimile transmission or e-mail save that where such deemed time of service is not during normal business hours the notice shall be deemed to have been served at the opening of business on the next Working Day; and

10.1.3 immediately on delivery if served by hand

## **11. WAIVER**

No failure or delay on the part of the CCGs to exercise any right or remedy under this Agreement shall be construed or operate as a waiver thereof nor shall any single or partial exercise of any right or remedy as the case may be and no waiver by the CCGs of any breach of this Agreement shall be effective unless agreed by the CCGs and the Council in writing.

## **12. ASSIGNMENT**

Neither party(s) shall be entitled to assign or sub-contract its rights or obligations under this Agreement to any person without the prior written consent of the other party.

## **13. RELATIONSHIP BETWEEN THE PARTIES**

Neither party(s) to this Agreement shall act as agent of or have the power or authority to bind or make any commitment on behalf of the other party or compromise the credit of the other party in any way nor shall this Agreement constitute a partnership between the parties and each party shall be responsible for its own obligations under this Agreement.

## **14. REVIEW AND QUARTERLY ACCOUNT**

14.1 The parties shall, where so requested by any party, meet within five days of request at a place and time to be arranged between the parties but in default of such agreement at a place and time to be decided by the CCGs acting reasonably.

14.2 Within five days of any request (whether at a meeting arranged under Clause 14.1 or by email and telephone correspondence or otherwise) the parties shall, acting reasonably and in good faith on a full open book basis, compare the amount paid by the CCGs to the Council with the amount actually paid by the Council to the

Provider(s) under the Contract(s) over the subsequent quarter. Where there is any shortfall in such amount paid by the Council to the Provider, the parties shall, acting reasonably and in good faith on a full open book basis, calculate a fair and reasonable rebate to the CCGs of any proportion of the relevant Annual Payment which was not paid on to the Provider, which the Council shall promptly refund to the CCGs.

- 14.3 The Deputy Director, Integrated Commissioning and Commissioning Manager, Dementia, will develop detailed plans for expenditure, in consultation with the multi-agency “Timely Transfers of Care – Dementia Strategy Group”. They shall obtain agreement to these plans via the integrated line-management and governance arrangements in place.
- 14.4 A report will be prepared within 12 months for the Integrated Commissioning Executive which will include the use of the monies transferred under this agreement.

## **15. VARIATION**

No variation of this agreement shall be permitted without the consent of both parties and such agreement having been recorded in writing by both parties in advance.

## **16. DISPUTES**

- 16.1 At the request of either party(s) a representative of the CCG and a representative of the Council shall meet to discuss any issue arising from the terms and conditions of this Agreement.
- 16.2 Where an issue arises which cannot be determined or agreed by the representatives referred to in Clause 17.1 the matter shall be referred to a separate meeting convened for the purpose and including the Accountable Officer(s) of the CCGs (or such other person as the CCGs shall deem appropriate) and the Director of Public Health (or such other person as the Council shall deem appropriate).
- 16.3 If the persons referred to in Clause 17.2 cannot resolve the matter within a reasonable period of time either party may require that the matter shall be referred to arbitration and the parties shall use reasonable endeavours to agree to the identity of the arbitrator. If an arbitrator cannot be agreed upon within a reasonable period either party may apply to the Chairman of the Institute of Arbitrators for the appointment of an arbitrator to resolve the dispute. The arbitrator shall act in accordance with the Arbitration Act 1996 and the parties shall bear the cost of the

Arbitration in such proportions as the arbitrator shall determine. The Arbitrator's decision shall be final.

**17. GOVERNING LAW**

The Agreement shall be governed by and construed in accordance with English Law and the parties hereby submit to the exclusive jurisdiction of the English Courts.

**18. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and accordingly the parties to this Agreement do not intend that any third party should have any rights in respect of this Agreement by virtue of that Act.

**19. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

**SIGNED ON BEHALF OF:**

**SIGNED by**

**for and on behalf of  
NHS LEEDS North Clinical  
Commissioning Group**

.....  
Signature  
.....  
Title  
.....  
Date

**SIGNED by**

**For and on behalf of  
Leeds City Council**

.....  
Signature  
.....  
Title  
.....  
Date

## SCHEDULE 1

### TRANSFERRED SUM

Non-recurrent Contribution by NHS LEEDS North CCG ,

YEAR	CCG	TRANSFERRED SUM
2017-18	NHS LEEDS North CCG:	£150,000
	NHS Leeds West CCG:	£240,000
	NHS Leeds South and East CCG:	£210,000
	<b>TOTAL</b>	<b>£600,000</b>

A single non-recurrent contribution is to be made to the Council in February or March 2018

## SCHEDULE 2

### SECTION 256 ANNUAL VOUCHER

LEEDS CITY COUNCIL

#### 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)

Scheme Ref No and Title of project	Revenue Expenditure	Capital Expenditure	Total Expenditure
Timely Transfers of Care - Dementia	£600,000	£0	£600,000
	<i>variation to this allocation to revenue / capital may be agreed subsequent to the transfer by the Director of Commissioning, Leeds CCG.</i>		

#### 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 NHS Leeds Clinical Commissioning Groups Partnership in accordance with the National Health Service (Conditions Relating to Payments by NHS Bodies to Local Authorities) Directions 2013.

Signed.....

Date.....

Director of Finance or Responsible Officer of the recipient

## 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 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 3

### The Services

#### Timely Transfers of Care - Dementia

**Aims:**

- Commissioning step-down facilities for people with dementia leaving hospital
- Commissioning clinical roles and/or specialist support to care homes to facilitate care planning, and support after the transition from hospital
- Commissioning individual funding packages for transition from hospital
- Managing financial risks and sustainability into 2018-19 arising from the above.

**Current Status:** A programme of work is in development involving commissioners, NHS providers, care home providers and third sector. A report is in preparation for Integrated Commissioning Executive on 28<sup>th</sup> Feb 2018. A “Timely Transfers of Care – Dementia Strategy Group” has been convened and is meeting fortnightly at St James Hospital.

**Impact:** The work programme is expected to make a significant contribution to developing appropriate care options for people with dementia and complex needs, thereby improving quality and choice for people and families, reducing placements made out-of-area, and reducing delayed transfers of care from hospitals.

**Funding Requested; £600,000**

## SCHEDULE 4

### Memorandum of Agreement Section 256 transfer

Reference number: Dementia Commissioning S256 2017/18

Title of scheme: Timely Transfers of Care - Dementia

**1. How will the section 256 transfer secure more health gain than an equivalent expenditure of money on the National Health Service?**

The transfer will enable NHS resource to be used more flexibly and enable joint working to eg:

- Support enhanced packages of care and placements agreed in 2017-18 (eg. under s117 aftercare) and sustain into 2018-19 if complex needs do not resolve..
- Develop specialist local authority provision of 'step-down' care, including joint provision with NHS providers. Again this requires sustained investment to manage ongoing support needs into 2018-19.

**2. Description of scheme (In the case of revenue transfers, please specify the services for which money is being transferred).**

Please see Schedule 3 for an overview of the service(s)

**3. Financial details (and timescales):**

Total Amount of Money to be Transferred and amount in each year (if this subsequently changes, the memorandum must be amended and re-signed)

Year(s)	Capital Sub-total	Revenue Sub-total	Total Amount
2017-18 NHS LEEDS North CCG	£	£150,000	£150,000
NHS Leeds West CCG		£240,000	£240,000
NHS Leeds South and East CCG		£210,000	£210,000
<b>2017-18 Total</b>	<b>£</b>	<b>£600,000</b>	<b>£600,000</b>
	<i>variation to this allocation to revenue / capital may be agreed subsequent to the transfer by the Director of Commissioning, Leeds CCG.</i>		

In the case of the capital payments, should a change of use as outlined in direction 4(1)(b) of the National Health Service (Conditions relating to the Payments by NHS Bodies to Local Authorities) Direction 2013 occur, both parties agree that the original sum shall be recoverable by way of a legal charge on the Land Register as outlined in direction 4(4) of those Directions.

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

The achievement of the desired outcomes (as per schedule 3) will be overseen by the Governing Body of Leeds CCG, and will be operationally managed by the Integrated Commissioning and Transformation Manager, Dementia, reporting to both Leeds City Council and NHS Leeds CCG.

**SIGNED by  
for and on behalf  
of  
NHS LEEDS North  
Clinical  
Commissioning  
Group**

.....  
Signature

.....  
Title

.....  
Date

**SIGNED by  
For and on behalf  
of  
Leeds City  
Council**

.....  
Signature

.....  
Title

.....  
Date