

# **Cannock Chase, East Staffordshire, North Staffordshire, South East Staffordshire and Seisdon Peninsula, Stafford and Surrounds and Stoke-on-Trent Clinical Commissioning Groups**

## **Personal Health Budgets Third Party Agreement**

<b>Version:</b>	1.0
<b>Ratified by:</b>	Staffordshire and Stoke-on-Trent CCGs Governing Bodies Meeting in Common
<b>Date ratified:</b>	29 <sup>th</sup> October 2020
<b>Name of responsible committee/ individual:</b>	Staffordshire and Stoke-on-Trent CCGs Governing Bodies Meeting in Common
<b>Date reviewed:</b>	
<b>Review date:</b>	October 2021
<b>Date of first issue:</b>	December 201

## **Personal Health Budget (PHB) Summary Sheet**

### **1. Person**

Patient Name: \_\_\_\_\_

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

\_\_\_\_\_

### **2. Representative (if applicable)**

Representative Name: \_\_\_\_\_

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

\_\_\_\_\_

### **3. Third Party**

Third Party Name: \_\_\_\_\_

Third Party Address: \_\_\_\_\_

\_\_\_\_\_

### **3. Payments:**

One-Off PHB Payment £ \_\_\_\_\_

First PHB Payment £ \_\_\_\_\_

Regular PHB Payment (per week)£ \_\_\_\_\_

Total PHB Payment (per annum) £ \_\_\_\_\_

Regular Personal Health Budget Payments start date: \_\_\_\_\_

### **4. Support Team**

PHB Nurse Name \_\_\_\_\_

## **Personal Health Budget (PHB) Terms**

This is an agreement between **[Insert name of CCG]** (drop down box) and either the Patient named above or their Representative or Nominee and a Third Party.

If you have any concerns about the content of this agreement, or any other queries in relation to it, you are advised to seek assistance from your PHB Nurse.

The CCG encourages you to take independent legal advice before signing this agreement.

### **Parties**

This Agreement is made between:-

(1) **[Insert name of CCG]** of **[Insert CCG's address]** 2NJ (the "CCG");

AND

(2) **[[Name of Patient]** of [insert Patient's address] (the "Patient");]

[OR]

**[[Name of Representative]** of [insert Representative's address] (the "Representative");]

AND

(3) **[Name of Third Party]** of [insert Third Party's address] (the "Third Party")

together the "Parties" and each a "party"

### **1 The Agreement**

1.1 This Agreement is made up of:

- 1.1.1 The PHB Summary Sheet
- 1.1.2 The PHB Support Plan
- 1.1.3 The PHB Terms

1.2 If there is any conflict or ambiguity between the terms of the documents listed in clause 1.1, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.

1.3 This Agreement should also be read alongside the Personal Health Budgets Policy.

1.4 This Agreement is made between the CCG, the Patient or their Representative, and the Third Party who agree that, subject to the terms of this Agreement, the Third Party will receive payments on behalf of the Patient from the Personal Health Budget agreed by the CCG and the Patient or their Representative.

- 1.5 Defined terms have the meaning set out in Clause 2 of this Agreement.
- 1.6 References to clauses are to clauses of this Agreement and references to paragraphs are to paragraphs of the schedules to this Agreement.
- 1.7 The CCG has assessed the Patient's need for Support and is satisfied that the Patient or their Representative is capable of managing, with the assistance of the Third Party, Personal Health Budget Payments from the CCG, which shall be paid into the Bank Account which shall be held and administered by the Third Party.
- 1.8 The Patient or their Representative and the Third Party must only use the Bank Account into which Personal Health Budget Payments under this Agreement are paid by the CCG for the purposes of securing Support as agreed with the CCG in the Patient's Personal Health Budget Support Plan and for no other purpose.
- 1.9 The rights and responsibilities of each of the Parties are as set in Schedule 1.
- 1.10 The Third Party agrees that it will enter into an appropriate agreement with the Patient or their Representative in order to record the details of any services that it agrees to provide to the Patient or Representative in connection with this Agreement and the management of the Patient's Personal Health Budget. The agreement will also record the details of any responsibilities which are to be assumed by the Patient or their Representative. The Third Party will supply the CCG with a copy of its agreement with the Patient or their Representative (and any associated documents) upon signature or any variation and in any event within 30 days of any request being made by the CCG.
- 1.11 If there is an inconsistency between any of the provisions of this Agreement and the provisions of the Third Party's agreement with the Patient or their Representative, the provisions of this Agreement shall prevail.
- 1.12 Subject to clause 5.9, this Agreement will come to an end with immediate effect upon any change in the law which makes it unlawful for either the Patient or their Representative, the Third Party or the CCG to carry out their respective obligations under this Agreement.
- 1.13 Upon termination of this Agreement, howsoever arising, all monies held by the Third Party, having been received from the CCG, shall be repaid immediately to the CCG or as directed by the CCG. The Third Party will provide a full account of the balance returned and monies spent.

## 2 Definitions

**Agreement** means this agreement (including all Schedules annexed hereto), between the CCG, the Patient or their Representative, and the Third Party in respect of the use of the Bank Account held by the Third Party to receive the Patient's Personal Health Budget Payments from the CCG.

**Bank Account** means the bank account held and administered by the Third Party as agreed by the Patient or their Representative and approved by the CCG and into which

Personal Health Budget Payments are paid under the terms of this Agreement. This may include a CCG approved virtual wallet.

**Clinical Commissioning Group (CCG)** means the commissioner who is responsible for the commissioning of healthcare services in a specific area and will work with local authorities and other agencies who provide health and social care locally to make sure that the local community's needs are being met.

**Close family member** means: a) the spouse or civil partner of the Patient; b) someone who lives with the Patient as if their spouse or civil partner; c) their parent or parent-in-law; d) their son or daughter; e) son- in- law or daughter- in- law; f) stepson or stepdaughter; g) brother or sister; h) aunt or uncle; i) grandparent; or j) the spouse or civil partner of (c)- (i), or someone who lives with them as if their spouse or civil partner. These include relationships deriving from fostering or adoption arrangements.

**DBS** means the Disclosure and Barring Service or any replacement or successor service to it.

**Employment Costs** means costs agreed by the CCG and associated with the employment of staff by the Third Party for the purpose of this Agreement, including wages, tax, national insurance, DBS checks, training, payroll and insurance but excluding sums payable as a consequence of:

- Redundancy, the risk of which the Third Party is **required** to cover by a suitable policy of employers' liability insurance;
- The mismanagement of the employer/employee relationship;
- Any kind of employment disputes – including Employment Tribunal claims and County Court claims, settlements or awards.

**First PHB Payment** means the payment made to the Third Party in accordance with clause 4.3.1 of this Agreement and the PHB Summary Sheet and paid into the Bank Account by the CCG.

**One-Off PHB Payment** means the payment made to the Patient or their Representative in accordance with clause 4.2.1 of this Agreement and the PHB Summary Sheet and paid into the Bank Account by the CCG.

**Patient** means the person, named in this Agreement in respect of whom the Personal Health Budget Payments are to be made.

**Personal Health Budget (PHB)** means the budget for provision of health care services to the Patient made by way of Personal Health Budget Payments in accordance with this Agreement.

**Personal Health Budget (PHB) Payments** means the payments made to the Third Party on behalf of the Patient in accordance with clause 4 of this Agreement and paid into the Bank Account by the CCG.

**Personal Health Budgets Policy** means the policy published by the Cannock Chase, East Staffordshire, North Staffordshire, South East Staffordshire and Seisdon Peninsula, Stafford and Surrounds and Stoke-on-Trent Clinical Commissioning Groups as may be amended from time to time.

**Personal Health Budget (PHB) Support Plan** means the plan which the Patient or their Representative develops with appropriate personalised assistance, and which describes the health outcomes they want to achieve and the services to be secured by means of Personal Health Budget Payments to achieve the health outcomes. This plan is agreed by the Patient or their Representative and the CCG.

**PHB Nurse** means the person nominated by the CCG to monitor and review the making of Personal Health Budget Payments in accordance with Paragraph 2.2 of Schedule 1.

**PHB Summary Sheet** means the summary sheet at the front of this Agreement as may be amended from time to time in accordance with the terms of this Agreement.

**PHB Terms** means the terms that form part of this Agreement, as may be amended from time to time in accordance with the terms of this Agreement.

**Representative** means a person who is appointed by the Court of Protection to act as a Deputy in relation to matters relevant to the Personal Health Budget, the holder of a relevant Lasting Power of Attorney, or a person agreed by the CCG as being appropriate to act in the best interests of the Patient in compliance with the requirements specified in [sections 4\(1\) to \(7\)](#) of the Mental Capacity Act 2005 in relation to the Personal Health Budget.

**Support** means the arrangements made to meet the Patient's health and personal care needs as specified in the Personal Health Budget Support Plan.

**Total PHB Payment** means the payments made to the Third Party in accordance with clause 4.3.3 of this Agreement and the PHB Summary Sheet and paid into the Bank Account by the CCG.

### 3 Third Party

3.1 Any Third Party to whom the CCG is to make Personal Health Budget Payments under the terms of this Agreement must:

3.1.1 be considered appropriate by the CCG;

3.1.2 agree, with the CCG and the Patient or their Representative, the basis on which it shall act on the Patient's behalf in relation to the Personal Health Budget Payments and shall enter into an agreement with the Patient or their Representative to record the details of those arrangements;

3.1.3 act in the Patient's best interests when securing the provision of Support and services in respect of which Personal Health Budget Payments are made;

3.1.4 provide assistance to the Patient or their Representative in respect of all contractual arrangements that the Third Party enters into for the Patient's benefit and which are secured by means of Personal Health Budget Payments;

- 3.1.5 provide assistance to the Patient or their Representative in respect of all contractual arrangements that the Patient or their Representative enters into which are secured by means of Personal Health Budget Payments;
- 3.1.6 use the Personal Health Budget Payments only in accordance with the Personal Health Budget Support Plan, the terms of this Agreement and any agreement it has entered into with the Patient or their Representative; and
- 3.1.7 agree to be subject to and undergo an enhanced DBS check.
- 3.2 The CCG will agree to the making of Personal Health Budget Payments to the Third Party on the Patient's behalf, subject to being satisfied that the Third Party is capable of managing the Personal Health Budget Payments.
- 3.3 The CCG will require the Third Party to apply for an enhanced DBS certificate before giving its consent to making the Personal Health Budget Payments to the Third Party and entering into this Agreement with the Third Party.
- 3.4 The Patient or their Representative shall provide four weeks' written notice to the CCG if they wish to change the identity of the Third Party or terminate this Agreement. Following receipt of such a notification, the CCG may: stop the making of Personal Health Budget Payments, consider paying the Personal Health Budget Payments to the Patient or their Representative directly (which will require the Patient or their Representative to enter into a Direct Payments Agreement with the CCG) or to a different third party (subject to the CCG entering into another Third Party Agreement with that third party) chosen by the Patient or their Representative and may as soon as reasonably possible review the Personal Health Budget Support Plan.
- 3.5 In the event that the Third Party wishes to cease being the Third Party for the purposes of this Agreement, the Third Party must provide four weeks' written notice to the Patient or their Representative and the CCG.
- 3.6 If as a result of clause 3.4 Personal Health Budget Payments in respect of the Patient are stopped, it will be the Third Party and the Patient or their Representative's joint responsibility to ensure that any surplus from the Personal Health Budget Payments held by them (in the Bank Account or otherwise) under this Agreement are repaid to the CCG.
- 3.7 If as a result of clause 3.5 Personal Health Budget Payments in respect of the Patient are stopped, it will be the Third Party's responsibility to ensure that any surplus from the Personal Health Budget Payments held by them (in the Bank Account or otherwise) under this Agreement are repaid to the CCG.

#### **4 Payments**

- 4.1 All Personal Health Budget Payments as agreed by the Patient or their Representative in the Personal Health Budget Support Plan will be made by the CCG to the Third Party as follows:

#### 4.2 Single (one-off) PHB Payments

4.2.1 A single One-Off PHB Payment (as set out in the PHB Summary Sheet) is included in the Personal Health Budget, which is the subject of this Agreement, to cover up front costs associated with one-off set up costs.

#### 4.3 First and Regular PHB Payments

4.3.1 A First Personal Health Budget Payment (as set out in the PHB Summary Sheet) to be made from the Personal Health Budget may cover more than 4 weeks and may be made after the date of this Agreement.

4.3.2 Subsequent to the First Personal Health Budget Payment made in accordance with clause 4.1.1 above, the CCG will pay the weekly amount set out in the PHB Summary Sheet (as may be amended from time to time in accordance with the terms of this Agreement) into the Bank Account in advance every 4 weeks during the term of this Agreement and such payment shall constitute the "Regular PHB Payment".

4.3.3 The total of the PHB Payments ("Total PHB Payment") to be paid per annum under this Agreement is set out in the PHB Summary Sheet and may be amended from time to time in accordance with the terms of this Agreement.

### 5 **General Provisions**

5.1 The CCG reserves the right to review arrangements within this Agreement and make changes required because of a change in law or guidance or otherwise in accordance with the terms of this Agreement. Such amendments or variations will be confirmed by the CCG in writing.

5.2 Notwithstanding clause 5.1, all other all other amendments and variations to this Agreement must be agreed between the Parties and confirmed in writing, signed and dated by the Parties and attached to this Agreement.

5.3 The CCG will give the Third Party and the Patient or their Representative not less than 4 weeks' written notice of any proposed review, monitoring or changes to the Personal Health Budget or Personal Health Budget Plan that may require any amendment or variation to this Agreement.

5.4 Subject to clause 5.5, any notice to be given in connection with this Agreement will be in writing and may be delivered by hand, post, or e-mail, addressed to the recipient at the address set out in this Agreement or any other address notified to the other Parties in writing in accordance with this clause as the address to which notices and other documents may be sent.

5.5 The notice will be deemed to have been properly served on the recipient:

5.5.1 if delivered by hand, at the time of delivery;



- 5.5.2 if delivered by post, forty eight (48) hours after being posted (excluding Saturdays, Sundays and public holidays); or
- 5.5.3 if delivered by e-mail, at the time of transmission.
- 5.6 This Agreement is a legally binding agreement which shall be governed and construed in accordance with English law and the Parties agree to submit to the exclusive jurisdiction of the English courts.
- 5.7 This Agreement (inclusive of Schedule 1) constitutes the entire understanding between the Parties relating to the subject matter of this Agreement and save as may be expressly referred to or referenced herein, supersedes all representations, writings, discussions or understandings with respect hereto (whether made in writing or otherwise), except in respect of any fraudulent misrepresentation made for and behalf of or by any party.
- 5.8 Except as expressly provided in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 5.9 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- 5.10 Termination of this Agreement (howsoever arising) shall be without prejudice to the Parties' rights in respect of any prior breach and any terms of this Agreement which either expressly or by implication survive termination of this Agreement.
- 5.11 The Patient or their Representative and the Third Party confirm that they have read and understood this Agreement including the terms and conditions set out in Schedule 1.
- 5.12 The Parties agree to be bound by and shall comply with the terms and conditions set out in this Agreement as amended from time to time, and to comply with their obligations as set out herein.

## **6 Disagreements and Disputes**

- 6.1 The CCG will work in collaboration with the Patient or their Representative, Third Party, providers and other allied health professionals in implementing this Agreement. The CCG recognises that there may be occasion during the life of the Agreement where disagreement occurs, relating to the Personal Health Budget. Disagreement may arise in circumstances including (but not limited to):
- 6.1.1 utilisation of the Personal Health Budget for purposes previously not approved by the CCG;

- 6.1.2 allocation of the financial value of the Personal Health Budget being considered to be no longer adequate;
  - 6.1.3 interpretation of the CCG's Personal Health Budgets Policy; or
  - 6.1.4 the CCG deciding to terminate the Personal Health Budget Agreement.
- 6.2 In all cases the PHB Nurse will first attempt to resolve the matter through dialogue with the Patient and/or their Representative and/or the Third Party. Where necessary this will be escalated to the Senior Clinical Lead for resolution. Where the matter still remains unresolved to the satisfaction of the Patient and/or their Representative and/or the Third Party the matter can be escalated at the request of the Patient and/or their Representative and/or the Third Party or the Senior Clinical Lead to the CCG's Senior Strategic Lead and Deputy Director of Commissioning, Partnerships and Integration ("CCG Review Team) for a considering and ruling on the disagreement.
- 6.3 The role of the CCG Review Team will be to determine whether this Agreement is in accordance with the CCG's Personal Health Budgets Policy; and to give consideration to the specific issue(s) of disagreement. In doing so the CCG Review Team will consider any evidence presented to it in determining an outcome. There will be no further means of appeal, but if the Patient and/or their Representative and/or the Third Party continue to remain dissatisfied with the outcome, they will have the option to pursue the matter via the CCG's Complaints Policy, provided that the matter is one that can be considered under the policy. Information about the CCG's Complaints process will be provided at the time.

## **7 Advocacy / Independent Advice**

- 7.1 The Patient and/or their Representative and/or the Third Party are at liberty to seek independent advice and support in relation to this Agreement or on any matter that arises from it. The CCG encourages you to take independent legal advice before signing this agreement. If requested, the CCG will be able to provide details of advocacy services commissioned locally that may be able to assist and support individuals.

## **8 Termination**

- 8.1 The CCG or the Patient or their Representative may terminate this Agreement by giving the other Parties four weeks' notice in writing, or the CCG may terminate this Agreement in accordance with the terms of paragraph 2 of Schedule 1

- 8.2 In the event that the CCG terminates this Agreement, the CCG's written notice will state the reason for terminating the Personal Health Budget Payments.

An assessment of the impact of terminating the Personal Health Budget Payments may be undertaken and alternative options outlined.

- 8.3 For the avoidance of doubt, the Third Party cannot terminate this Agreement but can service notice to cease to be the Third Party in accordance with clause 3.5.

- 8.4 Subject to clause 3.6, upon termination of this Agreement, howsoever arising, all monies held in the Bank Account shall be repaid immediately to the CCG or as shall

be otherwise directed by the CCG. The Third Party will provide a full account of the balance returned and monies spent.

Final Approved



Signed on behalf of **[INSERT NAME OF CCG]**

Signature .....

Name .....

Designation .....

Address: .....

**AND**

[Signed by  
The **Patient**

Signature .....

Name .....

Address .....

.....

.....

Date .....]

**[OR]**

[Signed by  
The **Representative**

Signature .....

Name .....

Address .....

.....

.....

Date .....]

(Where the Representative is signing on behalf of the Patient, by so doing they confirm they hold authority to do so and fully understand the obligations imposed by this Agreement on them that are legally binding.)

Cannock Chase Clinical Commissioning Group  
East Staffordshire Clinical Commissioning Group  
North Staffordshire Clinical Commissioning Group  
South East Staffordshire and Seisdon Peninsula Clinical Commissioning Group  
Stafford and Surrounds Clinical Commissioning Group  
Stoke-on-Trent Clinical Commissioning Group



**AND**

Signed by

The **Third Party**

Signature.....

Name.....

Address.....

.....

.....

Date.....

Final Approved

## SCHEDULE 1

### RIGHTS AND RESPONSIBILITIES OF THE PARTIES

#### 1 The Third Party and the Patient or their Representative's Rights and Responsibilities

- 1.1 The Third Party and the Patient or their Representative agree that the Personal Health Budget Payments cannot be used for any of the following purposes:
- 1.1.1 The supply or procurement of alcohol or tobacco; or
  - 1.1.2 The provision of gambling services or facilities; or
  - 1.1.3 To repay a debt otherwise than in respect of a service specified in the Personal Health Budget Support Plan; or
  - 1.1.4 To purchase primary medical services provided by general practitioners as indicated in the Personal Health Budget Support Plan; or
  - 1.1.5 To purchase urgent or emergency treatment services (including any unplanned hospital admissions) as indicated in the Personal Health Budget Support Plan; or
  - 1.1.6 To purchase support for social care purposes (where Personal Health Budget Payments for social care are paid into the Bank Account by the Council); or
  - 1.1.7 Anything illegal, unlawful or harmful to the Patient or their Representative, the Third Party or others; or
  - 1.1.8 To purchase any goods or services not detailed in the Personal Health Budget Support Plan; or
  - 1.1.9 To purchase anything else not relating to the Patient's assessed healthcare needs; or
  - 1.1.10 Any other purposes listed in the Personal Health Budgets Policy.
- 1.2 The Third Party must use the Personal Health Budget Payments to cover the cost of the Support in the manner it has agreed with the Patient or their Representative and the CCG and for no other purpose.
- 1.3 Where the Third Party incurs bank charges from accruing an overdraft in the Bank Account, the Third Party must meet these charges from their own funds.
- 1.4 The Third Party must let the CCG examine and, where appropriate, take copies or make extracts of all information and documentation relating to the Personal

Health Budget and the provision of the Support within 30 days of any request by the CCG. The CCG will be permitted access to the following information:

- 1.4.1 all financial records (including Bank Statements for the Bank Account, showing payments received and made through the Bank Account and any other records which show clearly the Personal Health Budget Payments received from the CCG) and details of how the Third Party has used the Personal Health Budget Payments as agreed in the Personal Health Budget Support Plan;
  - 1.4.2 the Bank Account bank statements;
  - 1.4.3 receipts for payment made;
  - 1.4.4 agency invoices and receipts (if applicable);
  - 1.4.5 any agreements or contracts for services made between the Third Party and the Patient or their Representative in relation to the Personal Health Budget; and
  - 1.4.6 any other information as the CCG may consider necessary.
- 1.5 Where the Third Party is to provide the CCG with information under this Agreement, such information shall be provided in a legible format, accompanied by authorisation for the CCG to take copies or extracts of the information, with an explanation of the information provided to the CCG or a statement to the best of the Third Party's knowledge and belief of where any information not provided to the CCG is held.
- 1.6 The Third Party must keep all supporting documents relating to the Personal Health Budget and the provision of the Support for at least six complete financial years from the date of any payments made to or from the Bank Account, even if the Personal Health Budget Payments have stopped. The Third Party agrees to provide the CCG, upon reasonable request, with an explanation of the information they provide to the CCG or a statement to the best of their knowledge and belief of where any information they fail to provide to the CCG is held.
- 1.7 The Third Party must keep a Financial Record which shows clearly:
- 1.7.1 payments that they have received to meet the Patient's assessed needs, and
  - 1.7.2 details of how they have used Personal Health Budget Payments made into the Bank Account, as agreed with the PHB Nurse.
- 1.8 Invoices received must show clearly the goods or services provided and total amount to be paid.
- 1.9 Where there is an agreed contingency fund set aside for emergency situations, these funds must only be used in line with the Personal Health Budget Support Plan that has been agreed.

- 1.10 The Third Party and/or Patient or their Representative (depending on who has agreed to assume responsibility) must ensure that any individual or organisation providing the Support:
  - 1.10.1 is reputable and can meet the standards of quality expected by the CCG;
  - 1.10.2 has complied with all its registration obligations including with the Care Quality Commission if carrying out regulated activities;
  - 1.10.3 where it is ascertained that the provider must operate under insurance or indemnity cover, has adequate insurance and indemnity cover for the services to be provided to the Patient;
  - 1.10.4 has the right skills and resources in place to provide the type of services the Patient requires under the Personal Health Budget Support Plan and is properly trained in the delivery of the services;
  - 1.10.5 has adequate complaints procedures in place, and
  - 1.10.6 where applicable, is a registered member of a regulated professional body, regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002.
- 1.11 No later than three months from the date the first Personal Health Budget Payment is first received into the Bank Account, there will be an initial review of the management of the Personal Health Budget by the Third Party and a review and re-assessment of the Patient's healthcare needs (including a review of the quality of the Support arrangements). Any proposed changes to the Personal Health Budget and/or the Support arrangements will be the subject of discussions and agreement between the CCG and the Patient or their Representative and the Support Plan and the PHB Summary Sheet will be updated accordingly
- 1.12 There will be subsequent financial monitoring and review of the Personal Health Budget every 3 months for the first year and every 12 months thereafter or more frequently if there is a change in circumstances (including an assessment whereby the CCG determines the Patient is no longer eligible for Support), or where the CCG becomes aware that the Personal Health Budget Payments have not been sufficient to secure the Support, in which case there will be a review of the management of the Personal Health Budget and a review and re-assessment of the Support needs (including a review of the quality of the Support the Patient is receiving). Any proposed changes to the Personal Health Budget (including stopping payments where the Patient is no longer eligible) and/or the Support will be notified to the Patient or their Representative and the Third Party in accordance with Clause 5.3 of this Agreement and will be the subject of discussions and agreement between the Patient or their Representative and the CCG. The Support Plan and the PHB Summary Sheet will be updated accordingly.



- 1.13 The Patient or their Representative and (where appropriate) the Third Party, agrees to notify the CCG within 48 hours of any substantial change of the Patient's health conditions or the Personal Health Budget Plan or other relevant circumstances (including where the Patient is admitted to hospital or residential care, moves to a different address in the CCG's area, moves away from the CCG's area, leaves the country for more than four weeks, no longer wishes to receive the Personal Health Budget Payments, or where the Patient or their Representative or Third Party needs help to comply with the terms and conditions of this Agreement) of which it becomes aware).
- 1.14 The Patient or their Representative has the right to bring this Agreement to an end at any time by giving four weeks' written notice (or less by agreement) to the PHB Nurse.
- 1.15 If this Agreement is brought to an end by the Patient or their Representative or by the CCG, the CCG will be responsible for settling any outstanding payments due to a provider organisation with whom the Patient or their Representative or the Third Party has made contractual arrangements to provide Support. If there is a surplus of Personal Health Budget Payments held in the Bank Account at termination which have not been spent, those shall be repaid to the CCG in accordance with the CCG's instructions at that time.
- 1.16 The Patient or their Representative may at any time during the term of this Agreement request the CCG to undertake a review of the Personal Health Budget. Upon receipt of such a request the CCG will decide whether it is reasonable to undertake such a review and will notify the Patient or their Representative of its decision, the outcome of any review and the reasons for its decision.
- 1.17 The Third Party shall arrange for anyone employed by the Third Party who is engaged in provision of the Support, to have enhanced DBS checks. This shall (subject to paragraph 2.4 below) include the circumstances where the Third Party is the employer of staff who are friends or family of the Patient. Results of DBS checks to be carried out in accordance with this paragraph, shall be provided to the CCG and on receipt, the CCG shall confirm that those results are satisfactory.
- 1.18 If the Third Party employs staff in connection with this Agreement, the Third Party, shall be required to have in force employers' liability insurance which includes public liability insurance and cover for redundancy costs. This is to be with reputable insurers or underwriters with a minimum limit for any one claim (the limit to be increased from time to time as reasonably required by the CCG). The relevant insurance policy and the premium receipts must be produced as and when required by the CCG. An allowance for these insurance policies is included within the Personal Health Budget.
- 1.19 For the purposes of this Agreement the Patient or their Representative will not employ any staff who are engaged in the provision of the Support.
- 1.20 Anyone employed by the Third Party using the Personal Health Budget is an employee of the Third Party and shall not be employed by or be considered to be an agent or employee of the CCG or the Patient or their Representative. **For**

**the avoidance of doubt the Third Party is responsible for ensuring they comply with all of their legal obligations as an employer, including but not limited to:**

