

**DATED**

**2013/14**

**(1) NHS ENGLAND (LONDON BRANCH)**

**(2) BROMLEY CLINICAL COMMISSIONING GROUP**

**(3) THE MAYOR AND BURGESSES OF THE LONDON  
BOROUGH OF BROMLEY**

**MEMORANDUM OF AGREEMENT  
SECTION 256 TRANSFER — NATIONAL HEALTH SERVICE ACT 2006  
SOCIAL CARE AND HEALTH**

Legal and Democratic Services  
London Borough of Bromley  
Civic Centre  
Stockwell Close  
Bromley BR1 3UH

Ref: L8 4/6/17/286

DATED2013/14

**Memorandum of Agreement  
Section 256 transfer — National Health Service Act 2006**

**Reference number:** LBB/CCG/NHSENGLANDgrant/2013-14

**Title of scheme:** NHS England allocation for DoH Social Care Grant

**Parties:** **NHS ENGLAND (London Branch)** 2nd Floor, Southside,  
105 Victoria Street, London, SW1E 6QT

**BROMLEY CLINICAL COMMISSIONING GROUP**  
Bassetts House, Broadwater  
Gardens, Orpington, Kent BR6 7UA (the "PCT") and

**THE MAYOR AND BURGESSES OF THE LONDON  
BOROUGH OF BROMLEY** Bromley Civic Centre,  
Stockwell Close, Bromley, Kent BR1 3UH (the "Recipient")

**1. How will the Section 256 transfer have a beneficial effect on the wider health and care system in the area of the Local Authority?**

Both The London Borough of Bromley and Bromley's Clinical Commissioning Group are committed to *Building a Better Bromley* through designing and delivery integrated health and care services for our residents. These services are there to respond to local needs and to keep our residents well and cared for but they are also designed to, wherever possible, promote independence and support our residents to manage any long term conditions and associated care needs in their community.

Getting our shared community based services right with clear care pathways in place is one way to achieve these aims and to prevent residents going into crisis and requiring an avoidable hospital admission and unnecessary delay in an acute setting which can create avoidable stress and is much harder for families and carers to manage.

This Section 256 has been drafted in partnership and taken through our Health & Wellbeing Board on 26<sup>th</sup> September 2013 with a focus on our Joint Strategic Needs Assessment (JSNA).

Both organisations propose to use the funding to deliver against 6 'schemes' as they are referred to in the NHS England template attached. Details on each scheme can be found in the attached template but, by way of a summary, the 6 areas look to maintain and sustain key community based services important to both organisations that are otherwise struggling to be kept operational due to the significant cuts. Social care budgets since 2010 has been cut by around £2.7bn – or 20 per cent. A further 10 per cent cut was announced to local government spending which will also impact upon social care.

The proposed schemes though go further than simply sustaining existing services, as this on its own will not provide the answers to delivering effective community based care over the coming years. Some of these schemes also look to accelerate integration and to support both organisations to integrate their commissioning structures ready for the Integrated Transformation Funding in 2015/16 where a joint local plan must be submitted by March 2014. Positive steps to integrations are apparent across many of these schemes and include:

- Drafting a shared Section 75 agreement
- Creating a joint commissioning executive
- Further integration of the dementia care pathway
- Reviewing existing joint funded packages and moving towards pooled budgets
- Targeted officer support to help develop the local Health and Wellbeing Board

The focus of all of these schemes of work is to maintain critical service levels and respond to pressure points in the system

Both organisations will be looking to use this funding for the commissioning of shared information, shared training and development as well as looking at clarifying shared governance arrangements to best manage limited resource across the CCG and LBB in the future.

**2. What will be the outcomes for service users which happen as a result of this Section 256 transfer?**

All the work that will be commissioned and service levels maintained will be in line with both partners' corporate objectives and will be championed collectively through the local Bromley Health and Wellbeing Board.

The main outcomes that both partners wish to achieve across the borough are:

- To reduce unplanned hospital admissions
- To reduce the need for long term care packages through proper crisis response and reablement
- To reduce the requirements for bed based care and provide more tailored health and care support in the home or in community settings
- To prevent any delays to discharge from acute into a primary care setting

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

NHS England must make payments under either or both of subsections (1) and (3) of section 256 of the 2006 Act to the local authorities listed in the Schedule.

The minimum amount which the Board must pay to the local authority is listed in the Schedule in respect of the relevant financial year is the amount identified in the Schedule as the local authority allocation for 2013/14 in relation to that authority.

NHS England must make arrangements for the local authority to provide it with information as to how the payments made in accordance with these Directions is being used by the authority

Total amount of money to be transferred by NHS England (if this subsequently changes, the memorandum will be amended and re-signed)

Year(s)	Amount	Date of Payment
2012/13	£4,260,838	2013/14
Total	£4,260,838	

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

Progress reporting will be taken through the Health & Wellbeing Board and the clinical commissioning executive and reported to NHS England

**4. The Grant Payment**

NHS England hereby agrees pursuant to its powers under Section 256 of the National Health Service Act 2006 to pay the amounts set out in Clause 3 of this Memorandum on the dates specified in Clause 3 (subject to Clause 4.2 of the Terms and Conditions annexed).

The Recipient hereby agrees to expend the payments made to it under Clause 5 of this Memorandum for purposes detailed in Schedule 1 – The Service Specification

**5. Terms and Conditions**

The Terms and Conditions attached to this Memorandum shall be deemed to be incorporated in this Memorandum and the parties agree to abide by the terms of the attached Terms and Conditions.

The defined terms used in this Memorandum shall have the meanings ascribed thereto in the Terms and Conditions.

These arrangements are reviewed on an annual basis

**IN WITNESS WHEREOF** the parties hereto have duly executed this Memorandum of Agreement as a deed the day and year first before written

Executed as a Deed by Bromley Clinical Commissioning Group whose Corporate Common Seal was hereunto affixed in the

Authorised Signatory and Seal

The Common Seal of the Mayor and Burgesses of the London Borough of Bromley was hereunto affixed in the presence of:-

Councillor

Head of Legal Democratic and Customer Services:

Executed by the NHS London Delivery Team

Authorised Signatory

## TERMS AND CONDITIONS (2007)

### 1 DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions the following expressions shall have the following meanings:

<b>"Act of Insolvency"</b>	in relation to a corporate body that-  (a) it is unable to pay its debts as defined in Section 123 of the Insolvency Act 1986 (referred to as "the Act" in the remainder of this definition) (and for the purposes of interpreting that section the words "it is proved to the satisfaction of the Court that" in subsections 123(1)(e) and 123(2) shall be ignored); or  (b) a proposal is made for a voluntary arrangement under Part I of the Act; or  (c) a petition is presented for an administration order under Part II of the Act; or  (d) a receiver and (or) manager or administrative receiver is appointed whether under Part III of the Act or otherwise; or  (e) it goes into liquidation as defined in Section 247(2) of the Act (other than a voluntary winding up solely for the purpose of amalgamation or reconstruction while solvent); or  (f) a provisional liquidator is appointed under Section 135 of the Act or a proposal is made for a scheme of arrangement under Section 425 of the Companies Act 1985;
<b>"this Agreement"</b>	means the Agreement constituted by the Memorandum of Agreement, these Terms and Conditions and all documents supplemental thereto
<b>"the Authorised Purposes"</b>	means the carrying out of the Services
<b>"Business Days"</b>	means a day (other than a Saturday or Sunday) on which the Banks are open in the City of London
<b>"the Capital Sum"</b>	means the total sums payable by the CCG pursuant to Clause 5.1 of the Memorandum of Agreement in exercise of the PCT's powers under Section 256 of the National Health Service Act 2006 and in accordance with this Agreement
<b>"Commencement Date"</b>	means the date hereof
<b>"the Memorandum of Agreement"</b>	means the memorandum of agreement between the CCG and the Recipient to which these Terms and Conditions are attached
<b>"the CCG"</b>	means Bromley Clinical Commissioning Group of Bassetts House, Broadwater Gardens, Orpington, Kent BR6 7UA

**“Recipient”** means The Mayor and Burgesses of the London Borough of Bromley of Bromley Civic Centre, Stockwell Close, Bromley, Kent BR1 3UH

**“NHS England”** means the NHS England (London Branch) 2nd Floor, Southside, 105 Victoria Street, London, SW1E 6QT

**“Repayment Event”** means any one or more of the following:-

- (a) the Capital Sum or any part of it not being used at any time for the Authorised Purposes (and so that a Repayment Event shall be deemed to occur on each day that it is not so used);
- (b) the Recipient committing or permitting an Act of Insolvency;
- (c) any remediable material breach by the Recipient of any of the provisions of this Agreement which the Recipient fails to remedy within a reasonable time of notice given by the PCT specifying the breach ;
- (d) any irremediable material breach by the Recipient of any of the provisions of this Agreement ;
- (e) the Authorised Purposes ceasing to be carried out unless an alternative use has been agreed between the parties beforehand;
- (f) any representation or warranty made by the Recipient under this Agreement or in any agreement certificate instrument or statement contemplated hereby or thereby or made or delivered pursuant hereto or thereto being incorrect or misleading in any material respect when made;
- (g) it becoming unlawful or impossible for the Recipient to perform and observe any of its obligations under this Agreement to perform and observe any of its obligations under the Provider Agreement.

**“Services”** The Services to be provided by or on behalf of the Council more specifically described at the Schedule 1 (Services Specification) hereto

**"Terms and Conditions"** means these Terms and Conditions

1.20 In the interpretation and construction of these Terms and Conditions:-

1.21 words importing the singular number only shall include the plural number and vice versa and where there are two or more persons included in the expression "the Recipient" obligations contained in

this Agreement which are expressed to be made by the Recipient shall be deemed to be made by such persons jointly and severally

1.2.2 any reference to any Act of Parliament shall include any modification extension or re-enactment thereof for the time being in force and shall also include all instruments orders and regulations for the time being made thereunder or deriving validity therefrom

1.2.3 the headings in this Agreement are inserted for convenience only and shall be ignored in construing the terms and provisions hereof

1.2.4 reference to a clause without further definition shall be reference to the appropriately numbered clause of these Terms and Conditions

## **2 REPAYMENT**

2.1 Subject to Clause 2.2 the Recipient agrees upon the occurrence of a Repayment Event to repay to NHS England or if requested to do so by NHS England to any other body nominated by NHS England.

2.2 NHS England may waive (in its absolute discretion) its right to make a demand under clause 2.1 in respect of any particular Repayment Event. Notwithstanding a waiver in respect of any Repayment Event NHS England shall remain entitled to make a demand in respect of each and every other Repayment Event which may occur or have occurred (whether before or after the particular Repayment Event which has been so waived).

2.3 On repayment pursuant to this clause 2 this Agreement shall automatically determine but without prejudice to any right of action of NHS England in respect of any breach by the Recipient of the terms of this Agreement

## **3 RECIPIENT'S COVENANTS**

The Recipient hereby covenants with NHS England:

3.1 At all times to use the Capital Sums for the Authorised Purposes and no other purposes

## **4 PAYMENT OF CAPITAL SUM**

4.1 The Recipient shall procure that the Recipient its employees or agents shall have reasonable access at all reasonable times during normal working hours to monitor the progress of the Services upon giving reasonable notice. The Recipient shall provide updates on the progress of the Works to the NHS England within 30 Business Days of receiving a request for the same

4.2 Subject to compliance by the Recipient with the terms of this Agreement, NHS England will



Pay the Capital Sum (or the relevant part thereof) to the Recipient as set out in Clause 3 of the Memorandum of Agreement within 30 days of receipt from the Recipient of valid VAT invoices up to the value of the Capital Sum provided that NHS England is satisfied that the Services have been carried out in accordance with this Agreement

4.3 not The Recipient shall immediately repay to NHS England any part of the Capital Sum that is used for the Authorised Purposes

## **5 . V O U C H E R S**

At the end of each financial year the Recipient shall provide to NHS England a voucher in the form specified by NHS England certified by the Recipient's auditors (and complying with any additional requirements of NHS England including without limitation requirements in respect of the authentication and certification of the voucher) in which the Recipient shall itemise the actual expenditure and certify that the conditions of the payment of the Capital Sum have been fully met or indicate such variations as have been agreed with NHS England.

## **6 . A S S I G N M E N T A N D S U B - C O N T R A C T I N G**

6.1 The rights and obligations of NHS England under this Agreement are freely assignable

6.2 The rights and obligations of the Recipient under this Agreement may not be assigned

## **7 . G O V E R N I N G L A W**

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

## **8 . N O T I C E S**

8.1 Any notice or communication under this Agreement shall be in writing

8.2 Any notice or communication to NHS England under this Agreement shall be deemed effectively served if sent either by registered post or delivered by hand to the Chief Executive at the address given in the Memorandum of Agreement or to such other officer and address notified from time to time to the Recipient for service on NHS England.

8.3 Any notice or communication to the Recipient hereunder shall be deemed effectively served if sent either by registered post or delivered by hand to the Recipient at the address given in this Agreement or to such other officer and address notified from time to time to NHS England for service on the Recipient

**9 . GENERAL**

91 No delay or omission of NHS England in exercising any right power or privilege under this Agreement shall operate to impair such right power or privilege or be construed as a waiver of it and a single or partial exercise of any right power or privilege shall not in any circumstances preclude any other or further exercise of it or the exercise of any other right power or privilege

9.2 If at any time any provision of this Agreement is or becomes illegal invalid or unenforceable in any respect the legality validity or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby

93 The Recipient shall from time to time upon the request of NHS England execute any additional documents and do any other acts or things which may reasonably be required to effectuate the purposes of this Agreement

94 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and accordingly the PCT and the Recipient do not intend that any other party shall have any right in respect of this Agreement by virtue of that Act

**10 . COUNTERPARTS**

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart

