

Staffordshire and Stoke-on-Trent Integrated Care Board (ICB)

Personal Health Budgets Direct Payment Agreement (Virtual wallet)

Version:	1.3
Ratified by:	Staffordshire and Stoke-on-Trent CCGs Governing Bodies Meeting in Common
Date ratified:	29 th October 2020 30 th June 2022
Name of responsible committee/ individual:	Staffordshire and Stoke-on-Trent CCGs Governing Bodies Meeting in Common
Date reviewed:	June 2022 – updated following further review by Mills and Reeves. March 2022 – direct payment mechanism via the use of a virtual wallet wording updated, wording added re responsibilities as per Working Time (Amendment) Regulations 2003 and inclusion of an agreement variation form (appendix 1) June 2021 – updated to include wording relating to redundancy costs (page 5)

Review date:	October 2021
Date of first issue:	<p>December 2020</p> <p>Version 1.1 issued July 2021</p> <p>Version 1.2 issued March 2022</p> <p>Version 1.3 issued June 2022 for ratification. NB v1.3 further updated to reflect change from CCG to Integrated Care Board (ICB)</p>

Final Approved

Personal Health Budget (PHB) Summary Sheet

1. Person

Patient Name: _____

Patient Address: _____

2. Representative (if applicable)

Representative Name: _____

Representative Address: _____

3. Payments:

One-off Payment £ _____

First Direct Payment £ _____

Regular Direct Payment (per week) £ _____

Total Direct Payment (per annum) £ _____

Contingency amount £ _____

Regular Direct Payments start date: _____

To be paid: (please tick)

The direct payments regardless of which of the two below options is preferred will be paid via a virtual wallet.

- to the Patient or Representative; or
- into a Managed Account (eg operated by a DPSO);

4. Support Team

PHB Nurse Name _____

DPSO Name: (if applicable) _____

Supporting documentation to inform contract:

- PHB Support Plan including cost breakdown

Personal Health Budget (PHB) Terms

This is an agreement between **[Insert name of ICB]** (drop down box) and either the Patient named above or their Representative or Nominee relating to direct payments for health care.

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

Parties

This Agreement is made between:-

- (1) **[Insert name of ICB]** of
[Insert ICB address]

(the “ICB”)

AND

- (2) **[Insert name of patient]** of
[Insert patient's address]

(the “Patient”)

- [AND/OR](2) **[Insert name of representative]** of
[Insert representative's address]

(the “Representative”)

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 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 The Agreement is between the ICB and the Patient or their Representative, pursuant to Section 12A of the National Health Service Act 2006 and the Regulations. The Parties agree that they shall, at all times, in connection with carrying out their rights and obligations pursuant to this Agreement, act in compliance with the Regulations.
- 1.5 Defined terms have the meaning given 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 Direct Payments which are agreed by the ICB as part of the Personal Health Budget will be made by the ICB in accordance with the terms of this Agreement.
- 1.8 The ICB has assessed the Patient's need for Support through discussion and agreement with the Patient and/or Family or Representative and through completion of the outline assessment. The ICB is satisfied that the Patient or their Representative is capable of managing (by themselves or with such assistance as may be available to them), the Personal Health Budget to be received as Direct Payments via a virtual wallet.
- 1.9 The PHB monies paid by the ICB into the Virtual wallet under this Agreement must only be used for the purposes of securing support as agreed with the ICB in the Patient's Personal Health Budget Support Plan and for no other purpose. Further details regarding the use of PHB monies are set out in Schedule 2.
- 1.10 The rights and responsibilities of each of the Parties are as set in Schedule 1.
- 1.11 Subject to the provisions of clause 6.8, 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 or the ICB to carry out their respective obligations under this Agreement.
- 1.12 Upon termination of this Agreement, howsoever arising, all monies held by the Patient or their Representative, having been received from the ICB by way of Direct Payments, shall be repaid immediately to the ICB or as shall be otherwise directed by the ICB. The Patient or their Representative will provide a full account of the balance returned.

2 **Definitions**

Agreement means this agreement (including all Schedules annexed hereto), made between the ICB and the Patient or their Representative, in respect of the use of the PHB monies by way of Direct Payments from the ICB.

Clinical Commissioning Group (CCG) means the commissioner who is responsible for the commissioning of healthcare services in the specific area in which the Patient is GP-registered. The CCG works with local authorities and other agencies that provide health and social care to make sure that the local community's needs are being met in

that locality. CCGs were abolished on 30 June 2022 and replaced by Integrated Care Boards (ICBs)

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 organisation to it.

Direct Payments means the payments made to the Patient or their Representative in accordance with clause 5 of this Agreement and the PHB Summary Sheet and paid into the virtual wallet by the ICB.

DPSO means, where applicable, the direct payment support organisation appointed to assist the Patient or their Representative with management of the Direct Payments.

DPSO Services means such services as the DPSO may provide to the Patient or their Representative.

DPSO Services Agreement means the agreement between the Patient or their Representative and the DPSO for the DPSO Services and includes the required terms as set out in clause 4.2.1 of this Agreement.

Employment Costs means costs agreed by the ICB and associated with the employment of Personal Assistants by the Patient or their Representative for the purpose of this Agreement, including wages, tax, national insurance, DBS checks, training, payroll, insurance and redundancy but excluding sums payable as a consequence of:

- The mismanagement of the employer/Personal Assistant relationship;
- Any kind of employment disputes – including Employment Tribunal claims and County Court claims, settlements or awards.

First Direct Payment means the payment made to the Patient or their Representative in accordance with clause 5.3.1 of this Agreement and the PHB Summary Sheet and paid into the virtual wallet by the ICB.

Integrated Care Board means a statutory organisation bringing the NHS together locally to improve population health and establish shared strategic priorities within the NHS.

Managed Account means a virtual wallet where a third party (such as a DPSO) holds the Direct Payment on behalf of the Patient or their Representative.

Nominee means a person nominated in accordance with Regulation 6(1) of the Regulations and any such Nominee is included in the definition of and referred to as a Representative within this Agreement.

One-Off Direct Payment means the payment made to the Patient or their Representative in accordance with clause 5.2.1 of this Agreement and the PHB Summary Sheet and paid into the virtual wallet by the ICB.

Patient means the person named above in respect of whom the Direct Payments are to be made.

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

Personal Health Budgets Policy means the policy published by the Staffordshire and Stoke-on-Trent Integrated Care Board as may be amended from time to time.

Personal Health Budget Support Plan means the plan developed by the ICB in collaboration with the Patient or their Representative for such personalised support as is appropriate, which describes the health outcomes sought to be achieved for the Patient and the services to be secured by means of Direct Payments to achieve those health outcomes. The Personal Health Budget Support Plan shall be agreed by the Patient or their Representative and the ICB in accordance with the terms of this Agreement.

PHB Nurse means the person nominated by the ICB to monitor and review the Direct Payments in accordance with Paragraph 2.2 of Schedule 1. The PHB Nurse will be the Patient's or Representative's single point of contact for all PHB related queries.

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.

Regulations means the National Health Service (Direct Payments) Regulations 2013 as amended or replaced by subsequent legislation.

Regular Direct Payment means the payments made to the Patient or their Representative in accordance with clause 5.3.2 of this Agreement and the PHB Summary Sheet and paid into the virtual wallet by the ICB.

Representative means a person who is a Court-appointed deputy, an attorney, a person with parental responsibility or a person appointed under Regulation 5(4) of the Regulations with respect to the Patient and any reference to a Representative in this Agreement includes any person nominated by the Patient or their Representative as a Nominee, within the meaning of Regulation 2(1) and Regulation 6 of the Regulations, to receive and manage Direct Payments.

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 Direct Payment means the payments made to the Patient or their Representative in accordance with clause 5.3.3 of this Agreement and the PHB Summary Sheet and paid into the virtual wallet by the ICB.

Virtual Wallet means an online platform which shows all activities within their PHB; for example, the amount of PHB deposited by the ICB, amount paid to the PAs and invoices paid to Providers.

3 Representative

- 3.1 This Clause 3 applies where the ICB has entered into this Agreement with a Representative.
- 3.2 The ICB must enter into this Agreement with a Representative if the Patient is under the age of 16 or has been assessed to lack the mental capacity to make the decision on how to administer their budget.
- 3.3 Any Representative to whom the ICB is to make Direct Payments under the terms of this Agreement must:
 - 3.3.1 be considered appropriate by the ICB;
 - 3.3.2 agree to act on the Patient's behalf in relation to the Direct Payments;
 - 3.3.3 act in the Patient's best interests when securing the provision of services in respect of which Direct Payments are made;
 - 3.3.4 be responsible as a principal for all contractual arrangements entered into for the Patient's benefit and secured by means of Direct Payments;
 - 3.3.5 use the Direct Payments in accordance with the Personal Health Budget Support Plan and the terms of this Agreement and the Regulations;
 - 3.3.6 not receive personally any payment funded through the Personal Health Budget, including any payment in respect of any help given to the Patient to manage or administer the Personal Health Budget or in respect of any services provided to the Patient which are funded by the Personal Health Budget;
 - 3.3.7 in the case of a Patient who lacks mental capacity at the date of this Agreement, inform the ICB immediately if the Patient regains mental capacity and becomes able to manage the Direct Payments; and
 - 3.3.8 where required, agree to be subject to and undergo a DBS check.
- 3.4 Where payments are to be made to the Representative, the ICB will agree to the making of Direct Payments to the Representative on the Patient's behalf subject to being satisfied that the Representative is capable of managing the Direct Payments by themselves or with such assistance as may be available to them. The ICB will require

e Representative to apply for an enhanced DBS certificate before giving its consent to making the Direct Payments to the Representative and prior to entering into this Agreement.

