

PERSONAL HEALTH BUDGETS
AGREEMENT BETWEEN BUDGET HOLDER AND
NHS SOMERSET CLINICAL COMMISSIONING GROUP

Name :

Date:

NHS Somerset CCG Agreement for
Personal Health Budget holders,
nominated person or their representative

Document Status	Final
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NHS Somerset Clinical Commissioning Group ("**the CCG**") is able to offer Personal Health Budgets to people receiving Continuing Healthcare funding. Personal Health Budgets are a personalised, tailored approach to the delivery of Continuing Healthcare.

As part of the Continuing Healthcare application process people are asked for their consent for their information to be shared with the Continuing Healthcare team and other relevant professionals so decisions can be made about the care packages provided. People with Personal Health Budgets are asked to consent to their information to be shared to enable the Personal Health Budgets and support packages to be regularly reviewed and evaluated to ensure Personal Health Budget holders achieve their agreed health outcomes.

The CCG aims to develop mutual respect, effective communication, and positive working relationships and support between professionals and all those involved in the budget holder's care.

Direct payments for healthcare are monetary payments, in lieu of services, made by the CCG to individuals to allow them to purchase care they need. Direct payments for healthcare are one of the ways of providing all or part of a Personal Health Budget.

A Personal Health Budget can be administered in three ways;

- as a notional budget where no money changes hands;
- as a third party budget, where the budget is held and managed by a third party organisation or an independent user trust;
- as Direct Payments to the budget holder or their representative or nominated person.

This Agreement sets out the arrangements between the CCG and the patient, or their representative or nominee, receiving Direct Payments from the CCG provided as part of a Personal Health Budget.

This Agreement explains individual responsibilities and accountabilities for the way in which the Personal Health Budget is used to meet the agreed health outcomes. This agreement is based on the National Health Service (Direct Payments) Regulations 2013 (as amended). A Personal Health Budget can be managed by the person for whom the services are provided (the budget holder), their Representative or a Nominated Person.

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Definitions

In this Agreement, save where the context requires otherwise, the following words, terms and expressions shall have the following meanings:

"You" and the **"budget holder"** and **"patient"** mean the individual who holds the Personal Health Budget and is receiving the Continuing Healthcare funding;

"Personal Health Budget" means the sum which the CCG identifies You are entitled to receive under this Agreement and the Support Plan by way of a Direct Payment;

"Direct payment" is the amount you receive each month;

"Nominated Person" means the third party representative chosen by the budget holder to manage the Personal Health Budget on their behalf; the budget holder must have the appropriate mental capacity to make that decision;

"Representative" is the person who the CCG agrees will manage the Personal Health Budget on behalf of the patient where the patient is under 16 or otherwise lacking the mental capacity to consent or to nominate a Nominated person;

"We" and **"Us"** means the CCG;

"Care Manager" means the person identified by the CCG to co-ordinate the assessment of the Support Plan and monitor this Agreement;

"Support Plan" means the plan which meets the patient's assessed needs under this Agreement.

1	Your Healthcare Needs
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We have assessed your healthcare needs and you have agreed and signed a copy of your Support Plan which sets the services identified to meet your needs.

You have agreed that you will receive your Personal Health Budget by way of a Direct Payment and that you will use the Direct Payments to purchase services solely to meet your identified assessed eligible needs as set out in your Support Plan.

We have a duty to make Direct Payments in accordance with the National Health Service Act 2006 and the National Health Services (Direct Payments) Regulations 2013, (SI 2013/1617) (as amended) ("**the Regulations**").

We want to ensure that you are supported both through the care provided under this agreement, and to enable you to undertake your roles and responsibilities under it.

Your Support Plan will be reviewed annually with you, or sooner if required. If as a result of the review, there is a change in your needs this may result in a change (increase or decrease) in the amount of your Personal Health Budget, and may require a new signed agreement.

2	Duration
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This Agreement will be effective from **[Please Insert Date]**

This Agreement will remain in effect until terminated unless:

- the patient, representative or nominee (as appropriate) notifies the CCG that they no longer want or consent to Direct Payments;
- the patient (if lacking capacity) recovers their capacity to consent, and withdraws their consent to continuing to receive Direct Payments;
- the Agreement is replaced;
- We notify you that the Direct Payments are to stop due to the reasons set out in section 9 of this Agreement; or
- the patient dies.

3	Your role and responsibilities
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The Support Plan sets out your health outcomes and how these should be met. Direct Payments are made in order to meet these agreed outcomes and We will need to monitor how the Personal Health Budget is managed and how the money has been spent. Your role and responsibilities include (but not limited to) the following:

- Ensure that the Direct Payments/Personal Health Budget is only spent on services agreed in the Support Plan;
- To use the Direct Payments for support arrangements which are compliant with the law and with any guidance provided by the Department of Health;

- To ensure value for money is considered in any spend of the Personal Health Budget, in line with the requirements when using public monies;
- Direct Payments must not be used:
 - to meet general household and repair bills including home improvements, food shopping bills, domestic sundries such as bed linen or other household items;
 - to purchase alcohol or tobacco products;
 - for gambling services or facilities;
 - to pay for support or care provided by a close relative living at the same address as the patient unless in exceptional circumstances where it has been expressly approved by Us and where all other reasonable options have been exhausted;
 - to repay a debt other than for a service agreed in the Support Plan;
 - to pay for hotel or travel costs;
 - to pay for primary or secondary care outside of the UK or repatriation back to the UK from Abroad.

The patient accepts liability for their health needs abroad and any repatriation back to the UK.

It is recommended that patients ensure that they have comprehensive travel insurance.

- Direct Payments should also not be used to pay:
 - to purchase primary medical services (such as diagnostic tests, vaccinations or basic medical treatment);
 - to purchase urgent or emergency treatment services (such as unplanned hospital admissions);
 - for planned surgical procedures;
 - to purchase care delivery in an emergency or acute setting where the NHS already has such care available.

These services should be provided free of charge under the NHS alongside the direct payment regime.

- To keep financial records and comply with the conditions set out in this Agreement. You must keep the financial records for at least six (6) years;
- You must, upon request, or at intervals specified, provide to Us information or evidence relating to:
 - your health/any health condition in respect of which the Direct Payment is made; and
 - the health outcomes expected from the provision of any service.
- You must notify Us when your health or other relevant circumstances change substantially.
- You must be available to participate in reviews of care needs and the PHB when these are required by the CCG.

4	Your responsibility if you employ your own staff (Direct Payment)
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You may wish to use the Direct Payments to employ staff to provide care and support. If you decide to employ staff then you will be responsible for (with support to help you manage this if required):

- Appointing your staff, taking up references (minimum of 2 references, with one being the previous employer) and complying with all legal obligations relating to employment and be responsible for Pay as You Earn (PAYE) arrangements;
- Giving your staff a job description, employment contract and managing your staff including making contingency arrangements to cover holidays and sickness;
- Paying your staff wages, holiday and sick pay, pension and other payments as legally required;
- Deducting national insurance and income tax on behalf of your staff and making payments to Her Majesty's Revenue and Customs (HMRC) as required;
- Keeping records of employees and employees tax and national insurance contributions;
- The health and safety of your staff whilst they are employed by you, including the implementation of any recommendations from any risk assessments associated with the delivery of care;
- All statutory, financial and legal responsibilities for the employment of personal assistants or the purchase of goods/services;
- Ensuring you have an adequate employer's liability insurance policy in place at all times whilst employing staff. This insurance must include redundancy cover. This insurance policy will be funded by the CCG via the monies paid for your Direct Payment. For the avoidance of doubt, the CCG has no liability in relation to redundancy payments for any staff that you employ;
- Ensuring your staff are inducted into their role and have adequate training, and that all staff possess and maintain the appropriate qualifications, experience, skills and competencies to perform the duties required of them, and be appropriately supervised, managerially and professionally;
- Ensuring that, where required, staff are registered with the appropriate professional regulatory body and comply with any requirements of that professional body;
- Applying for an Enhanced Disclosure and Barring Service certificate (Enhanced DBS) for any person who is to be employed by you. If there are children living in your home or who visit on a regular basis, then you must carry out an Enhanced DBS check on prospective employees. The CCG will pay for and facilitate, through an appropriate third party, the Enhanced DBS check on your behalf. Where the

Enhanced DBS check identify concerns the CCG must be informed, and retain the right to refuse the use of that individual;

- Informing the CCG of any incidents or Safeguarding concerns in relation to the arrangement or delivery of care to you;
- The budget holders must have permission from Somerset CCG before awarding any pay rises
- Budget holders will only be allowed to offer increases up to the level of increase agreed under the Somerset CCG's domiciliary care contract for that year
- Ensuring all your health related needs are met through this Agreement.

You must not employ staff/personal assistants who live at the same address as you, family members or close friends unless you agree this with the CCG in advance. The CCG will review such requests on a case by case basis to determine whether securing a service from that particular person is necessary to meet the patient's needs or to promote their welfare.

5	Your responsibilities if you purchase a service from a Service Provider (Managed Account)
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If you receive monies and choose to purchase services from an organisation who will manage your Personal Health Budget and/or provide care for you then you will be responsible for (with support to help you manage this if required):

- choosing a service provider to meet your needs;
- ensuring that the service provider is registered with the Care Quality Commission;
- ensuring the service provider has appropriate indemnity or insurance cover in place;
- agreeing the service provider's staff's timesheets;
- ensuring the care provider has signed their own timesheets;
- negotiating rates, and ensuring value for money;
- checking that the service provider's invoices are correct;
- paying the service provider's invoices;
- If you employ a self-employed personal assistant then they will be classed as a service provider and you will need to obtain proof of their self-employed status from HMRC.

6	Finances and Record Keeping
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You agree to (with support if needed):

- use a dedicated bank account for payment of Direct Payments. This bank account will be used for your care/support services money only. The account must only be accessible by named persons approved by Us, and you, your representative or nominee shall, on request, provide information to Us relating to, and evidencing that account and the services secured by the Direct Payments, and allow Us and/or anyone authorised by Us to audit the account.

- If the account holder is your nominee or the person you have requested to manage your Direct Payment, then We will require the nominee to apply for a Disclosure and Barring Service certificate (DBS Check) and be provided with a copy before giving our consent. Your nominee is responsible for managing the Direct Payment on your behalf and fulfilling your responsibilities in relation to receiving Direct Payments. These include:
 - acting as the principal person for all contracts and agreements with care providers, employees etc. entered into for your benefit by means of the Direct Payments;
 - using the Direct Payments in line with the agreed Support Plan; and
 - complying with any other requirement that would normally be undertaken by you (e.g. review, providing financial information) in accordance with the regulations.
- The bank account should note that it is for Personal Health Budget purposes.
- Pay your workers or agency invoices by cheque or an alternative secure method of payment, such as standing orders or BACS transfer, no cash payments are to be made. However, with Our prior written permission, out of pocket expenses may be paid by cash. These expenses must be detailed in your outcomes and service plan and receipts/evidence kept and recorded for audit purposes.
- Keep a record of all payments made.
- Allow and authorise access to Us, or approved nominee, to your records and your dedicated bank account.
- Submit copies of bank statements and evidence of income and expenditure to the CCG every three months to show what has been spent and the remaining balance in your dedicated bank account.
- The patient, representative or nominee will provide Us, on request, with any further information it may require in connection with the Direct Payments.
- Keep for examination by your Care Manager or other CCG representatives the following financial records:
 - original bank statements;
 - original invoices and receipts to substantiate income and expenditure records;
 - signed time sheets submitted by staff employed;
 - any other documentation that shows how your Personal Health Budget has been spent.
- Advise the CCG of any unused monies, and the reason for this, and to return any balance remaining at the end of the financial year, or as requested by the CCG.

- Pay any bank charges incurred in relation to your dedicated bank account out of your own funds, unless it can be shown such charges were incurred as a result of the CCG.
- You must not make any changes to the dedicated bank account details or the names on the dedicated bank account without the CCG's prior written permission.
- You must not use the dedicated bank account for any other purposes other than those prescribed in relation to the Personal Health Budget.
- You may accrue a maximum of up to 8 weeks of the value of the Direct Payments and will repay money above this level upon written request by the CCG.
- The CCG:
 - will make Direct Payments net of any amount for goods/services included in the care plan arranged or provided by the CCG;
 - reserve the right to recover any interest earned by the Direct Payments account;
 - may offset any liability that you may have to it under this Agreement whether for breach of contract or otherwise against monies which it owes to You under this Agreement.
 - will stop Direct Payments immediately if it considers that to do otherwise would be detrimental to your welfare. The CCG will ensure that your healthcare needs continue to be met.
- For the avoidance of doubt, notwithstanding any other rights the CCG has under this Agreement, the CCG may reclaim any Direct Payment money in the dedicated bank account if:
 - an unplanned surplus has developed;
 - the Support Plan has changed substantially;
 - the Direct Payments have been used for any service not agreed in the Support Plan;
 - theft, fraud or another offence may have occurred in connection with the direct payments;
 - We consider your needs can no longer be met through Direct Payments;
 - Death of the patient. The Direct payment agreement is terminated or the amount of the PHB is significantly reduced for any reason.
- For the avoidance of doubt, in the event the patient passes away, any monies left in the designated bank account is not to be included in the deceased's estate. This is public money and is not an asset of the individual.
- **Individuals are not allowed to contribute to the cost of the care package as set out in the Personal Health Budget from their own resources. If you consider that the Direct Payments are insufficient to meet your assessed care need then you should request a review of your Personal Health Budget by the CCG. If you wish to purchase additional care privately that is not part of your**

assessed care needs, this should take place separately with clear accountability.

7	Roles and Responsibilities of the CCG
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The CCG will:

- Undertake an assessment and agree a Support Plan with you. We will identify a Care Manager to co-ordinate the Support Plan and monitor this Agreement. The Care Manager at the commencement of this agreement is **[Please Insert Care Managers Name]** and their contact details are:-
[Please Insert Care Managers Contact Details]
- Give you a copy of the agreed plan and Personal Health Budget calculation that will tell you what your Personal Health Budget is to meet your agreed outcomes. The schedule of payments will set out when payments will be made; where a regular payment is made, this will be monthly in advance, commencing on the date specified in the schedule of payments. One-off payments, for example for equipment, will be paid through agreed invoicing arrangements;
- Supply you with copies in paper or electronic form of any guidance we expect you to comply with;
- Send you notification of any changes to the amount of Personal Health Budget to which you are entitled at least annually and following any review. The CCG may, after consultation with you:
 - change the amount of Direct Payment if the Personal Health Budget is changed as a result of a review. When the Direct Payment is reduced, the CCG will provide notification in writing stating the reasons for the decision and when the change will take effect. The CCG will only decrease the size of the Direct Payment if it is satisfied that the new amount is sufficient to cover the full cost of care;
 - reduce Direct Payments to reduce any surplus accumulated in the designated bank account;
 - make a one-off adjustment to adjust future monthly Direct Payments in order to recover any overpayment arising.
- Make sure that you have access to information, advice and other support you need to manage your Personal Health Budget and access to funds to purchase employer's liability insurance, recruitment costs, and other appropriate approved costs, to enable you to manage your Personal Health Budget;
- Pay your Direct Payments to you in line with the CCGs payment schedule. Please refer to Page 15 of this Agreement;

- Undertake a periodic review of your health needs, at least once within the first three (3) months, and subsequently at intervals not exceeding 12 months and adjust your Personal Health Budget accordingly;
- Ensure that if you decide to become an employer, we will arrange appropriate advice and support on all aspects and responsibilities that You will have as a result of that role, including on Disclosure and Barring Service checking;
- We will monitor and review how your Personal Health Budget is being spent at an appropriate interval. When carrying out a review, we will, in accordance with the Regulations:
 - Review the Support Plan to establish whether it continues to provide appropriately for your health needs;
 - Consider whether the Direct Payments have been used effectively;
 - Consider whether the amount of the Direct Payments paid to, or in respect of you is sufficient to provide the full cost of each of the services specified in the Support Plan; and
 - Consider whether the patient or its nominee has complied with the obligations imposed by them or under this Agreement.

8	Reviews of the Personal Health Budget
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The Personal Health Budget will be reviewed regularly by the Care Manager and the Continuing Health Care team. An initial review will take place within three (3) months from the date of this Agreement and at least once a year thereafter to see if the health outcomes are being met. Reviews may be undertaken more frequently if needs or outcomes change substantially. The budget holder will be informed by either the Care Manager or Continuing Healthcare Team about the date of the review. The outcome of the review will be sent to the budget holder, their representative or nominated person via letter within three (3) weeks of the review. The Personal Health Budget may be varied as the result of a care plan review, resulting in a revision to the monthly Direct Payments. Any changes to the monthly Direct Payments will be notified to you one month in advance.

You can request a review of the Personal Health Budget at any time and having regard to how soon after or before the next planned review, we will organise a further review as soon as practicable.

The CCG will require evidence of the use and administration of the Direct Payments to be submitted every three (3) months to the Care Manager and the budget holder, their representative or nominated person must therefore ensure that, as a minimum, the following records are provided:

- monthly bank or building society statements;
- copies of invoices;
- signed receipts for any cash payments;
- wages records – consisting of staff details, hours worked, staff payments, PAYE and NI payments to the Inland Revenue.

If the CCG does not receive your evidence within four (4) weeks of the requested date the CCG may suspend any further payments into the designated bank account until it has received this. You will be consulted before this happens.

9	Ending this Agreement
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We will stop or suspend making a Direct Payment (or part of) if we are satisfied that it is appropriate to do so, for example:

- If the patient (other than a child), who has capacity to consent to Direct Payments withdraws its consent to Direct Payments;
- If the patient is a child or lacks capacity to consent, its representative has withdrawn consent to Direct Payments and there is no other representative who can consent to Direct Payments;
- If the person lacks capacity to consent, and the CCG believes it is no longer in the person's best interest to receive a Personal Health Budget due to the safety and/or wellbeing of the person;
- If you do not use your Personal Health Budget for the purpose that it was given i.e. to meet your eligible assessed care needs as per your Support Plan. If you are unsure about whether it is for the purpose that it is given please consult your Care Manager;
- If following an annual review (or otherwise) you are no longer assessed as being eligible for Continuing Healthcare;
- If we consider that you are no longer capable of managing the Direct Payments with or without help;
- If we consider that you are not meeting your responsibilities as an employer;
- If you do not comply with this Agreement;
- Where through a change in needs it is determined that it is no longer clinically safe or appropriate;
- If theft, fraud, or another offence may have occurred in connection with the Direct Payments;
- If We consider that your assessed eligible needs in line with your Support Plan can no longer be met or no longer represent value for the public purse by securing the provision of services through a Personal Health Budget.

You may terminate this Agreement by giving the other party 28 days' notice. We may only terminate the agreement on the grounds set out in section 9. Prior to Us ending/ suspending your Direct Payments we will give you reasonable written notice of 28 days or in exceptional circumstances 7 days. In the event of any fraudulent use of your Personal

Health Budget, or where it is determined that the care is resulting in unacceptable clinical risks, We retain the right to terminate this Agreement immediately.

When this Agreement comes to an end for any reason We will need copies of all bank statements and receipts for expenditure to undertake a final audit of the dedicated bank account. Any monies held in the dedicated bank account will need to be reimbursed to Us. Where monies have been used inappropriately, these will also have to be reimbursed to Us.

If this Agreement ends for any reason and you continue to have health needs, the funding for your health needs will be provided by Us as part of the NHS in the usual way.

In the event of the patient passing away, or other reason for termination of this agreement, a personal representative needs to ensure that the dedicated bank account is closed and the balance returned to Us. They must formally notify Us within fourteen (14) days. As part of this Agreement, the budget holder must identify who will act on its behalf if the budget holder passes away.

10	Complaints Procedure
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If you have any reason to complain about the Personal Health Budgets service you are receiving, please discuss this directly with the Care Manager. The CCG has a complaints procedure which you can access via the Patient Advice Liaison Service. Leaflets are available and if you would like one please do not hesitate to ask. PALS advice line is: 0800 0851067.