- 1.20.1 **issuing a statement of employment or employment contract within the requisite time period; and**
  - 1.20.2 **paying all employment costs such as pay, tax, pension and National Insurance contributions.**
- 1.21 All Employment Costs associated with the employment of any staff by the Third Party under this Agreement that have been agreed with the CCG shall be included within the Personal Health Budget as indicated in the Personal Health Budget Support Plan. **However, for the avoidance of doubt these costs do not include sums payable as a consequence of:**
- 1.21.1 **Redundancy, the risk of which the Third Party is required to cover by a suitable policy of employers' liability insurance;**
  - 1.21.2 **The mismanagement of the employer/employee relationship;**
  - 1.21.3 **Any kind of employment disputes – including Employment Tribunal claims and County Court claims, settlements or awards.**
- The CCG is in no way responsible for paying the costs associated with those events listed in paragraphs 1.21.1 - 1.21.3 of this Schedule 1, whether as part of the Personal Health Budget or otherwise and the Personal Health Budget should not be used to pay for these costs.**
- 1.22 Where the Third Party is an employer, they shall:
- 1.22.1 Retain all records pertaining to employment including copies of all pay-remittance advice slips, payroll service invoices, HMRC tax and National Insurance remittance slips, Employer-related insurance certificates, holiday and leave records, sickness and absence records, DBS records and training and competency documents; and ensure employees are eligible to work in the UK; and
  - 1.22.2 **Ensure that all final costs relating to employment are settled including final pay, tax, pension and National Insurance Contributions.**
- 1.23 Where any equipment is not available from Core Services, the Third Party agrees that the purchase of such equipment made with the Personal Health Budget will be discussed and agreed with the CCG, with regard also to any costs of repairs, insurance or replacement and any such costs will be clearly outlined in the Personal Health Budget Support Plan.
- 1.24 The Patient or their Representative and/or Third Party agrees that the CCG will monitor the Personal Health Budget, the Personal Health Budget Support Plan and the use of the Personal Health Budget Payments. The following information will be shared, in order to facilitate this:

- 1.24.1 Personal Health Budget Support Plan;
  - 1.24.2 Contact details for the Patient or their Representative; and
  - 1.24.3 Details of the Bank Account.
- 1.25 The Patient or their Representative and/or Third Party agrees to notify any change of address and/or GP to the PHB Nurse.

## 2 The CCG's Rights and Responsibilities

- 2.1 The CCG will agree with the Patient or their Representative and Third Party and advise them of significant potential risks arising in relation to the making of Personal Health Budget Payments and the means of mitigating those risks.
- 2.2 The CCG retains responsibility for reviewing the Patient's health care needs and will therefore appoint or identify the PHB Nurse to assess that the needs as agreed in the Personal Health Budget Support Plan are being met. The PHB Nurse will be responsible for reviewing the Personal Health Budget Support Plan and:
- 2.2.1 Monitoring the Patient's health needs and the making of Personal Health Budget Payments to the Third Party;
  - 2.2.2 Arranging for the review of Personal Health Budget Payments under the terms of this Agreement;
  - 2.2.3 Liaising between the CCG and the Patient or their Representative and the Third Party in connection with the subject matter of this Agreement.
- 2.3 The Personal Health Budget in the form of Personal Health Budget Payments will be paid by the CCG into the Bank Account for the purpose of the Third Party receiving payments (on behalf of the Patient) for the cost of the Support which the CCG has assessed is needed by the Patient in accordance with clause 4 of this Agreement.
- 2.4 The CCG reserves the right to require that the Patient or their Representative or the Third Party do not secure Support from a particular service provider as indicated by the CCG in this Agreement or as shall be otherwise notified to the Patient or their Representative or Third Party by the CCG. **The Patient or their Representative and the Third Party agree not to use the Personal Health Budget Payment to purchase the Support from a Close Family Member of the Patient if they are living in the same household as the Patient without the CCG's express written consent to be granted only where it is necessary to meet the Patient's reasonable needs for the Support, as assessed by the CCG.**
- 2.5 The CCG may suspend or discontinue making payments to the Third Party if it becomes aware or is notified that the Personal Health Budget is not needed for a period exceeding 28 days, but before doing so it will discuss the matter with

the Patient or their Representative and the Third Party and take into account any contractual agreements and continuing needs the Patient may have.

2.6 The CCG will examine and, where appropriate, take copies or make extracts of all information and documentation relating to the Personal Health Budget and the provision of the Support within 30 days of the end of every three month monitoring period (which shall commence from the date the Third Party first receives a PHB Payment). This information includes:

2.6.1 all financial records/bank statements (that is of income received and payments made through the Bank Account which show clearly the PHB Payments received from the CCG and details of how the PHB Direct Payments have been used);

2.6.2 receipts for payments made by the Third Party (where possible/practical);

2.6.3 agency invoices and receipts (if applicable); and

2.6.4 any other information the CCG may consider necessary.

Where the Third Party is to provide the CCG with information under this Agreement, such information shall be provided in a legible format, accompanied by authorisation for the CCG to take copies or extracts of the information, with an explanation of the information provided to the CCG or a statement to the best of the Third Party's knowledge and belief of where any information not provided to the CCG is held.

2.7 Following examination of the information referred to at paragraph 2.6, the PHB Nurse will discuss any discrepancies with the Patient or their Representative and the Third Party and a decision will be taken as to how best to proceed if there are any concerns about how the Personal Health Budget has been managed.

2.8 The CCG may share information from the Patient's Personal Health Budget Support Plan with external support brokers, care providers, and other care professionals. However, the CCG will not share information about the Patient without the Patient or their Representative's consent, except as permitted by the General Data Protection Regulation (GDPR) 2018 and the Data Protection Act 2018.

2.9 Where the CCG is satisfied that the whole or any part of the Personal Health Budget has not been used to secure the provision of the care to which it relates or the Personal Health Budget Support Plan has changed substantially then it may suspend, discontinue or reduce the amount of Personal Health Budget Payments, but before doing so it will discuss the matter with the Patient or their Representative and Third Party and take into account any contractual agreements and continuing needs they may have. If no contact can be made with the Patient or their Representative or Third Party for a period of 4 weeks the CCG reserves the right to suspend or withdraw the Personal Health Budget Payments.

- 2.10 Where the CCG is satisfied that the Patient or their Representative or Third Party have not complied with any term or condition of this Agreement then it may require the Third Party to repay the CCG the whole or part of any of the Personal Health Budget Payments.
- 2.11 If the CCG is satisfied that theft, fraud or another offence has occurred in connection with the Personal Health Budget Payments it may terminate this Agreement with immediate effect and require the Third Party to repay the CCG the whole or part of the Personal Health Budget Payments that have been made, pursuant to the Personal Health Budget.
- 2.12 If the CCG is satisfied that there are identified legal or safeguarding concerns then it may suspend provision of the Personal Health Budget until such time as the legal or safeguarding concerns have been resolved. Alternative arrangements will be made, as appropriate, for the provision of Support.
- 2.13 The CCG has the right to terminate this Agreement by giving the Patient or their Representative and Third Party 4 weeks' notice in writing stating the reasons for the decision if it appears to the CCG that:
- 2.13.1 the Patient or their Representative or Third Party is no longer capable of managing a Personal Health Budget.
  - 2.13.2 the Patient's needs for care can no longer be met by means of a Personal Health Budget; or
  - 2.13.3 the Patient is no longer registered with a GP practice which is a member of the CCG; or
  - 2.13.4 the Patient no longer meets the criteria for eligibility for NHS Continuing Health Care; or
  - 2.13.5 ongoing healthcare for the Patient is no longer required; or
  - 2.13.6 a Personal Health Budget is no longer an appropriate way of providing the Patient with care and support; or
  - 2.13.7 the Third Party has not complied with any terms of this Agreement.
- 2.14 The CCG may terminate this Agreement with immediate effect and arrange appropriate replacement services if:
- 2.14.1 the Third Party refuses to receive Personal Health Budget Payments; or
  - 2.14.2 the CCG considers that the Third Party is no longer suitable to receive Personal Health Budget Payments.
- 2.15 Upon receipt of a notice served under paragraph 2.14 the Patient or their Representative may request that the CCG re-consider its decision and may provide evidence or information for the CCG to consider as part of the

deliberation. The CCG will notify the Patient or their Representative and Third Party in writing of its decision and the reasons for it.

- 2.16 The NHS complaints procedure will apply to any decision by the CCG in relation to a complaint which is brought by the Patient or their Representative or the Third Party in connection with this Agreement. The CCG will ensure that the Patient or their Representative and Third Party are aware of the process for accessing that complaints procedure. The CCG will also ensure that the Patient or their Representative and Third Party are aware of the procedure for escalating a complaint to the Health Service Ombudsman should the Patient or their Representative or the Third Party feel that it is necessary to do so.
- 2.17 This Agreement will require amendment in the event of a change in the CCG's jurisdiction or area of responsibility. The CCG shall notify the Third Party in the event that this occurs.

### **3 The Bank Account**

- 3.1 The Bank Account will be held by the Third Party solely for the receipt of and use of Personal Health Budget Payments in connection with the purchase of the Support or in connection with any other payments required to be made to secure relevant services for a disabled person.
- 3.2 In the event that direct payments for social care are paid into the Bank Account by a local authority, the Third Party will ensure that no monies paid under this Agreement as Personal Health Budget Payments are used for the purchase of social care support which falls outside the scope of care defined within the Personal Health Budget Support Plan.