

## Direct Payments Agreement for

### Authorised or Nominated Person with payment card account

This agreement sets out the responsibilities and obligations of:

#### Gloucestershire County Council (GCC) and

Name: \_\_\_\_\_ (the Authorised or Nominated Person,  
referred to in this agreement as “the Direct Payment Recipient”)

Address: \_\_\_\_\_

In relation to the provision of Direct Payments for:

Name: \_\_\_\_\_ (the Service User)

Address: \_\_\_\_\_

**I consent to GCC sharing and obtaining information relevant to my Direct Payment from other professionals and/or organisations e.g Direct Payment Support Service Provider**

**I consent to receive Direct Payments on behalf of the above named Service User and confirm that I understand and will comply with the conditions contained in the attached agreement.**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

(Authorised or Nominated Person)

Relationship of Authorised Person to Service User: \_\_\_\_\_

Signature of witness: \_\_\_\_\_

Name of witness: (please print): \_\_\_\_\_

Date: \_\_\_\_\_

Agreed on behalf of Gloucestershire County Council: \_\_\_\_\_

Name and position of officer (please print): \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

**Please study this document (8 pages) and then read and sign the DECLARATION on page 8 to confirm your legal relationship with the Service User**

## **Authorised or Nominated Person?**

The responsibilities of the Authorised and Nominated Persons are identical but they are appointed differently depending on whether the Service User themselves has capacity to manage a DP.

An Authorised Person is appointed by the council to operate and take full management responsibility for a Direct Payment for a Service User who LACKS capacity to manage it themselves. You must tell GCC if you think that the Service User you receive the Direct Payment for is able to make their own decisions again.

A Nominated Person is selected by a Service User with capacity to manage a Direct Payment for them because they wish the Nominated Person to take on the full responsibility of managing and operating the Direct Payment on their behalf.

In both cases the Authorised or Nominated person is required to act in the Service Users 'best interests' within the meaning of the Mental Capacity Act 2005 which requires that they should consult with the service user and involve them as far as they are able in any decisions about their care.

## **Introduction to Direct Payments**

The Council has carried out an assessment of needs and determined that the Service User's needs as identified in the attached Support Plan should be met.

The Council and the Direct Payment Recipient have agreed that the Direct Payment Recipient should take direct responsibility for the provision of the services required to meet the Service User's needs.

The Direct Payment Recipient has agreed to make all necessary arrangements to ensure the said services are provided, with support if required.

The Council has agreed to make the arrangements to fund the provision of the said services as set out in this agreement.

Reference in this agreement to the use of the Direct Payment by the Direct Payment Recipient shall include the Service User's assessed financial contribution.

## **Responsibilities of the Council:**

The Council Agrees:

1. To set up a Prepayment account for the recipient of the Direct Payment
2. To make Direct Payments into the Direct Payment Recipient's account in accordance with the details listed in the Direct Payments Schedule, in order to meet the Service User's assessed eligible needs outlined in the Support Plan.
3. To make Direct Payments at the agreed frequency.
4. To provide information in relation to the use of Direct Payments.
5. To review the Service User's situation within 8 - 12 weeks, to decide whether the service is meeting the assessed needs.
6. To reassess the needs of the Service User and the operation of this agreement annually, or more frequently, to determine whether the assessed needs have changed, how arrangements for the provision of the services are being managed, whether the Direct Payment Recipient remains willing to receive Direct Payments, and whether the Direct Payment Recipient remains able to manage the Direct Payments.
7. To increase or decrease the amount of Direct Payments paid at any time following a reassessment of needs which results in the revision of the Support Plan, and to give appropriate notice of any changes. (at least 2 week's notice in writing stating the reasons)
8. To review the amount of the Direct Payment on 1 April each year in respect of contracted rates for respite/domiciliary care.
9. To meet the agreed priority needs of the Service User as set out in the Support Plan if the arrangements made by the Direct Payment Recipient break down for any reason. If necessary GCC will commission alternative services to ensure that the Service User's needs are met.
10. To ensure that regular checks are undertaken on the management of Direct Payments and provide advice and support or take corrective action where issues are identified.
11. To undertake a financial audit annually or more regularly if the Council deems it appropriate and take appropriate action for the recovery of any money due as a result of ending the Direct Payment.
12. In the event of the Service User's death, the Council will consider what contractual responsibilities existed at the time of death when determining what sum is to be repaid to the Council. Any monies held in the Direct Payment

Recipient's Direct Payments account will not form part of the Service User's estate.

**The Council will not:**

- Have any liability for the service arranged by the Direct Payment Recipient other than providing Direct Payments.

**Responsibilities of the Direct Payment Recipient:**

The Direct Payment Recipient agrees:

13. To manage the bank account (set up by the Council) for the sole purpose of securing services that meet the care needs identified in the Support Plan. This account may only be used for monies relating to Direct Payments (including the Service User's assessed financial contributions and any additional voluntary payments that they may make to procure increased services)
14. To use the Direct Payment for the purchase only of those services that meet the assessed needs identified in the Support Plan.
15. To ensure the necessary arrangements are made to pay, into the bank account, any financial contribution towards the cost of the services assessed in accordance with the Council's charging policy.
16. To ensure the necessary arrangements are made to adjust any financial contribution towards the cost of the services assessed in line with annual changes in state benefits following the April review. A new Schedule of Payments may be issued as a result of any such changes but a new Direct Payment Agreements will not be issued in this situation.
17. To secure services and comply with all safety and legal requirements that may arise in making such arrangements.
18. To pay all invoices and costs relating to the purchasing of services using the Direct Payment on time, including employee costs, any services purchased from an agency or organisation and any managed bank account or payroll services.
19. To ensure that all the legal obligations and requirements which relate to the purchase of services and employment of people are met and kept up to date. This includes taking on the full responsibilities of being the employer of any PA's and may include:
  - Appropriate recruitment procedures,
  - Disclosure & Barring Service checks,
  - Purchase of Public and Employer's Liability Insurance,
  - Arrangement of relevant training, to provide employees with a safe working environment.

20. To have a contingency plan that can be implemented if the arrangements for the provision of service that meet the assessed care needs break down.
21. To keep for a period of 6 years (plus the current year) and make available to the Council on request, documents relating to the Direct Payment in order for financial audits to be carried out on expenditure. Documents include:
  - Completed timesheets including start and end times of shifts worked, holiday and sickness records – if relevant
  - PAYE, National Insurance and any other payroll records, as applicable
  - Related invoices
  - Related receipts
  - Items purchased as specified in the support plan
  - Items purchased using funds from the Direct Payment Account
  - Insurance documents
22. To manage any changes with agencies, organisations or employees from which services are obtained, following an increase or decrease in Direct Payments.
23. To notify, and /or advise next of kin/executor that, the Council must be informed at the earliest opportunity of any changes in circumstances which would affect the Service User's assessed needs or entitlement to Direct Payments. This will include any changes in capacity to consent or ability to manage Direct Payments or in the event of the death or permanent admission to care of the Service User.
24. To notify or advise next of kin/executor that in the event of death the Direct Payment account and any funds contained in it will not be regarded as an asset of the estate.
25. To notify the Council if they find themselves unable to continue with the responsibilities of being an Authorised or Nominated Person.
26. Following the ending of Direct Payments to provide, or arrange for the next of kin/executor to provide, documents relating to Direct Payments in order for a final financial audit to be undertaken and recovery of any money due. If the expected amount is not available to be returned from the Direct Payment account the Council may claim the amount from the Service User's estate.
27. To repay the Council Direct Payment funds or any part of it should a request be made to do so in the manner agreed with the Council. Options may include deducting an agreed amount over a specified period or the Direct Payment Recipient making a repayment to the Council, or suspension of payments for a limited period. This may be due to any of the following reasons:
  - The Direct Payment or any part of it has not been used to secure the provision of services, or some part of the services that meet the assessed needs.
  - There has been an over payment.

- The conditions of this agreement have not been met.
- Payment has been received by the Direct Payment Recipient from a third party for the same services to meet the same needs.
- Money has been misspent from the Direct Payment bank account.

**The Direct Payment Recipient will not:**

- Make cash payments from the Direct Payments account (unless this is required in order to meet eligible needs and explicitly agreed in the Support Plan)
- Use the Direct Payment to pay themselves for any services.
- Use the Direct Payment to secure services from a partner, a close relative or anyone else that lives in the service users household unless otherwise agreed by the Council in writing.
- Use the Direct Payments to buy health services, long term residential care, to pay household bills, to buy food or other personal expenses.
- Use the Direct Payments to pay any other charges owed to the Council.

**Joint Agreement**

The Council and the Direct Payment Recipient agree that:

28. If, in the opinion of the Council, the person or organisation appointed by the Direct Payment Recipient is either not able to provide an adequate service or is unfit to provide a service, the Council has the right to require a change to the person or organisation who is providing the service.
29. The Direct Payment Recipient has the right to complain under the County Council's Adult Social Care complaints procedure about the operation of this agreement.

## **Suspension and termination of the Direct Payment Agreement.**

30. The Council may suspend payment of Direct Payments temporarily if the Service User is admitted to hospital, extended respite care or are otherwise temporarily unable to receive services. Any decision to suspend payment will take account of any reasonable existing liabilities including periods of notice relating to service arrangements.
31. The Council has the right to suspend or stop the Direct Payment if it is decided that the arrangements made for purchasing services are not adequate to meet the needs and outcomes of the Support Plan or if there are concerns for the safety of the Service User.
32. The Council has the right to suspend or stop the Direct Payment if any of the terms and conditions of this agreement have not been met or if the Direct Payment ceases to be an appropriate way of meeting the Service User's needs.
33. The Council will terminate this agreement with immediate effect if any part of the Direct Payment is used for the following purposes:
  - Anything illegal
  - Gambling
  - Investment
34. The Council will consider the Direct Payment Recipient's contractual and statutory responsibilities when determining the balance of the Direct Payment to be repaid to the Council in the event of the Direct Payment Recipient suddenly becoming permanently unable to manage Direct Payments.
35. The Council will stop the Direct Payment when the entitlement to Direct Payments has ended or Direct Payments are no longer required.
36. The Council will consider the Direct Payment Recipient's contractual and statutory responsibilities when determining the balance of the Direct Payment to be repaid to the Council in the event of the death of the Service User.
37. Subject to the Council's right to terminate the agreement with immediate effect under paragraph 33 above, either party may terminate this agreement by giving to the other party 4 week's notice in writing. The period of four weeks will commence on receipt of the written notice.

### **Attachments:**

- ❖ Support Plan
- ❖ Schedule of Direct Payments
- ❖ Adult Social Care Direct Payments Guide

**DECLARATION- Please sign (a), (b) or (c) below**

I have read the above terms and conditions of appointment as an '**Authorised or Nominated person**' and consent to receive and manage the Direct Payment in accordance with these terms and conditions on behalf of the named Service User.

**(a) I am the legal representative** of the above named Service User either as a Lasting Power of Attorney, Enduring Power of Attorney or a court appointed Deputy under section 16 of the mental capacity Act.

Signed (Authorised/Nominated Person).....

Date .....

Relationship of Authorised/Nominated Person to Service User .....

**(b) I am not the legal representative but there is a legal representative** who has powers relating to decisions about securing community care services to meet the Service User's needs. I have the consent of this legal representative to act as the 'authorised person'.

The legal representative is

Name: .....

Address.....

.....

Tel No: .....

Signed (Legal Representative).....

Date.....

Signed (Authorised/Nominated Person).....

Date.....

Relationship of Authorised/Nominated Person to Service User .....

**(c) There is no legal representative** and I am willing to receive and manage a Direct Payment to purchase services or activities that will meet the assessed eligible social care needs of the above named service user.

Signed (Authorised/Nominated Person).....