11	Agreement of Contract for a Personal Health Budget
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If there is anything in this Agreement that you do not understand, please ask your CHC representative before you, your representative or nominee signs it. The CCG would encourage you, your representative or nominee to get independent advice on the Agreement.

The CCG needs to use information about you (the patient) in order to manage your personal health budget and for related healthcare purposes. We may need to share information about you with other NHS organisations and health and social care providers such as your GP and Somerset County Council. By entering into this Agreement you, your representative or nominee (as applicable) agree to our use of information in this way. We will handle information about you in a way which respects your rights and confidentiality, and in accordance with the Data Protection Act 1998 and the GDPR. Please write "yes" clearly in each box rather than ticking:

I agree that as the personal health budget holder or as their nominated person/representative, I will participate in clinical and financial reviews and provide information requested by the CCG to support the financial review.

I agree to provide to the CCG all relevant information about the expenditure of the direct payment every three (3) months including:

- monthly bank or building society statements
- copies of invoices

- signed receipts for any cash payments
- wages records

I confirm that the CCG is authorised to make copies or take extracts of any information relating to the Direct Payments. Financial arrangements will be reviewed every three (3) months. The support arrangements will be reviewed after three months and annually afterwards though they can be more often. I can request a review myself.

I agree to use a dedicated bank account for Direct Payments. Monies from this account will only be used to pay for services in the agreed Support Plan. The bank account shall only be accessible by the following individuals:

I understand that Direct Payments may be stopped in the circumstances set out in this Agreement.

I understand that the budget holder or their representative/nominated person on their behalf is responsible for paying the tax and National Insurance due for any personal assistants employed by the budget holder out of the Personal Health Budget. I understand that I must use the payroll service supplied by the Support and Brokerage Service for this.

I understand that if I, as budget holder/nominated person/representative do not spend all monies in my Personal Health Budget, any surplus funds remain the property of the CCG. The CCG Group can either recover this from me as a lump sum or reduce future direct payments accordingly. Period of notice for reduction in direct payments is four (4) weeks.

I understand that I, as budget holder/nominated person/representative can only use Personal Health Budget monies to pay for services in the agreed Support Plan. I am aware that I cannot spend my budget on alcohol, tobacco, gambling services, food, household sundries, primary healthcare, emergency or acute treatment (where that care is already available), improvements/alterations/repairs to property, support given by close relatives living at the same address as myself or debts other than services identified in the Support Plan.

I, as budget holder/nominated person/representative, agree that the amount of money in the Personal Health Budget will be sufficient to cover the full costs of the services in the Support Plan. I agree that the budget holder's needs can be met by the services agreed in the attached Support Plan.

I understand that if I knowingly provide false information or make false representations (as defined by the Fraud Act 2006) in relation to my Personal Health Budget, I may be liable for prosecution and civil recovery proceedings

In the event of the patient's death _____(name)

.....(address)

will act on their behalf to ensure that the balance of monies in the dedicated bank account is returned to the CCG.

SCHEDULE OF PAYMENTS	
Total agreed annual direct payments budget	£
Amount to be paid monthly (To Support and Brokerage Service)	£
Amount to be transferred monthly from Support and Brokerage Service to my dedicated account for Direct Payments (Please insert amount or delete sentence if not applicable)	£

Payment will be made by BACS into the recipient's direct payment bank account on the 5th day of each month, or the following working day where this falls on a weekend.

Effective Dates of Payment Agreement Commencing: [Please Insert Date] to continue until such time as a termination date is notified.
Date of first review: [Please Insert Date] Within three (3) months from the date of this Agreement and then annually thereafter, yearly unless an earlier review is required.

I have read, understand and agree with the Agreement for budget holders and the Support Plan attached.	
Name of Budget Holder:	[Please Insert the Budget Holders Name]
Signed by: Budget Holder/Representative/Nominated Person	
Print Name:	
Date:	
Signed by: Budget Holder/Representative/Nominated Person	
Print Name:	
Date:	
Signed by CHC Manager:	
Print Name:	
Date:	

Care Manager: Tel:

***Please return completed agreement for the attention of:
Continuing Healthcare Team, Somerset Clinical Commissioning Group,
Wynford House, Lufton Way, Yeovil, Somerset BA22 8HR.***