**DIRECT PAYMENT AGREEMENT**

This Agreement is made the day of [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

between:

1. North Tyneside Council of Quadrant East, Silverlink North, Cobalt Business Park, North Tyneside, NE27 0BY (‘the Council’) and
2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(name and address of the person managing the Direct Payment)* (‘the Recipient’)

together referred to in this Agreement as ‘the Parties’

**IT IS AGREED THAT:**

1. This Agreement is in relation to a Direct Payment for [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] *(name of the service user/child/young person)* (‘Service User’)

2. The Parties agree the Direct Payment(s) is/are to secure the following specified goods, services or support as identified in the Education, Health and Care Plan / Care and Support Plan\* (\*please delete as appropriate), to meet the assessed unmet eligible needs (“the assessed need(s)”) of the Service User:

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

(‘the agreed provision’)

3. The Parties agree that the amount of the Direct Payment(s), payment date(s), frequency and details of the bank account into which the Direct Payment(s) will be made are set out in Schedule 1 to this Agreement.

4. This Agreement will commence once the Parties have signed and dated this Agreement and will continue until this Agreement has been terminated in accordance with clauses 6(e) or 13(e) or \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\* (\*please insert a date as appropriate), whichever is the earlier.

5. General Conditions of Payment of the Direct Payment from the Council to the Recipient

(a) The Direct Payment(s) must be used only to purchase the agreed provision which meets the assessed need(s) as set out in clause 2 above;

(b) The Recipient must notify the Council of any changes in circumstances which the Recipient knows, or suspects may affect the agreed provision or the assessed need(s);

(c) The Recipient must open a separate bank account (‘the Bank Account’) solely for the Direct Payment(s) to be paid into and accessed only by the Recipient or another person who has been approved in writing by the Council. The Recipient confirms that the Bank Account set out in Schedule 1 meets this condition; and

(d) The Recipient must keep financial records in relation to the Bank Account and Direct Payment(s) expenditure, including bank statements, invoices and receipts and produce these to the Council upon request / \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*insert frequency)\** (\*please delete/complete as appropriate) ;

6. Recipient’s General Obligations

(a) The Recipient must notify the Council immediately of any unspent Direct Payment(s) that have accrued within a period of three months;

(b) The Recipient is liable for payment of any bank charges which arise as a result of the Recipient’s mismanagement of the Bank Account and/or the Direct Payment(s);

(c) The Recipient must only use any interest earned from the Direct Payment(s) toward the cost of the agreed provision;

(d) The Recipient must ensure that all legal obligations which relate to the agreed provision, including the purchase of services/goods and any people employed using the Direct Payment(s) are met and the Recipient is responsible for all contractual arrangements entered into using the Direct Payment(s); and

(e) If the Recipient wishes to stop the Direct Payment(s) and terminate this Agreement he or she must give the Council at least one months’ notice in writing.

7. Recipient’s Specific Obligations in relation to the Employment of Persons

(a) Where the Direct Payment(s) is used to employ staff, the Recipient, as the employer, is required to take all necessary steps to ensure this employment is appropriate and safe for the Service User in order to meet the assessed need(s), including carrying out appropriate recruitment and Disclosure and Barring Service checks, purchasing Public and Employer’s Liability Insurance and arranging for relevant training;

(b) The Recipient must not use the Direct Payment(s) to secure services from their partner, a close relative or another person living in the same household unless otherwise agreed in advance by the Council in writing; and

(c) The Recipient agrees that they will seek independent legal advice from a Solicitor or an alternatively legally qualified person, where appropriate, to ensure they comply with all employment related legislation in connection with the employment of a person using Direct Payment(s).

8. Recipient’s Specific Obligations in relation to the Purchase of Equipment

(a) Where equipment is purchased using the Direct Payment(s) to meet the assessed need(s), the Recipient will be the owner and therefore responsible for ensuring the safety of the equipment purchased. The Recipient is responsible for arranging for and the payment of the servicing and maintenance of the equipment to ensure it is kept in a good state of repair at all times in order to meet the assessed need(s);

(b) Where the equipment is faulty and cannot be repaired or there is to be a delay with a repair, the Recipient must notify the Council immediately so that alternative arrangements can be put in place to ensure the assessed need(s) continue to be met;

(c) The Recipient is responsible for the disposal of the equipment purchased using Direct Payment(s) when it is no longer required. The Recipient must notify the Council immediately if they are considering disposing of the equipment by whatever means;

(d) Where notification is received, the Council reserves the right to request the return of the equipment if it so desires and

(d) Where an item of equipment has been purchased using the Direct Payment(s) and it is subsequently sold, the Recipient must notify the Council immediately so that a decision can be taken regarding the proceeds of the sale.

9. Review of the Direct Payment

(a) The Council may carry out a review of the Direct Payment(s) at any time but shall do so at least once during the first three months of the payment(s) and upon any review or reassessment of the Education, Health and Care Plan or Care and Support Plan.

(b) Following a review the Council may:

(i) substitute the person receiving the Direct Payment(s) with a nominee as appropriate;

(ii) increase, maintain or reduce the amount of Direct Payment(s);

(iii) require the Recipient to comply with either or both of the following conditions:

(1) not secure a service from a particular person; or

(2) provide such information as the Council considers necessary

(iv) stop, suspend or recover the Direct Payment(s) if it appears to the Council that:

(1) the Recipient is not using the Direct Payment(s) to secure the agreed provision;

(2) the arrangements made for securing the agreed provision are not adequate to meet the assessed need; or

(3) the agreed provision can no longer be secured by means of the Direct Payment(s).

10. Stopping the Direct Payment

In addition to clause 9(b)(iv) above, the Council shall stop making the Direct Payment(s) if:

(i) the Recipient has notified the Council in writing that he or she no longer consents to receive the Direct Payment(s);

(ii) the Recipient ceases to be a person to whom a Direct Payment(s) may be made;

(iii) the entitlement to the Direct Payment(s) has ended or the Direct Payment(s) is no longer required; or

(iv) at any point the Council becomes aware that the making of Direct Payment(s) is:

(1) having an adverse impact on other services which the Council provides or arranges for people with an Education, Health and Care Plan or a Care and Support Plan; or

(2) no longer compatible with the Council's efficient use of its resources.

11. Suspension of the Direct Payment

1. In addition to clause 9(b)(iv) above, the Council has the right to suspend the Direct Payment(s) where the need for services/support is temporarily not required for whatever reason.

12. Recovery of the Direct Payment

(a) In addition to clause 9(b)(iv) above, the Council may require the Recipient to repay part or all of the Direct Payment(s), where:

(i) the circumstances of the Service User have changed in a manner which has an impact on the appropriateness of the agreed provision;

(ii) all or part of the Direct Payment(s) has not been used to secure the agreed provision;

(iii) theft, fraud or another offence may have occurred in connection with the Direct Payment(s);

(iv) the Service User has died;

(v) where evidence of the Direct Payment(s) expenditure is not produced by the Recipient to the Council following a request; or

(vi) there is an accrual of unspent Direct Payment(s) and it is not needed to secure the agreed provision.

(b) Save for clause 12(a) (iii) above, the Council shall only seek repayment of any portion of the Direct Payment(s) that has not already been spent on the agreed provision.

(c) Where the Council decides that all or part of the Direct Payment(s) must be repaid, the Council shall give notice in writing to the Recipient, setting out:

(i) the reasons for the decision;

(ii) the amount to be repaid; and

(iii) a reasonable timescale within which the amount must be repaid.

13. The Decision to Reduce, Stop, Suspend or Recover the Direct Payment

(a) The Council has the right to reduce, suspend or stop the Direct Payment(s) and where appropriate recover all or part of the Direct Payment(s) if any of the conditions of this Agreement have not been met.

(b) Where the Council decides to reduce, suspend, stop or recover the amount of the Direct Payment(s) it will provide reasonable notice to the Recipient and will set out in the notice the reasons for its decision.

(c) The Recipient may request that the Council reconsiders its decision.

(d) When conducting its reconsideration, the Council shall consider the representations made by the Recipient, the Service User or their parent or guardian as appropriate and shall provide written reasons of its decision following the reconsideration.

(e) Where the Council has taken the decision to stop and/or recover the Direct Payment(s) in accordance with the terms of this Agreement and either no request for a reconsideration of this decision is made by the Recipient or following reconsideration the decision to stop and/or recover still stands, the Council is able to terminate this Agreement by giving one months’ notice in writing to the Recipient.

14. **Data Protection**

Any personal information you give to us will be processed in accordance with the UK Data Protection Act 1998. The Council may use the information relating to the Direct Payment(s), and may also share the information with other bodies, for the purpose of the prevention or detection of crime or the assessment or collection of any tax.

15. **Notices**

Any notice required to be given under this Agreement is to be given by either party to the other in writing and shall be served personally or by sending it by registered post or recorded delivery to the address given at the beginning of this Agreement. ***IN WITNESS*** *whereof the Parties hereto have caused this Agreement to be executed the* day and year first above written

**For and on behalf of**

**NORTH TYNESIDE COUNCIL**

Signed: ……………………………………….

Print name: ……………………………………….

Position: ……………………………………….

Date: ……………………………………….

**To be signed by the Recipient:**

I confirm I have read the legal requirements on eligibility to receive and manage the Direct Payment(s) as set out in the Council’s Personal Budget Policy. I agree that I am eligible to receive and manage the Direct Payment(s) and there is nothing that I know of which would prevent me from receiving and managing the Direct Payment(s) at the time of signing this Agreement. If circumstances change, I agree I will notify the Council so that my eligibility can be considered again. I agree to the terms and conditions of this Agreement.

Signed: …………………………………….

Print Name: …………………………………….

Date: ……………..……………………..

**Where the Recipient is a Nominated Agent or Suitable Person, the Service User or child’s parent or carer where they have capacity will also need to sign this Agreement:**

I agree to Direct Payments being used to secure the agreed provision to meet the assessed need(s) and to the Direct Payment being managed by the above Nominated Agent or Suitable Person.

Signed: …………………………………….

Print Name: …………………………………….

Date: ……………..……………………..

**THERE ARE TWO COPIES OF THIS AGREEMENT. PLEASE SIGN, DATE BOTH COPIES AND RETURN ONE COPY OF THIS AGREEMENT TO:**

**SEND Support Service,**

Children, Young People and Learning

North Tyneside Council

The Langdale Centre

Langdale Gardens

North Tyneside

NE28 OHG

**SCHEDULE 1**

(a) The amount of the Direct Payment (s):

(b) Frequency of payment(s):

(c) Date of first payment:

(d) The payment(s) detailed above will be paid into the following Bank Account :

Name of Account Holder:

Sort Code:

Account Number: