

DIRECT PAYMENT AGREEMENT

**re an individual who lacks capacity to
request a direct payment**

**This is a legal Agreement. Please read it carefully. We will go
through it with you. However, if you wish you should seek
independent help.**

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PARTIES TO THE AGREEMENT

This agreement is between:

1. focus independent adult social work community interest company (CIC) of Heritage House, Fisherman's Wharf, North East Lincolnshire, DN31 1SY on behalf of North East Lincolnshire Clinical Commissioning Group
(referred to in this agreement as 'we' or 'us')

And

2. [] of []
being the name and address of the person authorised to receive the direct payment
(referred to in this agreement as 'you')

This agreement relates to:

[] of []
being the name and address of the person whose needs are to be met using the direct payment
(referred to in this agreement as 'the person')

BASIS OF THE AGREEMENT

All direct payments are made in accordance with the law, and our local policy. You can read our policy at: <https://livewell.nelincs.gov.uk/adult-social-care/direct-payments/>. We must only make direct payments where we are satisfied that a direct payment is an appropriate way to meet the person's needs, and offers an appropriate balance between individual outcomes and best value.

We have assessed the person's care needs and agreed to provide a direct payment to meet some or all of the needs identified in the person's support plan.

We have assessed the person's mental capacity and decided that the person lacks the capacity to request a direct payment. We have agreed that you are authorised to receive the direct payment on their behalf. This means you are acting as an authorised person, as set out in the Care Act 2014, and you have agreed to act as such.

You are willing and able to arrange the support detailed in the person's support plan yourself or with assistance. You will manage the direct payment account on the person's behalf and agree to be bound by the same terms, conditions and responsibilities as a person with needs in receipt of direct payments. You have also agreed to some additional responsibilities which are included in this agreement.

If you need help managing the direct payment you may access appropriate assistance.

You must abide by any conditions that we place on the direct payment. Any such conditions will be listed at the end of the agreement.

The person's needs will be reviewed annually and more frequently if required. Use of the direct payment will also be reviewed regularly.

Your additional responsibilities, as an authorised person

1. In addition to complying with any requirements that normally apply to a person with needs receiving a direct payment, you agree to:
 - Act in good faith
 - Act in a way that avoids a conflict between your own interests and those of the person (unless we have agreed with you in advance, in writing, that a potential conflict is necessary)
 - Act with care on behalf of the person, exercising at least such care and skill as you would in arranging your own affairs
 - Act in the person's best interests, working flexibly with us to arrange services and support which help meet the person's needs and outcomes identified in their support plan
 - Involve the person in decisions about their care as far as is reasonably practicable, giving them as much control and independence as possible. This includes making every effort to explain to them how the money is being used to meet the needs identified in their support plan
 - If the person has fluctuating capacity, ensuring during the periods they regain capacity that they are involved as much as practicable in decisions
 - Notify us promptly if the person regains relevant mental capacity, or there are any other changes in their circumstances which may affect the level of help they need, their support plan, and the amount of the direct payment
 - An enhanced criminal record check (DBS check) being carried out on you if you are not the spouse/ civil partner/ partner, close relative living in the same house as the person (or spouse/ civil partner/ partner of a close relative living in the same household as the person) or friend involved in the provision of care of the person or you are an incorporated or unincorporated body. This is legally required
 - Undertake a DBS check (or obtain verification that a DBS check has been undertaken) on people providing a service through use of the direct payment, if you are not the spouse/ civil partner/ partner, close relative living in the same house as the person (or spouse/ civil partner/ partner of a close relative living in the same house as the person) or friend involved in the provision of care of the person lacking capacity, or you are an incorporated or unincorporated body. This is legally required.
 - Inform us if you are giving up the role of authorised person under this agreement as soon as you no longer want to carry it out.
2. You understand that you are in a position of trust. The Fraud Act 2006 created an offence of 'abuse of position'. This applies when someone is expected to safeguard the interests of a person but instead acts against their financial interests. This constitutes a criminal offence for which you could be prosecuted.

3. You will manage any other matter necessary to the operation of this agreement, alone or in conjunction with any other representatives of the person.

THE DIRECT PAYMENT AND THE PERSON'S CONTRIBUTION

4. We will notify you in writing of the amount of the direct payment. The amount paid will be the gross weekly direct payment, less any financial contributions that the person is required to make as a result of a financial assessment. Payments will be made to you on a 4 weekly cycle.
5. Any required financial contribution must be paid into the direct payment account on a regular basis. Whilst the amount of care the person needs may vary from week to week, their weekly contribution is a fixed amount which should always be paid into the direct payment account. The weekly contribution should continue to be paid into the direct payment account whilst you are receiving the direct payment. Failure to make the weekly contributions may result in us ending the direct payment as a way of providing the person's support.
6. If the person's direct payment is to purchase equipment, we will make payment as a one-off sum.

WHAT YOU WILL DO

Finance

7. As directed by and agreed with us, you will either:
 - a) receive the person's direct payment via a direct payment card account offered by EML (EML Payments Ltd). Where this applies you will sign an additional set of terms and conditions
 - b) receive the person's direct payment via a third party supported direct payment account
 - c) set up a separate bank account which is only to be used for direct payments. If you have the authority to do so (as an attorney or deputy), you will open this account in the name of the person. If you do not have the authority to do so (as an attorney or deputy), you will open this account in your name. Whether the account is opened in the name of the person or in your name, you will hold and use this money solely for the benefit of the person. You will ensure that the bank understands that the monies held in the account are held for the benefit of the person, and do not belong to you.

However the direct payment is received, for simplicity we will refer throughout this agreement to the 'direct payment account'.

8. Unless we have agreed otherwise with you, any financial contributions must be paid into the direct payment account on a four-weekly basis. We recommend you set up, or arrange for the set up of, a Standing Order from the person's account to the direct payment account as the easiest way of paying the financial contribution.
9. You must inform us promptly of any changes in the person's financial circumstances.

10. It is your personal responsibility to check the direct payment account and any bank statements or other relevant information regularly to ensure payments have been received into the account, and there are sufficient monies in the account to meet expected expenditure/ the person's needs.

Use of direct payments

11. You agree to use the direct payment only in accordance with this agreement.

12. You agree to use the direct payment, including any contribution from the person's funds, only to meet the identified care needs in the person's support plan. Misuse of the direct payment may result in ending the direct payments as a way of providing the person's support. You must seek approval from us to pursue different needs from those set out in the person's support plan.

13. You agree not to use direct payments:

- for anything illegal such as drugs
- for gambling, lottery, bingo, raffle tickets, alcohol, tobacco
- for non-statutory liabilities such as tips, bonuses, ex gratia payments (we are not obliged to fund particular costs incurred on a discretionary basis)
- for gifts for the person or anyone else
- for accommodation costs such as rent, mortgages
- for any activity or item that exposes the person to serious risk from someone else/ themselves
- for purchase of a service or equipment which adult social care services is not responsible for such as services that the NHS should provide, or equipment that is not specified in the support plan
- for health-related services such as dentist, chiropody, physiotherapy
- for purchase of adult social care services from the CCG
- for household expenses such as food, personal items, utility bills or other day to day expenses
- for repayment of loans or other debts or putting into savings
- as a substitute for Disabled Facilities Grants
- for long term residential care (you may use it for respite care for up to a total of 4 consecutive weeks in any 12-month period) if this is part of the person's agreed direct payment package and in their support plan
- for employing or paying:
 - the person's partner (this means the other member of a married or unmarried couple, or civil partner)
 - a close relative living in the same household as the person (parent, parent-in-law, aunt, uncle, grandparent, son, daughter, son-in-law, daughter-in-law, stepson or stepdaughter, brother, sister or any partner of any of these if they are living in the same household as the person)(exceptions may be made where we consider this necessary; our written approval for any exception would be required in advance).

14. You agree to make any back up or emergency arrangements, in case the services the person needs are temporarily disrupted, for example, you agree to find replacement care at short notice. However, any problems should be referred as soon as possible to the person's case worker or Single Point of Access.

Equipment

15. You agree that, if the person's direct payment is used to purchase equipment, you will ensure that it is appropriately serviced and maintained and that where necessary staff receive training in its use. Equipment will also only be purchased where agreed in the person's support plan. You will own the equipment on behalf of the person, therefore it is your responsibility.

Use of care providers and personal assistants

16. You will act as the principal person in all contracts and agreements e.g., contracts for services, or employment.

17. Where you use home care provider organisations and/ or agencies to provide the person with personal care they must be registered with the Care Quality Commission (CQC) and you must check this is the case. We can advise you of the names of CQC registered organisations/ agencies.

18. If you contract with a home care provider organisation and/ or agency, employ one or more personal assistants, or enter into a contract for services with one or more personal assistants, it is your responsibility to negotiate the terms of your contract (e.g., the rates they charge).

19. If you employ one or more personal assistants, or enter into a contract for services with one or more personal assistants, we strongly recommend that you obtain a DBS check. Note that in some cases you must obtain checks (see paragraph 1). DBS checks must be made at the person's cost.

20. You agree to comply with all legal requirements which arise from arrangements you make using a direct payment.

Acting as an employer

21. You agree to comply with any legal requirements should you become an employer of one or more personal assistants, and to provide us with evidence of compliance on request. This includes (but may not be limited to):

- ensuring tax and National Insurance requirements are met
- ensuring relevant insurance is in place, including Employer's Liability Insurance and Public Liability Insurance
- complying with health and safety requirements, including ensuring a safe working environment as well as access to staff training
- treating staff properly and fairly
- offering a work-based pension (auto enrolment) unless the employee wishes to opt out. A declaration of compliance must be provided.

We strongly recommend that you obtain proper advice and support concerning employment law. We are not able to give legal advice.

22. You agree to ensure that if a personal assistant is treating themselves as self-employed, this has been accepted by Her Majesty's Revenue and Customs (HMRC) and

- you will provide us with a certificate proving HMRC's acceptance of the personal assistant's self-employed status
- you will provide evidence of the personal assistant's Unique Payable Tax Record Number
- you will ensure the personal assistant completes the form we provide you with to acknowledge that they are responsible for their tax, National Insurance etc
- If the self-employed status has not been accepted by HMRC, you will have to pay back tax and National Insurance contributions from private funds (we will not meet these costs).

Self-employed personal assistants will also need to provide evidence that appropriate insurance is in place.

23. If you employ someone, you will agree with the employee(s) how much you are going to pay, but it must not be less than the minimum wage or more than the amount of the person's direct payment. It is generally expected that direct payments will include an amount to remunerate any employee(s) at minimum wages only. Higher rates may be payable only where we have agreed this with you in advance. Where higher rates have not been agreed in advance, any additional remuneration must be met from private funds.

24. You agree to ensure a DBS check is undertaken where there are children under 18 living in the household where the person's care needs are being met. We strongly recommend that you carry out DBS checks on any staff you intend to employ or contract. Note that in some cases you must obtain checks (see paragraph 1). DBS checks must be made at the person's cost.

25. No one who is managing a direct payment (this includes you) must be employed to deliver care to the person, unless previously agreed with us, in writing, as necessary.

Maintaining records

26. You agree to keep clear financial records of the direct payment money you have received, along with any financial contributions from the person, and how these funds are being used to meet the assessed needs in the person's support plan. You must keep bank statements, records of expenditure and receipts.

27. Where you are employing a personal assistant, or contracting with a self-employed personal assistant, and managing payments to them yourself, you must keep:

- invoices or time sheets
- records of wage payments and other benefits or expenses paid
- payment of employee's holiday pay, sick pay and maternity pay
- deductions from employees' wages of tax, National Insurance, pension auto enrolment requirements or any other deduction.

28. You must allow us to look at these records if we ask you. You agree to keep all relevant records for the six years from the date of the payment period to which the invoice/ time sheet, payment or deduction relates.

Financial Monitoring

29. You agree to us auditing and monitoring the direct payment to ensure the direct payment is being managed and used properly. You will make records available to us on reasonable request. Failure to comply with reasonable requests may result in the direct payment being suspended or ended.

Review

30. When the direct payment is reviewed you agree to share relevant and accurate information with us about the person's care needs and the direct payment. You also agree to us speaking to:

- people who are providing the person's care (including personal assistants, care provider organisations or agencies) to ensure that support is being provided in line with the person's support plan and the direct payment is being managed and used appropriately.
- anyone who is acting as the person's representative or helping you in any way to manage the direct payment including helping you manage direct payment monies. This includes third party support providers.

31. If requested, you will revise any arrangements you have put in place should we believe they are inadequate to meet the needs identified in the person's support plan.