- 3.5 The Patient may notify the ICB if they wish to change or withdraw their Representative. Following receipt of such a notification the ICB may: stop the making of Direct Payments; and consider paying the Direct Payments to the Patient directly or to a different representative of the Patient (within the meaning of Regulation 2(1)), and may as soon as reasonably possible undertake a review of the Personal Health Budget and Personal Health Budget Support Plan in accordance with the Regulations.
- 3.6 The Representative may notify the ICB if they wish to withdraw from the role. Following receipt of such a notification the ICB may: stop the making of Direct Payments, and consider paying the Direct Payments to the Patient directly or to a different representative of the Patient (within the meaning of Regulation 2(1)); and may as soon as reasonably possible undertake a review of the Personal Health Budget and Personal Health Budget Support Plan in accordance with the Regulations.
- 3.7 If Direct Payments to or in respect of the Patient are stopped under Clauses 3.5 or 3.6, it will be the responsibility of the Patient (where the Patient has capacity to do so) or their Representative (where the Patient lacks capacity) to ensure that any monies held by them from the Personal Health Budget under this Agreement are accounted for and repaid to the ICB.

4 DPSO

- 4.1 As set out in paragraph 1.30 of Schedule 1, the Patient or their Representative may appoint a DPSO, who will manage and/or assist the Patient or their Representative with the Direct Payments.
- 4.2 Where the Patient or Representative appoints a DPSO:
- 4.2.1 The Patient or their Representative is required to enter into a contractual agreement with the DPSO. This agreement must include a requirement for the DPSO to provide such information to the ICB as may be required by the ICB. A signed copy of the DPSO Services Agreement must be provided to the ICB before Direct Payments will be paid into a Managed Account. The ICB has produced a template DPSO Services Agreement which Patients or their Representatives and DPSOs might wish to use.
- 4.2.2 Upon receiving a signed copy of the DPSO Services Agreement and subject to being satisfied that the DPSO is capable of managing the Direct Payments the ICB will agree to the making of Direct Payments to the DPSO (into the Managed Account) on the Patient or Representative's behalf.
- 4.2.3 In the event the DPSO Services Agreement comes to an end, the Patient or Representative must inform the ICB. The information on the front of this Agreement will then be updated in accordance with the procedure in clause 6.1 .

- 4.3 For the avoidance of doubt, the ICB will have no contractual relationship, nor enter into any contractual arrangements, with the DPSO for the purpose of this Agreement.

5 Payments

- 5.1 All Direct Payments as agreed by the Patient or their Representative in the Personal Health Budget Support Plan will be made by the ICB into the virtual wallet as follows:

5.2 Single (one off) Direct Payments

- 5.2.1 A single One-Off Direct 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. Aside from this, only Regular Direct Payments will be made in accordance with clause 5.3 below.

5.3 First and Regular Direct Payments

- 5.3.1 A First Direct 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.
- 5.3.2 Subsequent to any First Direct Payment made in accordance with clause 5.3.1 above, the ICB 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 virtual wallet in advance every 4 weeks during the term of this Agreement and such payment shall constitute the "Regular Direct Payment".
- 5.3.3 The total of the Direct Payments ("Total Direct 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.
- 5.3.4 The contingency amount as set out in the PHB Summary Sheet must remain a constant balance in the virtual wallet to cover items listed in the budget section of the Support Plan.

6 General Provisions

- 6.1 The ICB reserves the right to review arrangements within this Agreement and make any 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 ICB in writing.
- 6.2 Notwithstanding clause 6.1, all other amendments to and variations of this Agreement must be agreed between the ICB, the Patient or their Representative and be confirmed in writing, signed and dated by the ICB and the Patient or their Representative and attached to this Agreement. The Patient or their Representative will receive not less than 4 weeks' notice of any proposed review, monitoring or changes to the Personal

Health Budget or Personal Health Budget Support Plan, which may lead to any amendment or variation to this Agreement.

- 6.3 Subject to clause 6.4, notice to be given in connection with this Agreement will be in writing and may be delivered by hand, post, or email, addressed to the recipient at the address set out at the beginning of 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.
- 6.4 The notice will be deemed to have been properly served on the recipient:
- 6.4.1 if delivered by hand, at the time of delivery;
 - 6.4.2 if delivered by post, forty eight (48) hours after being posted (excluding Saturdays, Sundays and public holidays); or
 - 6.4.3 if delivered by email, at the time of transmission.
- 6.5 This Agreement is a legally binding contract which shall be governed by and construed in accordance with English law and the Parties agree to submit to the exclusive jurisdiction of the English courts.
- 6.6 This Agreement (inclusive of the schedules) constitutes the entire understanding between the ICB and the Patient or their Representative 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, on behalf of or by any party.
- 6.7 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.
- 6.8 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.
- 6.9 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.
- 6.10 Direct Payment monies do not form part of a person's estate and must be returned to the ICB upon the death of the Patient or otherwise in accordance with the terms of this Agreement.
- 6.11 The Patient or their Representative confirms that they have read and understood this Agreement including the terms and conditions set out in the schedules.

- 6.12 The ICB and the Patient or their Representative agree to be bound by and to comply with the terms of this Agreement, as amended from time to time, and to comply with their obligations as set out herein.

7 Disagreements and Disputes

- 7.1 The ICB will work in collaboration with the Patient or their Representative, providers and other allied health professionals in implementing this Agreement. The ICB 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):
- 7.1.1 Utilisation of the Personal Health Budget for purposes previously not approved by the ICB.
 - 7.1.2 Allocation of the financial value of the Personal Health Budget being considered to be no longer adequate.
 - 7.1.3 Interpretation of the ICBs Personal Health Budgets Policy.
 - 7.1.4 The ICB deciding to terminate the Personal Health Budget Agreement.
- 7.2 In all cases the PHB Nurse will first attempt to resolve the matter through dialogue with the Patient and/or their Representative. 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, the matter can be escalated at the request of the Patient and/or their Representative or the Senior Clinical Lead to the ICB Senior Strategic Lead and Deputy Director of Commissioning, Partnerships and Integration ("ICB Review Team") for a considering and ruling on the disagreement.
- 7.3 The role of the ICB Review Team will be to determine whether the Personal Health Budget Agreement is in accordance with the ICBs Personal Health Budgets Policy; and to give consideration to the specific issue(s) of disagreement. In doing so the ICB 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 the Representative continue to remain dissatisfied with the outcome, they will have the option to pursue the matter via the ICB Complaints Policy, provided that the matter is one that can be considered under the policy. Information about the ICB Complaints process will be provided at the time.

8 Advocacy / Independent Advice

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

9 Termination

9.1 The ICB or the Patient or their Representative may terminate this Agreement by giving the other party four weeks' notice in writing or the ICB may terminate this Agreement in accordance with the terms of paragraph 2 of Schedule 1.

9.2 In the event that the ICB terminates this Agreement, the ICB written notice will state:

9.2.1 the reason for terminating the Direct Payment; and

9.2.2 details of any repayments due from the Patient or their Representative.

An assessment of the impact of terminating the Direct Payment may be undertaken and alternative options outlined.

9.3 Upon termination of this Agreement, howsoever arising, all residual Direct Payment monies held in the virtual wallet or otherwise by the Patient or their Representative, having been received from the ICB by way of Direct Payments, shall be repaid immediately to the ICB or as shall be otherwise directed by the ICB. The Patient or their Representative will provide a full account of the balance returned.

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

Signature

Name

Designation

Address:

AND

Signed by the **Patient**

Signature

Name

Address

.....

.....

.....

Date

Signed by the **Representative [if applicable]**

Signature

(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)

Name

Address ...

.....
.....
.....

Date

Final Approved

SCHEDULE 1

RIGHTS AND RESPONSIBILITIES OF THE PARTIES

1 The Rights and Responsibilities of the Patient or their Representative

- 1.1 The Patient or, where applicable, their Representative agrees that the Patient's health needs can be met by provision of the Support as identified in the Outline Assessment and Personal Health Budget Support Plan as updated from time to time in accordance with this Agreement or as required by any relevant law or guidance (including the Department of Health's "*Guidance on Direct Payments for Healthcare: Understanding the Regulations*" (March 2014) as amended or replaced from time to time) and that the amount of the Direct Payments is sufficient to provide for the full cost of the Support identified in the Personal Health Budget Support Plan. The Patient or their Representative agrees to use the Personal Health Budget made available to or in respect of the Patient as Direct Payments only for the purpose of securing services needed to help deliver the health outcomes as agreed by the Patient or their Representative in the Personal Health Budget Support Plan from any service provider who meets the conditions set out at paragraph 1.12 of this Schedule 1 and does not fall under paragraph 2.4 of this Schedule 1.
- 1.2 The Patient or their Representative agrees that the Direct Payments cannot be used for any of the following purposes:
- 1.2.1 The supply or procurement of alcohol or tobacco; or
 - 1.2.2 The provision of gambling services or facilities; or
 - 1.2.3 To repay a debt otherwise than in respect of a service specified in the Personal Health Budget Support Plan; or
 - 1.2.4 To pay self-employed Personal Assistants; or
 - 1.2.5 To purchase primary medical services provided by general practitioners; or
 - 1.2.6 To purchase urgent or emergency treatment services (including any unplanned hospital admissions); or
 - 1.2.7 To purchase services that the ICB already commissions which would result in "double funding"; or
 - 1.2.8 To purchase services that the ICB does not agree represent value for money;

- 1.2.9 Anything illegal, unlawful or harmful to the Patient, their Representative or others; or
 - 1.2.10 To purchase services or equipment that are the commissioning or funding responsibility of another statutory authority; or
 - 1.2.11 To purchase transport and related services already funded through a Mobility Allowance; or
 - 1.2.12 To employ someone who lives in the same household as the Patient, unless this has been agreed by the ICB in accordance with the terms of this Agreement; or
 - 1.2.13 To purchase holidays, flights, accommodation and meals; or
 - 1.2.14 To pay for household bills, household repairs, household goods or alterations to a property; or
 - 1.2.15 To fund mileage for Personal Assistants; or
 - 1.2.16 To purchase any goods or services not detailed in the Personal Health Budget Support Plan; or
 - 1.2.17 To purchase anything else not relating to the Patient's assessed healthcare needs; or
 - 1.2.18 Any other purposes listed in the Personal Health Budgets Policy.
- 1.3 The Patient or their Representative must use the Direct Payments to cover the cost of the Support and for no other purpose.
- 1.4 The Patient or their Representative must let the ICB 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 upon request from the ICB or within 30 days of any such request by the ICB, which shall commence from the date the Patient or their Representative first receives a Direct Payment, pursuant to the Personal Health Budget as set out in paragraphs 1.14 and 1.15 below. The Patient or Representative will be required to allow the ICB access to the following information:
- 1.4.1 all financial records (including Bank Statements for the virtual wallet , showing payments received and made through the wallet and any other records which show clearly the Direct Payments received from the ICB and details of how the Patient or their Representative has used the Direct Payments as agreed in the Personal Health Budget Support Plan);
 - 1.4.2 receipts for payment made;

- 1.4.3 agency invoices and receipts (if applicable); and
- 1.4.4 any other information as the ICB may consider necessary.
- 1.5 Where the Patient or their Representative is to provide the ICB with information under this Agreement, such information shall be provided in a legible format, accompanied by authorisation for the ICB to take copies or extracts of the information, with an explanation of the information provided to the ICB or a statement, to the best of the Patient's or their Representative's knowledge and belief, of where any information not provided to the ICB is held.
- 1.6 The Patient or their Representative 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 virtual wallet (or otherwise), even if the Direct Payments have stopped. The Patient or their Representative agrees to provide the ICB, upon request, with an explanation of the information provided to the ICB or a statement, to the best of their knowledge and belief, of where any information they fail to provide to the ICB is held.
- 1.7 The Patient or their Representative must keep a Financial Record which shows clearly:
 - 1.7.1 payments received to meet the Patient's assessed needs; and
 - 1.7.2 details of how they have used Direct Payments made into the virtual wallet as agreed with the PHB Nurse.
- 1.8 Invoices received must show clearly the goods or services provided and the total amount to be paid.
- 1.9 The Patient or their Representative must ensure that provisions are put in place for cover in emergency situations to ensure that the Patient has Support when they need it.
- 1.10 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.
- 1.11 The Patient or their Representative must ensure that any organisation or directly employed individual providing the Support:
 - 1.11.1 is reputable and can meet the standards of quality expected by the ICB;
 - 1.11.2 has complied with all its registration obligations including with the Care Quality Commission if carrying out regulated activities;
 - 1.11.3 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;

- 1.11.4 has the right skills and resources in place to provide the type of services the Patient requires under the Personal Health Budget Support Plan;
 - 1.11.5 has adequate complaints procedures in place; and
 - 1.11.6 where applicable, is a registered member of a regulated profession, regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002.
- 1.12 The Patient or their Representative may request that the ICB carries out on their behalf the enquiries under paragraph 1.12 in respect of any particular service provider organisation.
- 1.13 No later than three months from the date a Direct Payment from the Personal Health Budget is first received into the virtual wallet, there will be an initial review of the management of the Personal Health Budget and a review and re-assessment of the Patient's care needs (including a review of the quality of the Support arrangements the Patient or their Representative has made). Any proposed changes to the Personal Health Budget and/or the Support arrangements will be agreed between the ICB and the Patient or their Representative and the Support Plan and the PHB Summary Sheet will be updated accordingly.
- 1.14 There will be subsequent monitoring and review at three monthly intervals for first year and every 12 months thereafter or and more frequently if there is a change in circumstances (including an assessment whereby the ICB determines the Patient is no longer eligible for Support), or where the ICB becomes aware that the Direct 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 and/or the Support will be notified to the Patient or their Representative in accordance with Clause 6.2 of the Agreement and will be the subject of discussions between the Patient or their Representative and the ICB. The Support Plan and the PHB Summary Sheet will be updated accordingly.
- 1.15 If, following a review of the Personal Health Budget under paragraphs 1.14 and 1.15, the ICB decides to reduce the amount or stop the making of Direct Payments including if the individual has died, the ICB will give the Patient or their Representative 4 weeks' minimum notice in writing stating the reasons for the decision. Upon receipt of such notice the Patient or their Representative may require the ICB to undertake one further review and may provide any relevant evidence or information to consider as part of this further review. The ICB will notify the Patient or their Representative in writing of its decision thereafter and the reasons for it.

