

# Adult Social Care Deferred Payments Agreement Policy

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## Deferred payment agreements policy

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## 1. Introduction

1.1 The Care Act 2014 required all local authorities in England to operate a deferred payment scheme from 1 April 2015 as an option for paying for care home costs.

1.2 The purpose of this policy is to reflect the requirements of Part 1 of the Care Act 2014 ('the Act') effective from 1 April 2015, the Regulations made under the Act and the Care and Support Statutory Guidance issued under the Act by the Department of Health in March 2016 (as amended).

## 2. Transition to Care Act requirements

2.1 Deferred payment agreements agreed between Gloucestershire County Council (we / the Council) and the adult or their representative prior to 1 April 2015 will continue subject to the terms and conditions of that agreement. Agreements made on or after 1 April 2015 will be subject to terms and conditions in accordance with Care Act requirements.

## 3. Definitions

- Care costs – costs charged to an individual by a care home provider including any top-ups This includes the costs associated with the provision of supported accommodation
- Care home – a provider of accommodation which also provides personal or nursing care registered under the Health and Social Care Act 2008
- Deferred – the delaying of payment of care costs and any associated interest and administrative fees and charges until a later date
- Deferred amount – the total of all care costs, all administrative charges and interest which the Council agrees to defer under a deferred payment agreement
- Legal mortgage by way of a first legal charge - in the context of this policy, this means the deferred payment agreement itself. The deferred amount is secured as a first mortgage over the adult's main or only home
- MCA - Mental Capacity Act 2005
- Property disregard – situations when the value of the adult's only or main home is disregarded for the purposes of financial assessment
- Representative – someone who is legally authorised to represent the adult i.e.
  - a deputy appointed by the Court of Protection to act on behalf of an adult assessed as lacking capacity, or

- the donee (holder) of an Enduring or Lasting Power of Attorney given to them by the adult before they lost capacity
- Supported living accommodation – accommodation other than in a care home
  - in premises which are specifically designed or adapted for occupation by adults with needs for care and support to enable them to live as independently as possible, or
  - which is provided in premises intended for occupation by adults with needs for care and support where personal care is available if required (but not premises which the adult owns or occupies other than as a tenant or licensee)
- Top ups
  - The council must provide accommodation at the adults preferred care home unless the provider of the accommodation does not agree to provide the accommodation to the adult on the local authority's terms and there is a care home that has a place and does agree to do so. A third party can pay the difference between the local authority's terms and the adults preferred care home charges. This is a top-up fee
  - A third party can pay for additional or premium services that the Council does not consider are necessary to meet the adults care needs. This is also a top up fee

#### **4. Information and advice about deferred payment agreements**

4.1 Paying for care home costs particularly over the longer term can significantly affect someone's financial position. It is essential that people have access to information and advice to enable them to make informed choices about their options for funding their care costs.

4.2 The Council will provide and / or signpost people to information about:

- Options for paying for care home costs including by means of a deferred payment agreement
- How the County Council's deferred payment scheme operates.
- Sources of independent financial advice

4.3 Information will be made available in formats which comply with the Equality Act 2010.

#### **5. Mental capacity**

5.1 Where there is any doubt about the adult's mental capacity to enter into a deferred payment agreement, the Council's MCA procedures will be followed before an application for a deferred payment agreement may proceed.

5.2 Local authorities are not permitted to enter into deferred payment agreements with a person lacking the requisite mental capacity, unless the proper arrangements are in place i.e. Court appointed deputy or attorney.

5.3 A deferred payment agreement may be requested on behalf of an adult assessed as lacking capacity by someone who is their Court appointed deputy or Power of Attorney for Property and Finance.

## **6. Eligibility criteria**

6.1 A deferred payment will be offered to anyone who can provide adequate security for the deferred amount where the Council is satisfied that:

- The adult has been assessed by the Council as having eligible needs which should be met through care in a care home
- The adult owns or has a beneficial interest in a property which they occupy as their only or main home and the total value of the adult's capital assets excluding their home is less than the upper capital limit set by the Department of Health and Social Care
- The value of the adult's home is not the subject of a property disregard for the purpose of financial assessment
- The adult or their representative understands and agrees to the terms and conditions of the deferred payment agreement

6.2 The Council has a discretion to consider offering a deferred payment in the following circumstances:

- Where the adult's care and support is provided in supported living accommodation and the adult intends to pay the associated care and accommodation rental costs from the deferred payment. (Deferred payment agreements cannot be entered into to finance mortgage payments on supported living accommodation)
- Where the adult is unable to offer security by way of a first legal charge over property but is offering other forms of security for the deferred payment
- Where the adult is seeking a deferred payment in respect of top up fees or in respect of any care costs which exceed what is considered necessary by the Council to cover the costs of care and support

6.3 The Council will consider an application for a deferred payment in these circumstances on a case by case basis taking into account all the circumstances including but not limited to the sustainability and likely duration of the deferred payment arrangement and any risk to the Council in entering into the arrangement. The Council will need to be satisfied that there is adequate security to protect the interests of the Council and that the debt is secure.

## 7. Adequate security

- 7.1 Adequate security must be provided for the amount deferred. This includes care costs as well as any associated interest or administrative costs and charges which have also been deferred.
- 7.2 Where eligibility criteria are met, the Council's preferred adequate security is a legal mortgage by way of a first legal charge in favour of the Council over property which the adult owns (either solely or jointly) as their only or main residence.
- 7.3 The Council must obtain written consent to the deferred amount being secured by legal mortgage by way of a first legal charge in favour of the Council from all owners, or their representatives, and any other person who has a beneficial interest in the property before an offer of a deferred payment agreement may be made.
- 7.4 Where adequate security cannot be offered by way of a first legal charge in favour of the Council, other forms of adequate security may be considered.

## 8. Unregistered property

- 8.1 If the proposed security is not registered with the Land Registry, the property must be registered with the Land Registry before a deferred payment agreement can be offered.
- 8.2 Registration and all fees and charges relating to registration are the responsibility of the property owner(s).

## 9. Requirements for valuation of the secured property

- 9.1 The Council will obtain a valuation of the property offered as security before entering into a deferred payment agreement.
- 9.2 The Council will arrange for revaluations to be obtained when the amount deferred is equal to or exceeds 50% of the value of the security and periodically thereafter to ensure that the equity limit is not breached. See also section 12 Equity Limit.
- 9.3 The adult or their representative can request to arrange an independent valuation. Substantial differences between Council and independently arranged property valuations must be resolved before proceeding with the agreement.
- 9.4 The adult or their representative is responsible for the cost of all valuations whether arranged by the Council or by themselves.
- 9.5 The adult or their representative may elect to add valuation costs to the deferred amount or to pay the costs separately.

## 10. Maintenance, insurance and use of secured property

10.1 The adult or their representative must ensure that the property over which a deferred payment agreement is secured is adequately maintained and insured throughout the duration of the agreement. The Council requires the adult or their representative to have in place an arrangement for regular maintenance to take place. If the property is to be left empty for an extended period of time, the adult or their representative will need to ensure that the insurance covers this adequately and any terms required by the insurer are met.

10.2 The adult or their representative must seek the Council's consent:

- to the way in which the property is to be used throughout the duration of the agreement, and
- before allowing any person to occupy the secured property during the duration of the deferred payment agreement

## 11. Amount that can be deferred

11.1 People may request a deferred payment agreement to cover some or all of their care costs subject to any contribution the Council is allowed to require from the person's income. *Please refer to the Council's Financial Assessments and Benefits Team Policy and Procedural Guide.*

11.2 The actual amount that can be deferred varies according to individual circumstances. Decisions are determined by consideration of:

- Whether there is adequate security for the deferred payment requested and
- Whether the amount deferred is sustainable given:
  - the likely duration of the deferral;
  - projected costs and how care needs and costs may increase over time;
  - the equity available to recover the amount advanced. The equity limit must not be exceeded. See 12 *Equity limit* below

## 12. Equity limit

12.1 The equity limit is 90% of the value of the property against which the deferred payment is or will be secured, less:

- the lower capital limit set by the Department of Health and Social Care and

- the amount of any other financial and / or beneficial interest secured on the property ranking in priority over the Council's charge

12.2 Fluctuations in the value of the property over time affect the equity limit. The total amount deferred including all care costs, interest and administrative fees and charges will be reviewed at regular intervals during the course of the deferred payment agreement to ensure that the equity limit is not exceeded.

12.3 No further care costs will be deferred if this will cause the equity limit to be exceeded. However, interest and administrative costs will continue to be added to the deferred amount. See section 19 When deferral of further care costs must or may cease.

12.4 The Council will review the adult's arrangements for meeting care costs with the adult or their representative when the amount deferred approaches or reaches 70% of the value of the property. The review will include consideration of the continuing costs of care including any top ups, the implications of being unable to sustain a top up, potential eligibility for means tested support, and whether a deferred payment agreement remains the best option for meeting care costs.

### **13. Applications for a deferred payment agreement**

13.1 All applications for a deferred payment agreement must be made on the Council's standardised deferred payment agreement application form signed by the adult or their representative.

13.2 Alternative formats will be made available

### **14. Refusing a request for a deferred payment agreement**

14.1 The Council will decline any application for a deferred payment agreement when:

- the adult or their representative has failed to provide the information required to process the application or
- eligibility criteria are not met or
- adequate security cannot be provided or
- a deferred payment has been requested for an adult lacking the requisite mental capacity to enter into a deferred payment agreement where the person has no registered Power of Attorney and no Court appointed deputy.



- 14.2 The Council may refuse a deferred payment agreement despite someone meeting the qualifying criteria:
  - The property is unregistered
  - Where the Council is unable to secure a legal mortgage by way of a first legal charge over the property or the property is uninsurable
  - Where given all of the circumstances the amount requested is unsustainable
  - Where the adult does not agree to all of the terms and conditions of the deferred payment agreement, for example to maintain and insure the property throughout the duration of the agreement
- 14.3 When an application for a deferred payment agreement is declined, the Council will provide the adult or their representative with its written reasons for refusing the request. Information about the right to appeal the Council's decision will also be provided.

## **15. Financial assessment**

All applicants for a deferred payment agreement will be subject to the Council's financial assessment process.

## **16. The deferred payment agreement**

- 16.1 The deferred payment agreement includes all of the terms and conditions of the agreement between the Council and the adult or their representative.
- 16.2 Care costs cannot be deferred until the Council's deferred payment agreement has been signed or by the adult in need of care or where relevant their representative.
- 16.3 Once signed the deferred payment agreement will take immediate effect.

## **17. Registering the charge over the secured property**

- 17.1 When the security is a legal mortgage, the Council will register a charge over the secured property following the completion of the deferred payment agreement
- 17.2 All fees and charges relating to registration are the responsibility of the adult or their representative who may elect to add costs to the deferred amount or to pay them separately.



## **18. Payment of care costs**

- 18.1 Wherever possible, deferred payment arrangements should be completed within 12 weeks of application.
- 18.2 The Council will pay all or a proportion of the adult's care costs as agreed in the deferred payment agreement as they become due except where conditions exist which preclude the deferral of further care costs. See section 19 When deferral of further care costs must or may cease below.

## **19. When deferral of further care costs must or may cease**

- 19.1 No further care costs will be deferred under an active deferred payment agreement when:
  - This will cause the equity limit to be exceeded (see section 12 Equity limit). While care costs cannot continue to be deferred once the equity limit is reached, interest and administrative fees and charges will continue to be added to the deferred amount until full repayment is received by the Council
  - The adult is no longer receiving care in a care home or such other care as agreed in the deferred payment agreement
  - The Council no longer considers it appropriate that the adult's needs be met in a care home or such other care as agreed in the deferred payment agreement
- 19.2 The Council may decide not to defer care costs in other circumstances, for example:
  - When the adult's assets fall to a level where the adult becomes eligible for Council support with care costs;
  - When the adult is no longer eligible for care in a care home or such other care as agreed in the deferred payment agreement;
  - If the terms and conditions of the deferred payment agreement have been breached and attempts to resolve the matter have been unsuccessful;
  - If the value of the property becomes disregarded where this means that the adult becomes eligible for local authority support;
  - When the adult's weekly income in any week during which the deferred payment agreement is in force exceeds the disposable income allowance set by the Department of Health and Social Care

- When the adult's capital assets excluding their home is more than the upper capital limit set by the Department of Health and Social Care

19.3 The Council will provide a minimum of 30 days' advance notice that further deferrals will cease; and provide an indication of how the adult's care costs will need to be met in future. Depending on their circumstances, the adult may either receive local authority support in meeting the costs of their care or may be required to meet their costs from their income and assets.

19.4 When the deferral of care costs cease and if the actual cost of care is in excess of the amount required to meet the individual's assessed needs the adult may be required to move to alternative accommodation where this would be suitable to meet their needs and be affordable within their personal budget.

## **20. Charging interest on deferred amounts**

20.1 Interest will be charged on all deferred amounts including administrative fees and charges.

20.2 Interest will accrue on a compound basis to the deferred amount and will continue to accrue on all deferred amounts until full repayment is received by the Council. Compound interest will be calculated and applied daily.

20.3 The interest rate charged will be the market gilts rate plus 0.15%. The market gilts rate is variable and is as specified by the Office of Budget Responsibility normally before 1 January and 1 July each year.

20.4 Interest will be added to the amount deferred unless the adult or their representative elects to pay interest separately.

## **21. Administrative fees and charges**

21.1 Administrative fees and charges relating to the deferred payments agreement will be levied. They will not exceed costs actually incurred by the Council.

21.2 Administrative fees and charges will be added to the amount deferred unless the adult or their representative elects to pay these separately.

## **22. Provision of regular financial statements**

The Council will provide the adult or their representative with a written financial statement at six monthly intervals following the commencement of the deferred payment agreement.

## **23. Terminating a deferred payment agreement**

23.1 The deferred payment agreement will be terminated when:

- the adult or their representative provides the Council with written notice as agreed in the deferred payment agreement of their intention to terminate the agreement and repays the deferred amount in full to the Council;
- the secured property is sold. In these circumstances the adult or their financial representative must notify the Council in writing of the intention to sell the property as agreed in the deferred payment agreement and must repay the deferred amount in full to the Council on conclusion of the sale; or
- the adult dies and the deferred amount is repaid. The deferred amount becomes due for repayment 90 days after the death of the adult or as agreed by the Council

23.2 Irrespective of the reason for termination interest continues to accrue on the deferred amount until full repayment is received by the Council.

23.3 When the deferred amount has been repaid in full, the Council will discharge the charge over the property.

## **24. Debt recovery**

24.1 Recovery of any outstanding fees, charges, interest and / or client contributions due to the Council will be in accordance with the Council's debt recovery procedures.

24.2 Debt recovery procedures will also be instigated if:

- the deferred amount is not repaid in full following notification by the adult or their representative that the outstanding amount will be repaid and there is no reasonable explanation for non-payment and / or the terms and conditions of the deferred payment agreement have been breached
- the deferred amount is not repaid in full following the sale of the secured property
- active steps to repay the deferred amount following the death of the adult in need of care are not taken within such period as agreed by the Council.

## **25. Dissatisfaction and complaints**

- 25.1 Where a deferred payment agreement has been refused by the Council, the applicant or their representative has the right to ask for the decision to be reviewed.
- 25.2 The appeal review will be considered in a panel with appropriate local government senior officers.
- 25.3 If a person is still not satisfied with the panel decision, or any person who is dissatisfied with Council services, a Council decision or feels that they have been treated unjustly has the right to make a complaint to the Council and subsequently to the Local Government and Social Care Ombudsman and will be provided with information about how to do so.

## **26. Review**

- 26.1 This policy will be reviewed by December 2023

**APPENDIX 1**

# **Deferred Payment Agreement**

## **(Traditional)**



**DATE:**

**DEFERRED PAYMENT AGREEMENT UNDER THE CARE ACT 2014**  
**(DEFERRED AMOUNTS/RECHARGING)**

BETWEEN

**GLOUCESTERSHIRE COUNTY COUNCIL**

AND

**[SERVICE USER]** acting by **[REPRESENTATIVE]** as *attorney/deputy*  
under *Lasting/Enduring Power of Attorney*

AND

**CO-OWNER**

AND

**CO-OWNER**



This Agreement is dated

## PARTIES

- (1) **GLOUCESTERSHIRE COUNTY COUNCIL** (the "Local Authority")
- (2) **SERVICE USER** of [ADDRESS] and [CARE HOME ADDRESS] acting by **[REPRESENTATIVE]** as *attorney/deputy* under *Lasting/Enduring* Power of Attorney ("you" or "your")
- (3) **CO-OWNER** of [ADDRESS] ("Co-Owner")
- (4) **CO-OWNER** of [ADDRESS] ("Co-Owner")

## BACKGROUND

- a) This deferred payment agreement has been entered into between the parties on the basis that the Local Authority is required to do so under regulation 2 of the Care and Support (Deferred Payment) Regulations 2014.
- b) It has been identified that you require care in the form of residential accommodation in a care home.
- c) On the basis that your financial assessment has determined that you own capital in excess of the Financial Resources Threshold limit, it has been identified that you are required to pay the cost of your care in full.
- d) You will be required to contribute your weekly income towards the costs of care, with the exception of your weekly disposable income allowance.
- e) You have a beneficial interest in the Property over which the charge is being made. The Local Authority has offered you a deferred payment agreement over the property, allowing the costs of care to be deferred and accrue against property owned by you. The Local Authority is also entitled to make a charge for Administrative Charges in putting place the arrangements for meeting your care needs and to apply interest to the accrued amounts. Such charges will be applied in accordance with the terms and conditions of this agreement.

### 1. Interpretation

1.1 In this Agreement, the following words have the following meanings:

<b>Accommodation</b>	Means the details of the care home or the supported living accommodation identified in Schedule 1.
<b>Administrative Charges</b>	Means the costs that the Local Authority incurs and is permitted to charge you in relation to your deferred payment agreement in accordance with paragraph 10(3) of the Care and Support (Deferred Payment) Regulations 2014. These charges may include, but are not limited to, those charges identified in Schedule 2.
<b>Agreement</b>	Means the terms and conditions of this deferred payment agreement together with the Schedules.

<b>Care Charges</b>	Means the charges for the Accommodation, care and/or support that are required to be paid. The details of these charges are set out in Schedule 1.
<b>Commencement Date</b>	Means the date that the Local Authority shall commence payment being <b>[SERVICE START DATE]</b> .
<b>Contribution</b>	Means the amount that you will be required to pay directly towards the Care Charges being the amount by which your weekly income exceeds £144.00. You are entitled to retain £144.00 per week as your disposable income allowance, but you may agree with us that you retain a lower sum if you wish to.
<b>Debt</b>	Means the balance from time to time of the amount of the Care Charges, Administrative Charges and Interest which has not yet been repaid and is accrued against the Property.
<b>Disposable Income Allowance</b>	Means the weekly sum of £144.00 or such other sum as provided in the Regulations relating to deferred payments made under the Care Act 2014.
<b>Equity Limit</b>	Means the maximum amount that the Local Authority will defer and can be accrued against your interest in the Property. Schedule 1 sets out the equity limit that is applicable to you at the time of entering into the agreement.  This is calculated by taking into account 90% of the value of your interest in the Property (being the current market or surrender value at the relevant time) that the Local Authority has obtained as Security for the Care Charges together with any Administrative Charges and Interest which are to be treated as part of the Debt, less £14,250 and the amount of any encumbrance secured on it which ranks in priority to the Local Authority's Security. This amount can be amended from time to time by the Local Authority.
<b>Financial Assessment</b>	Means the financial assessment carried out under section 17 of the Care Act 2014
<b>Financial Resources Threshold</b>	Means the sum specified in regulation 12 of the Care and Support (Charging and Assessment of Resources) Regulations 2014.
<b>Income</b>	Means your income as calculated in accordance with the Financial Assessment carried out under section 17 of the Care Act 2014.
<b>Interest</b>	Means the interest that the Local Authority may charge on the amounts that it has deferred and that have accrued against the Property (including the Care Charges and the Administrative Charges). This rate will not exceed the Relevant Rate for the Relevant Period plus 0.15%.
<b>Local Authority Contact</b>	Means the representative of the Local Authority who you should notify of any change in circumstances or any other information required to be given under the Agreement. The name and contact details of this representative are included in Schedule 1.
<b>Property</b>	Means the property over which the Local Authority takes Security as identified in Schedule 1.
<b>Relevant Period</b>	Means the period starting on either 1 <sup>st</sup> January and ending on 30 <sup>th</sup> June in any year, or 1 <sup>st</sup> July and ending on 31 <sup>st</sup> December in any year.
<b>Relevant Rate</b>	Means the weighted average interest rate on conventional gilts specified for the financial year in which the Relevant Period starts in the most recent report published before the start of the Relevant

	Period by the Office of Budget Responsibility under section 4(3) of the Budget Responsibility and National Audit Act 2011.
<b>Security</b>	Means the security which the Local Authority takes in respect of the Property to protect repayment of the amount of charges that it has deferred together with the Administrative Charges and the Interest. This will take the form of a charge by way of legal mortgage which is capable of being registered as a legal charge in favour of the Local Authority in the land register or any other security which the Local Authority considers to be sufficient to secure payment and as attached (or substantially in the form attached) to this agreement at Schedule 3.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made under it from time to time.
- 1.8 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

## **2. How the payments will be made**

- 2.1 The Local Authority agrees, subject to the Equity Limit, to defer payments up to a maximum of the Care Charges from the Commencement Date. This will be made by either:
  - 2.1.1 deferring your obligation to pay Care Charges which are payable to the Local Authority; or
  - 2.1.2 deferring the amounts payable by you in Care Charges by paying them to your care provider at the times when they become payable.

- 2.2 Where the Care Charges are payable to a care provider other than the Local Authority, the Local Authority will pay the amount of the Care Charges to the care provider.
- 2.3 If you are notified of any change in the amount of the Care Charges or the frequency with which they must be paid, you must notify the Local Authority in writing as soon as you reasonably can and where possible, in advance of the change taking effect. If the Local Authority receives less than fourteen (14) days' notice of a change it cannot guarantee that the requested change will be made in time to take effect on the required date.
- 2.4 If you decide at any time to pay the Care Charges or any part of them yourself you must give the Local Authority at least fourteen (14) days advance written notice before the payment is due of:
  - 2.4.1 the amount that you are going to pay;
  - 2.4.2 the number of times you will be making the payment (whether this will be a one-off payment, a set number of payments or if the payments will be made until further notice).
- 2.5 If you move from the Accommodation into another care home, you should give the Local Authority at least fourteen (14) days written notice of the change and that you wish the Local Authority to substitute the Care Charges with the charges applicable to the new accommodation. The Local Authority will do this if they meet the description of the Care Charges or if the Local Authority continues to be required to lend you the charges under the Care Act 2014. Any changes notified and agreed will take effect on the expiry of the fourteen (14) days' notice. If the Local Authority do not believe that they continue to be required to defer the Care Charges as a result of the change in Accommodation, it will notify and discuss with you the impact of this as soon as possible and may not be required to defer any further amounts in accordance with clause 10.1.
- 2.6 The amount of the Care Charge takes into account your Income. If your Income exceeds the disposable income allowance, the Local Authority will require you to make the Contribution towards the charges due. The Care Charge which the Local Authority has agreed to defer will be reduced by the amount of the Contribution.
- 2.7 If your Income exceeds £144 per week, the Local Authority may require you to repay any amounts forming part of the Debt that should have been funded by your Contribution, by giving you at least 30 days' written notice from the date that it comes to the attention of the Local Authority that you are required or should previously have been required to make a Contribution during the term of this Agreement.



- 2.8 If you notify the Local Authority (or the Local Authority is otherwise notified) that your Income will or is due to exceed £144 per week, the Local Authority will give you at least thirty (30) days written notice from the date that it comes to the Local Authority's attention, that it will reduce the amount of payment that it will defer will be amended accordingly to take into account the Contribution you will be required to make.
- 2.9 The Local Authority will not defer any further amount under this Agreement (even if the Equity Limit has not been reached) if at any time:
  - 2.9.1 you are no longer receiving care and support in the Accommodation or other applicable care home or supported living accommodation.
  - 2.9.2 your needs should no longer be met by the provision of care and support in the Accommodation, or other applicable care home or supported living accommodation.
  - 2.9.3 the Equity Limit has been reached;
  - 2.9.4 an event occurs as specified in clause 10.2 below;
  - 2.9.5 you are in breach of your obligations under clause 10.3 below;
  - 2.9.6 the Property can no longer be insured against all usual risks, save where at the Local Authority's discretion it believes that there are reasonable grounds for concluding that the site value of the Property, disregarding any building on the property, is adequate security for the amount deferred and any future deferred payments that are to be provided;
  - 2.9.7 the Local Authority reasonably finds that your financial resources do not exceed the Financial Assessment Threshold;
- 2.10 The Local Authority will have the discretion as to whether it will defer any further amount under this Agreement (even if the Equity Limit has not been reached) if at any time the valuation report (obtained in accordance with clause 9) concludes that the Debt exceeds 90% of the value of your interest in the Property (as determined by the Local Authority) until, such time as the value of the property has increased to the Local Authority's satisfaction.
- 2.11 The Local Authority will give you at least 30 days' written notice of the date on which it believes that the Equity Limit will be reached unless it is not reasonably practicable to do so because, for example, the Equity Limit is reached by reason of a fall in the value of the Property.

### 3. Interest

- 3.1 Interest will be charged and accrue on the Debt calculated on a daily compounded equivalent of the Relevant Rate plus 0.15%.



- 3.2 If you decide that you wish to pay the Interest separately rather than adding the Interest to Debt, you should give the Local Authority at least fourteen (14) days written notice. If you do this you may return to adding interest to the Debt at any time by giving the Local Authority at least fourteen (14) days' written notice that you wish to do so.
- 3.3 Interest will be added to the Debt each month, on the date when an amount is lent to you for Care Charges, unless the Interest is paid before that date.
- 3.4 The Local Authority may, by giving you at least fourteen (14) days written notice, vary the Interest by an amount that it chooses, to reflect, in a proportionate and reasonable way any change in the cost of funding the Loan as long as the amount does not exceed the Relevant Rate.

#### **4. Costs and Interest on Costs**

- 4.1 The Local Authority may charge you the Administrative Charges. Unless otherwise agreed at the commencement of this Agreement, the Administrative Charges will be added to the Debt and Interest will be charged on the amount of the Administrative Charges.
- 4.2 If you wish to pay the Administrative Charges separately (and not include these in the amount of the Debt) you should give the Local Authority fourteen (14) days written notice. Once this notice has taken effect the Local Authority will invoice you separately for such Administrative Charges as they become due. If you do not then reimburse the invoiced amount within 28 days after such notice is given, the amount of those costs will be added to the Debt and Interest will be charged from that date.
- 4.3 A copy of the Local Authority's current tariff of charges will be provided to you with this Agreement. The Local Authority will give you notice of any changes to the tariff of charges by sending you a copy of the tariff when it is changed, and you may obtain a copy of the current tariff of charges on request at any time.

#### **5. Repayment**

- 5.1 The Debt is to be repaid to the Local Authority on the earliest of the following dates:
  - 5.1.1 the date of any sale or other disposal of the Property;
  - 5.1.2 90 days after your date of death.
- 5.2 You will be required to immediately repay parts of the Debt together with Interest, if the Local Authority defers sums on the mistaken assumption that it is required to make such payments (and it is not actually required to permit you to defer those sums) and you should reasonably realise that you were not entitled to the benefit of these sums (for example where you no longer live in the Accommodation).



5.3 If the Local Authority defers sums on the mistaken assumption that it is required to make such payments (and it is not actually required to defer those sums) and it is not reasonable for the Local Authority to expect you to realise that you were not entitled to the benefit of these sums, then the Local Authority will give you three months' notice to repay part of any part of the Debt (together with Interest).

## **6. Security**

- 6.1 The Local Authority's rights to repayment of the Debt will be secured by way of the Security (also called a legal charge) over the Property.
- 6.2 You agree to grant the Security in a form acceptable to the Local Authority and at the time of entering into this agreement will execute Form CH1 annexed to this agreement to enable the legal charge to be registered.
- 6.3 You will obtain all necessary consents to grant the Security. For example, if the Property is already secured to another party, or somebody already has a legal charge that ranks in priority to the Security that the Local Authority requires, you may need that other party's consent to grant the Security to the Local Authority.
- 6.4 The Local Authority will not be able to lend any amounts until it has received genuine and informed consent in writing by any party who has an interest in the Property.

## **7. Possession and use of the Property**

- 7.1 If you intend to let the Property or allow the Property to be occupied by any person you must:
  - 7.1.1 first obtain the Local Authority's prior written consent; and
  - 7.1.2 pay for and maintain adequate insurance, including landlord insurance where appropriate, in relation to the Property on terms satisfactory to the Local Authority.

The Local Authority will not unreasonably withhold or delay its consent provided that the Property will be occupied on the basis of an assured shorthold tenancy which enables an order for possession to be obtained on two month's written notice, after the expiry of an initial term of no more than 6 months.

## **8. Insurance and maintenance of the Property**

- 8.1 You agree to adequately insure the Property against all usual risks and provide evidence of such insurance at the reasonable request of the Local Authority.
- 8.2 If satisfactory evidence is not provided to the Local Authority that the Property is adequately insured or the cost of such insurance would cause your weekly Income to fall below the current disposable income allowance, the Local Authority may itself insure

the Property under an appropriate policy of insurance. The cost of this insurance will be included in the Administrative Charges to be charged to you.

- 8.3 You shall apply all moneys received or receivable under any insurance in respect of the Property towards replacing, restoring or reinstating the Property or towards compensating the applicable third party as appropriate. To the extent that the relevant insurance policy does not restrict the proceeds of insurance being used to repay the Debt, the proceeds of insurance shall be used, at the option of the Local Authority, to repay the Debt.
- 8.4 The Local Authority, or any appropriately qualified person acting on behalf of the Local Authority will give you at least fourteen (14) days' notice that it is going to inspect the Property for the purposes of ascertaining whether the Property is being maintained in reasonable condition and/or whether there are works of maintenance and/or repair which should be undertaken to the Property in order to preserve or restore its value at or to a value which is adequate Security for the Debt, together with a reasonable amount by which it is anticipated that the Debt will increase in the foreseeable future. The Local Authority will not carry out this inspection more than once a year.
- 8.5 If, following an inspection under clause 8.4, the Local Authority reasonably considers that works need to be undertaken, the Local Authority will give notice (of not more than 56 days and not less than 28 days or such other notice period taking into account the urgency of such works) to you of this requirement requesting that either you carry out such works to the reasonable satisfaction of the Local Authority or stating that the Local Authority will undertake such works and recover the reasonable costs of such works as Administrative Charges.

## 9. Valuations

- 9.1 If at any time the Local Authority has reasonable grounds for concluding that the Debt exceeds 70% of the value of your interest in the Property or exceeds the Equity Limit, it may take reasonable steps to ascertain the value of your interest in the property and in particular instruct a suitably qualified valuer to inspect the Property and to provide a report to the Local Authority on the market value of the Property.
- 9.2 The cost of obtaining this valuation report or costs incurred in otherwise ascertaining the value of the Property may be included in the Administrative Charges.

## 10. Keeping the Local Authority informed and undertakings that you give to the Local Authority

- 10.1 You must inform the Local Authority as soon as reasonably practicable if any of the following happens:

- 10.1.1 your income exceeds, or is expected to exceed, £144 in any week or, where your income has already exceeded £144 in any week;
- 10.1.2 there is any change to the amount or frequency of your Care Charges;
- 10.1.3 you have not paid any Care Charge in full when it has become due (other than any which is payable to the Local Authority or which the Local Authority is to pay on your behalf under this Agreement);
- 10.1.4 you cease to live in a care home or supported living accommodation;
- 10.1.5 there is a change to your needs for care and support the effect of which is that you may no longer require your needs to be met by the provision of the Accommodation;
- 10.1.6 a decision is taken to sell, encumber or otherwise dispose of the Property or any part of it.

10.2 If any of the events listed in clause 10.1.3 to 10.1.6 occur the Local Authority may not be obliged to lend you any more money.

10.3 You undertake to inform the Local Authority of other relevant information that may reasonably impact on this Agreement and to comply, at your own cost, with the following obligations:

- 10.3.1 to obtain any waiver, consent, authorisation or other permission necessary to comply with this Agreement and to enable the Local Authority to take out the Security over the Property;
- 10.3.2 to obtain consent and agreement from any occupiers of the Property that any interest they have in the Property whatsoever will rank behind the interests of the Local Authority including, for the avoidance of doubt, any Security or legal charge granted in favour of the Local Authority;
- 10.3.3 not to create or permit to subsist any security over the Property without the prior consent of the Local Authority (such consent to be subject to the security being reasonable to the Local Authority but not to be otherwise unreasonably withheld or delayed);
- 10.3.4 not to sell, transfer or otherwise dispose of the Property without the prior consent of the local authority;
- 10.3.5 not to increase any existing indebtedness which is secured against the Property nor to borrow any more money secured against your Property without the prior consent of the Local Authority (such consent not to be unreasonably withheld or delayed);
- 10.3.6 to notify the Local Authority of any changes to your financial position or any income that you receive;



10.3.7 not to change or alter the Property without the Local Authority's consent (not to be unreasonably withheld or delayed).