Repayment and reductions

32. You agree to repay some or all of the direct payment money to us if:

- services have been purchased to meet care needs at an advantageous cost (so creating a surplus in the direct payment account)
- direct payment monies have been misused or have not been used to meet the needs identified in the person's support plan
- monies have been paid to the direct payment account in error
- direct payment monies have not been fully used, for example because of a temporary change in circumstances (e.g., the person has a hospital stay or short-term respite or rehabilitation)
- you have not met any terms or conditions in this agreement; or
- the direct payment is terminated.

33. You acknowledge that the person's direct payments may be reduced where (by way of example):

- a needs assessment and/ or review identifies that the person's needs have reduced
- following assessment and/ or review, we are satisfied that a reduced amount is sufficient to meet the needs set out in the person's support plan
- a surplus has accumulated in the direct payment account.

Information sharing

34. You agree to us, along with any other representative appointed for the person (if applicable), sharing relevant personal information about the person in order to ensure that the person's identified needs are met appropriately.

35. You agree to provide us with any information we consider necessary in connection with the direct payment within 10 working days of us requesting it. Further, you agree to us requesting and receiving any information held by another person or organisation in connection with the direct payment (this includes third party support providers). Any such requests made by us will be made directly to a person or organisation holding the information. We will use this agreement as evidence that you have consented to us requesting and receiving information in connection with the person's direct payment.
36. With regard to any relevant risks identified in the person's support plan, you agree to share how these will be managed with anyone who provides care to the person or supports you in the management of the direct payment.
37. You agree to inform us of significant changes to the person's assessed needs or circumstances and of any temporary changes such as going into hospital, rehabilitation, care home (other than planned respite agreed in the person's support plan) and returning home.

In the event of death

38. You agree to ensure that the person's appointed executors and/or immediate family members are aware that in the event of the person's death the direct payment monies revert to us and must not be regarded as an asset of the person's estate. They will be required to cooperate with us in determining the final balance that we will recover, once any agreed outstanding payment commitments are deducted. Also if the expected amount is not available to be returned from the direct payment account, we may claim the amount from the estate.
39. You also agree to ensure that any bank holding the direct payment account is informed that the monies in this account belong to us.
40. You agree to use your best endeavours to work with us to resolve direct payment matters as quickly as possible following the person's death.

WHAT WE WILL DO

Making payments

41. We agree to pay the direct payment (less any contribution from the person) directly into the direct payment account. The weekly payment will be made 4 weeks in advance. Any one-off payments will be paid directly into the direct payment account (or if we have agreed to a one-off payment with no ongoing direct payment for care needs, we will pay into the person's personal bank account, but you will still need to provide receipts).

Conditions

42. We reserve the right to place such reasonable conditions on the management and use of the direct payment as we think fit to ensure acceptable arrangements are in place.

Review of Support Plan

43. We will review the person's support plan and the operation of the direct payment after 6 weeks for care and 6 months for finances, and at least annually thereafter. We have the right to increase or decrease the direct payment in line with the person's review/ reassessment. You can request a review/ reassessment of the person's circumstances at any time if you think that their care needs have changed. You will only receive a direct payment for as long as the person has needs which we are responsible for meeting, and we continue to think that a direct payment is an appropriate way of meeting those needs.

Repayment

44. We will require you to repay us any surplus monies in the direct payment account, having taken into account any agreed outstanding financial commitments. We will also recover any overpayments made to you. If a requested repayment is not made, this may mean the direct payment ends and the person's care is provided in a different way.

Stopping / suspending direct payments

45. We may suspend the direct payments, or stop them and terminate this agreement, and recover payments as necessary, in line with our debt recovery process:

- a) If we are satisfied that you have not complied with the terms and conditions of this agreement.
- b) If you notify us that you no longer want to receive the direct payment.
- c) If the person recovers relevant mental capacity and does not wish you to act as their authorised person/ us to pay the direct payments to you any longer.
- d) If it appears to us you are no longer capable of managing a direct payment, by yourself or with assistance. We may continue payments if we are reasonably satisfied that your inability will be temporary and another person or organisation acceptable to us is prepared to manage the payments on the person's behalf.
- e) If it appears to us that you are not acting in the person's best interests, or that the person's welfare will no longer be safeguarded and promoted through the use of a direct payment.
- f) If it appears to us that direct payments are no longer an appropriate way to meet the person's needs. This includes (but may not be limited to) situations where the direct payment has ceased to offer an appropriate balance between outcomes and best value i.e., a direct payment is no longer an effective use of public money.
- g) If for any reason, the person is temporarily unable to receive services.
- h) If, after a review/ reassessment, the person does not have needs for which we are responsible. Depending on the circumstances and need we will give written notice of the termination of this agreement (up to a maximum of 28 days).
- i) If the direct payment has been inappropriately used (either intentionally or unintentionally), or you have shown yourself incapable or unwilling to manage the direct payment correctly.
- j) If the person's financial contributions are not made to the direct payment account on a regular basis.
- k) If you fail to comply with the review or financial auditing/ monitoring process, including failing to provide requested information.
- l) If the person is admitted into a care home on a long stay basis.
- m) If you have failed to disclose any relevant information that should have been taken into account when calculating the direct payments.

- n) If we suspect fraud or any other criminal activity has taken place concerning the direct payment, we may refer the matter for investigation including to the police.
- o) Regulations prohibit us from making the direct payments, for example if you or the person become the subject of certain mental health or criminal justice legislation.
- p) You die and there is no other person who we are satisfied is suitable to receive direct payments on the person's behalf (and who is willing to sign an agreement with us).

Going into hospital

- 46. You agree to inform us of when the person goes into hospital and when they return home. The direct payment is likely to be suspended while the person is in hospital.
- 47. Where the person goes into or returns home from hospital, you are responsible for notifying any care provider organisation or agency, or any personal assistants, from which the person receives care. It is your responsibility to cancel the care that the person will not receive whilst in hospital, in line with the terms of your agreement with the organisation/ agency, or personal assistants.
- 48. Any temporary retainer payable to a personal assistant must be agreed with us. Any financial contribution that the person makes must continue to be made during any period in which a retainer is paid.

ENDING THIS AGREEMENT AND RECOVERY OF PAYMENTS

- 49. The direct payment may be terminated for reasons stated in paragraph 45 above or in the event of the person's death.
- 50. We may end this agreement by telling you in writing and, depending on yours and/ or the person's circumstances and need, this will be a maximum of 28 days.
- 51. You may end this agreement by giving 28 days' notice in writing.
- 52. If we consider the person still has needs for which we are responsible, we will work with you to plan how the person's future needs can be appropriately met.
- 53. If the person no longer has needs identified for which we are responsible, the direct payment will end and be dealt with in accordance with the terms in this agreement.
- 54. Any direct payment monies remaining in the direct payment account following termination of this agreement must be returned to us once all outstanding bills are paid and employer responsibilities met. We will write to you, or where the person has died, to their appointed executors and/or immediate family members to request this money.
- 55. Direct payment monies do not form part of the person's estate. Failure to return the expected direct payment monies may result in us making a claim against the person's estate. (See paragraph 38 above).

COMMENTS, COMPLAINTS AND COMPLIMENTS

56. You have the right to comment, complain and compliment under our procedures. You will be given a leaflet to explain how to do this.

GOVERNING LAW

57. This agreement shall be governed by and construed in accordance with the law of England and the parties to this agreement irrevocably submit to the exclusive jurisdiction of the English courts.

ANY CONDITIONS PLACED ON THE DIRECT PAYMENT

58. We are permitted to place any conditions on your direct payment as we think fit. We will do this where we believe it is necessary to ensure that the direct payment arrangements are appropriate to meet the person's needs. Any conditions will be listed below and kept under review:

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SIGNATURES

Signature - practitioner

Signed:	<i>(signature of worker on behalf of focus)</i>
Name:	<i>(printed name of worker on behalf of focus)</i>
Date:	<i>(date of worker's signature)</i>

I declare that the information I have given on this agreement is correct and complete and I will inform North East Lincolnshire Clinical Commissioning Group (CCG) of any changes in circumstances. I understand that if I knowingly provide false information this may result in termination of payments and I may be liable for prosecution and civil recovery proceedings. I consent to the disclosure of information from this form to and by the CCG, focus and NHS Protect for the purpose of verification, prevention, detection and prosecution of fraud and to the retention of this agreement for a minimum period of two years.

Signature – authorised person

Signed:	<i>(signature of person authorised to receive the direct payment)</i>
Name:	<i>(printed name of person authorised to receive the direct payment)</i>
Date:	<i>(date of authorised person's signature)</i>