- 1.16 The Patient or their Representative agrees to notify the ICB immediately of any substantial change in the Patient's health conditions or the Personal Health Budget Support Plan or other relevant circumstances (including: where the Patient is admitted to hospital, moves to a different address in the ICB area, moves away from the ICB area, leaves the country for more than four weeks, no longer wishes to receive the Direct Payments, or needs help to comply with the terms and conditions of this Agreement).
- 1.17 Where the ICB is satisfied that the whole or any part of a Personal Health Budget has not been used to secure the Support to which it relates, the ICB reserves the right to:
- 1.17.1 demand repayment of the whole or part of the Direct Payments made; or
 - 1.17.2 withdraw the Direct Payments and transfer them onto a notional budget managed directly by the ICB; or
 - 1.17.3 arrange for a third party or accountancy service approved by the ICB to take over the management of the Direct Payments.
- 1.18 Subject to paragraph 2.8 of this Schedule 1, where the ICB is satisfied that the Patient or their Representative has not complied with any term or condition of this Agreement then the Patient or their Representative must repay the whole or part of the Personal Health Budget if the ICB so requests.
- 1.19 The Patient or their Representative (if so directed by the Patient) has the right to bring this Agreement to an end at any time by giving four weeks' written notice (or less by reaching agreement with the ICB) to the PHB Nurse.
- 1.20 If this Agreement is brought to an end by the Patient or their Representative or by the ICB, the ICB will be responsible for settling any outstanding payments due to a provider organisation with whom the Patient or their Representative has made contractual arrangements to provide Support. If there is a surplus Personal Health Budget held in the virtual wallet or in any other location under this Agreement at termination which has not been spent, or in any other virtual wallet of the Patient or their Representative, it must be repaid to the ICB in accordance with the ICB instructions.
- 1.21 Any repayment of the Direct Payments, in part or in whole, to the ICB under the terms of this Agreement shall be made in accordance with the ICB instructions at that time.
- 1.22 Transfer of Direct Payments monies to any bank account is not permitted.
- 1.23 The ICB, the Patient or their Representative may at any time during the term of this Agreement request a review of the Personal Health Budget on 2 weeks' notice. Upon receipt of such a request from the Patient or their Representative, the ICB 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 consequent decisions.

- 1.24 When the Patient or their Representative intends to employ staff directly, the Patient or their Representative must request that these staff undertake DBS checks. When the Patient or their Representative intends to employ or contract with persons known to them (such as a member of their family or friends not living in the same household) they will ask them to undertake an enhanced DBS check to ensure that the person has no relevant criminal convictions which would preclude them from being employed in such a role. If the Patient or their Representative intends to employ a person unknown to the Patient but known to their Representative, they shall require such person to undertake an enhanced DBS check. Results of DBS checks to be carried out in accordance with this paragraph shall be provided to the ICB on receipt and the ICB shall confirm whether those results are satisfactory.
- 1.25 If the Patient or their Representative directly employs staff, they are required to have in force employer's 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 as specified by the ICB (the limit to be increased from time to time as reasonably required by the ICB). The relevant insurance policy and the premium receipts must be produced as and when required by the ICB. An allowance for these insurance policies is included within the Personal Health Budget.
- 1.26 If the Patient or their Representative directly employs staff, they are required to implement training for those staff as directed by the ICB in the Support Plan. This is to be with reputable training bodies with a minimum limit of competence that is acceptable to the ICB. The relevant training costs and schedule must be produced as and when required by the ICB. An allowance for the training is included within the Personal Health Budget.
- 1.27 The Patient or their Representative (if so authorised by the Patient) agrees to notify in writing the Patient's next of kin and/or personal representative and their bank and/or building society that the virtual wallet does not form part of the Patient's estate and does not form part of their personal income. A copy of such notification shall be provided to the ICB within 14 days of being served on the relevant persons in accordance with this paragraph 1.28. In the event of the Patient's death, the ICB will assess the outstanding contractual responsibilities incurred by the Patient or their Representative in respect of the use of the Direct Payments for the purpose of determining whether any amount unspent shall be repaid to the ICB.
- 1.28 If the Patient or their Representative chooses to use a payroll service to pay their personal assistants or employees then they must use an accredited/reputable payroll service, the costs of which are to be met from the Personal Health Budget. In the event that the Patient or their Representative chooses to manage payroll themselves, they must demonstrate the necessary competencies which, if not met, may result in payroll being transferred to a professional payroll service. The Patient or their Representative will be financially audited every 12 weeks unless stated otherwise.

- 1.29 The Patient or their Representative may appoint a DPSO, who will manage and/or assist the Patient or their Representative with the Direct Payments. If the Patient or their Representative does so, they must enter into a contractual arrangement with the DPSO. For the avoidance of doubt, the ICB will have no contractual relationship, nor enter into any contractual arrangements, with such DPSO for the purpose of this Agreement.
- 1.30 Anyone employed by the Patient or their Representative using the Personal Health Budget is an employee of the Patient/Representative and shall not be employed by or be considered to be an agent or employee of the ICB. **For the avoidance of doubt the Patient or their Representative is responsible for ensuring that they comply with all of their legal obligations as an employer, including but not limited to:**
- 1.30.1 **issuing a statement of employment or employment contract within the requisite time period; and**
 - 1.30.2 **paying all employment costs such as pay, tax, pension and National Insurance contributions;**
- 1.31 All Employment Costs associated with the employment of any staff by the Patient or their Representative under this Agreement that are agreed by the ICB shall be included within the Personal Health Budget as indicated in the Personal Health Budget Support Plan.
- 1.32 Where the Patient or their Representative is an employer they shall 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.
- 1.33 This shall include a requirement to ensure that the employee contracted hours are in line with the working time directive as per The Working Time (Amendment) Regulations 2003.
- 1.34 Where any equipment is not available from Core Services, the Patient or their Representative agrees that the purchase of such equipment made with the Personal Health Budget will be discussed and agreed with the ICB, with regard to any costs of repairs, insurance or replacement and any such costs will be clearly outlined in the Personal Health Budget Support Plan.
- 1.35 The Patient or their Representative agrees that the ICB will monitor the Personal Health Budget, the Personal Health Budget Support Plan and the use of the Direct Payments. The following information will be shared, in order to facilitate this:
- 1.35.1 Personal Health Budget Plan;
 - 1.35.2 Contact details for the Patient and (if the Patient has one) their Representative; and
 - 1.35.3 Details of the virtual wallet.

- 1.36 The Patient or their Representative (where applicable) agrees to notify any change of address and/or GP to the PHB Nurse.

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2 The Rights and Responsibilities of the ICB

- 2.1 The ICB will agree with the Patient or their Representative and advise them of significant potential risks arising in relation to the making of Direct Payments and the means of mitigating those risks.
- 2.2 The ICB retains responsibility for reviewing the Patient's healthcare needs and will therefore appoint or identify the PHB Nurse to assess whether 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 Direct Payments to the Patient or their Representative;
 - 2.2.2 Arranging for the review of Direct Payments under the terms of this Agreement;
 - 2.2.3 Liaising between the ICB and the Patient or their Representative in connection with the subject matter of this Agreement.
- 2.3 The Personal Health Budget in the form of Direct Payments will be paid by the ICB into the virtual wallet for the purpose of the Patient or their Representative receiving payments for the cost of the Support which the ICB has assessed is needed by the Patient.
- 2.4 The ICB reserves the right to require that the Patient or their Representative does not secure Support from a particular service provider as indicated by the ICB in this Agreement or as the ICB shall otherwise notify to the Patient or their Representative. **The Patient or their Representative agrees not to use the Direct Payments to purchase the Support from a close family member if they are living in the same household as the Patient without the ICB express written consent to be granted only where it is considered necessary by the ICB to meet the Patient's need for the Support and this provision is contained in the Health and Support Plan.**
- 2.5 The ICB may suspend or discontinue making Direct Payments if it becomes aware or is notified that the Personal Health Budget is not needed for a period exceeding 28 days, or if the Patient does not respond to requests for information or communications, but before doing so it will discuss the matter with the Patient or the Representative.
- 2.6 The ICB 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 Patient or their Representative first receives a Direct Payment, pursuant to the Personal Health Budget, as set out in paragraphs 1.14 and 1.15. This information includes:

- 2.6.1 all financial records/bank statements (that is of income received and payments made through the virtual wallet which show clearly the Direct Payments received from the ICB and details of how the Patient or their Representative has used the Direct Payments as agreed in the Personal Health Budget Support Plan);
- 2.6.2 receipts for payments made by the Patient or the Representative (where possible/practical);
- 2.6.3 agency invoices and receipts (if applicable); and
- 2.6.4 any other information the ICB may consider necessary.

Where the Patient or their Representative is to provide the ICB with information under this Agreement, such information shall be provided in a legible format, accompanied by authorisation for the ICB to take copies or extracts of the information, with an explanation of the information provided to the ICB or a statement to the best of the Patient's or their Representative's knowledge and belief of where any information not provided to the ICB 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 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 ICB may share information from the Patient's Personal Health Budget Support Plan with external support brokers, care providers, and other care professionals. However, the ICB will not share information about the Patient without the Patient or their Representative's consent, except that information referenced in the National Health Service (Direct Payments) Regulations 2013 (as amended), and as permitted by the General Data Protection Regulation (GDPR) 2018 and the Data Protection Act 2018.
- 2.9 Where the ICB 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, in its discretion, suspend, discontinue or reduce the amount of Direct Payments but before doing so the ICB will discuss the matter with the Patient or their Representative and take into account any contractual commitments that have been made by the Patient/Representative and any continuing needs that the Patient may have. If no contact can be made with the Patient or their Representative for a period of 4 weeks, the ICB reserves the right to suspend or withdraw the Direct Payments.
- 2.10 Where the ICB is satisfied that the Patient or their Representative has not complied with the terms of this Agreement, it may require the Patient or their Representative to repay to the ICB any or all of the Direct Payments that have been made, pursuant to the Personal Health Budget.

- 2.11 If the ICB decides that a sum must be reduced or repaid under the terms of this Agreement, it will notify the Patient or their Representative within 4 weeks of making the decision and provide its reasons for making the decision and specifying the amount to be reduced or repaid.
- 2.12 Upon receipt of a notice to repay the whole or part of the Direct Payments served under paragraph 2.11 the Patient or their Representative may request that the ICB re-consider the decision made and provide evidence or information for the ICB to consider as part of the deliberation. Following deliberation, the ICB will notify the Patient or their Representative in writing of its decision and the reasons for it.
- 2.13 Where the ICB has been asked to re-consider a decision that it has made pursuant to this Agreement, it shall only be required to re-consider that decision if required to do so by the Regulations.
- 2.14 If the Patient and/or Representative are managing the Personal Health Budget by themselves and it appears to the ICB that they are no longer capable of doing so, the Personal Health Budget may be transferred to a Managed Account.
- 2.15 If the ICB is satisfied that theft, fraud or another offence has occurred in connection with the Direct Payments, it may terminate this Agreement with immediate effect (within 7 days) and require the Patient or their Representative to repay to the ICB any of or all of the Direct Payments that have been made, pursuant to the Personal Health Budget.
- 2.16 If the ICB 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.
- 2.17 The ICB has the right (Regulation 17) to terminate this Agreement by giving the Patient or their Representative 4 weeks' notice in writing stating the reasons for the decision if it appears to the ICB that:
 - 2.17.1 the Patient or their Representative is no longer capable of managing a Personal Health Budget by themselves (or with such assistance as may be available to them);
 - 2.17.2 the Patient is a person whose ability to arrange their Support is restricted by certain mental health or criminal justice legislation (details of which will be provided to the Patient or their Representative by the ICB);
 - 2.17.3 the Patient's needs for care can no longer be met by means of a Personal Health Budget;
 - 2.17.4 the Patient is no longer registered with a GP practice which is a member of the ICB;

- 2.17.5 the Patient no longer meets the criteria for eligibility for NHS Continuing Health Care;
 - 2.17.6 ongoing healthcare for the Patient is no longer required; or
 - 2.17.7 a Personal Health Budget is no longer an appropriate way of providing the Patient with care and support.
- 2.18 Where a Representative is appointed and they are receiving Direct Payments, the ICB may terminate this Agreement with immediate effect (within 7 days) and arrange appropriate services if:
- 2.18.1 The Representative refuses to receive Direct Payments; or
 - 2.18.2 The ICB considers that the Representative is no longer suitable to receive Direct Payments.
- 2.19 The ICB may terminate this Agreement by giving the Patient or their Representative 4 weeks' notice in writing stating the reasons for the decision if the ICB considers that, the Patient or their Representative has not complied with any of the terms of this Agreement.
- 2.20 Upon receipt of a notice served under paragraph 2.19 the Patient may request that the ICB re-consider the decision and may provide evidence or information for the ICB to consider as part of the deliberation. The ICB will notify the Patient or their Representative in writing of its subsequent decision and the reasons for it.
- 2.21 The Patient or their Representative is responsible for ensuring that all final costs are settled including all employer-related costs such as final pay, tax, pension and National Insurance contributions.
- 2.22 This Agreement will require amendment in the event of a change in the ICB jurisdiction or area of responsibility. The ICB shall notify the Patient or Representative in the event that this occurs.
- 2.23 Any contractual liability to a third party, incurred by the Patient or their Representative (or the personal representatives of the Patient in the event of their death), in respect of Support secured by means of a Direct Payment shall transfer to the ICB when the ICB stops making Direct Payments to the Patient or their Representative as a result of termination of this Agreement, howsoever arising.
- 2.24 During the term of this Agreement the ICB will provide information, advice and support to the Patient or their Representative or will make arrangements for the Patient or their Representative to obtain such information, advice and support.
- 2.25 The ICB will ensure, when reasonably requested to do so, that any person involved in the management or delivery of the Support has undertaken an enhanced DBS check. The ICB will inform the Patient or their Representative of the results of any such DBS checks.

- 2.26 The NHS complaints procedure will apply to any decision by the ICB in relation to a complaint brought by the Patient or their Representative. The ICB will ensure that the Patient or their Representative is aware of the process for accessing that procedure. The ICB will also ensure that the Patient or their Representative is aware of the procedure for escalating a complaint to the Health Service Ombudsman should the Patient or their Representative feel that it is necessary to do so.

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Appendix 1

Personal Health Budget Direct Payments

Agreement Variation Form 2022/23

Service	
Service User	
Description of Change	

This document sets out a variation to our agreement for the period from (**add date**) to (**add date**) and subsequent variations as described above.

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

Signature	
Name	
Designation	
Address	

AND

Signed by the **Patient**

Signature	
Name	
Designation	
Address	

Signed by the **Representative [if applicable]**

(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)

Signature	
Name	
Designation	
Address	