**10.3.8** To apply for first registration of title to the Property at the Land Registry in the event that title is unregistered at the time of entering into this agreement.

## **11. Ending this Agreement**

- 11.1 You may bring the Agreement to an end at any time by giving reasonable written notice to the Local Authority and paying the whole of the Debt.
- 11.2 If you do not bring the Agreement to an end early in accordance with term 11.1, the Agreement will come to an end when the Debt is paid in accordance with clause 5 above.
- 11.3 The Local Authority will not defer any further sums under the Agreement if you fail to comply with your obligations and undertakings in this Agreement or in relation to the Security. For example, non-payment on any due amount pursuant to this Agreement or a legal charge.
- 11.4 If a failure to comply occurs, as described in term 11.3, the Local Authority may cancel any commitment to lend whereupon it shall immediately be cancelled.

## **12. Statements**

- 12.1 The Local Authority will provide you with a written statement:
  - 12.1.1 at the end of the period of six months beginning with the date of this Agreement;
  - 12.1.2 every six months after the date of the first statement; and
  - 12.1.3 within 28 days of a request to the Local Authority for such a statement made by you or on your behalf.
- 12.2 This statement will inform you of the amount which you would have to pay to the Local Authority if you were to bring the Agreement to an end on the date on which the statement is sent or such later date as has been requested by you, and the amount of Interest and Administrative Charges which have accrued since the Agreement was made.

## **13. How notices are to be given**

Any notice which the Local Authority gives to you in accordance with this Agreement will be sent by first class prepaid post to you at the Accommodation or by such other method by or to such other person and at such address as has been agreed in writing between you and the Local Authority from time to time.



- 13.1 Any notice which you give to the Local Authority under this Agreement is to be given in writing to the Local Authority Contact.
- 13.2 Any notice which is sent by first class prepaid post is to be treated as having been served on the second day after it is posted, excluding Sundays and public holidays. Any notice which is sent by fax or email to the Local Authority Contract or such other contact details as provided to either party, is to be treated as having been served at 9am on the business day after the date that it was sent, save where the party receives an error or failure message.

#### **14. Assignment and transfer**

- 14.1 The Local Authority may:

- 14.1.1 assign any of its rights under this Agreement or the Security; or
  - 14.1.2 transfer all of its rights or obligations by novation,

to a bank, financial institution or other institution.

#### **15. Severance**

- 15.1 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.
- 15.2 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

#### **16. Applicable law**

- 16.1 The interpretation, validity and performance of this Agreement shall be governed by the law of England and Wales.

#### **17. Variation**

- 17.1 Any variation to this Agreement must be in writing and signed both by you (or your appointed Attorney) and on behalf of the Local Authority.



## **18. Co-owners**

18.1 The Co-Owner consents to you entering into the terms of this agreement. The Co-Owner agrees that he/she will join as a party to the creation of the Security which will be created under the terms of this agreement and will do all things necessary and sign all forms of consent appropriate to securing the registration of the Security in favour of the Local Authority under the terms of the agreement.

18.2 The Co-Owner acknowledges and agrees that it has been advised by the Local Authority to seek independent legal and financial advice before signing this agreement. In this context "independent advice" means advice from an advisor who is neither related to or acting on behalf of you.

### **Your signature**

**Please read this Agreement carefully, including all the terms set out above and the information set out in the Schedules at the end of the Agreement. The Local Authority advises you to seek independent legal and financial advice before entering into this Agreement. Only sign below if you understand and accept the terms and information included.**

### **Missing payments**

If you do not make payment when it falls due, legal proceedings may be issued against you for a judgment for the amount you owe and/or for possession of the Property. It could also make it more difficult or expensive for you to obtain credit in the future.

### **Complaints**

If you or any guarantor is dissatisfied with any action or omission on the part of the Local Authority under or in connection with this Agreement, in the first instance please write to your Local Authority Contact. If your complaint is not resolved by the Local Authority contact to your satisfaction, you may make a complaint through Gloucestershire County Council's complaints process and subsequently to the Local Government Ombudsman. Details of the Local Authority's complaints process are available on the Gloucestershire County Council website.

**THE PROPERTY SECURING THIS BORROWING MAY BE REPOSSESSED IF AMOUNTS ARE NOT REPAYED WHEN DUE OR YOU DO NOT COMPLY WITH THE OBLIGATIONS OF THIS AGREEMENT**



Signed by **[REPRESENTATIVE]** as attorney/deputy for **[SERVICE USER]**:

Date of signature: \_\_\_\_\_

Witnessed by:

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

Name (IN BLOCK CAPITALS): \_\_\_\_\_

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

Occupation: \_\_\_\_\_

Signed by **[REPRESENTATIVE]** as attorney/deputy for **[SERVICE USER]**:

Date of signature: \_\_\_\_\_

Witnessed by:

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

Name (IN BLOCK CAPITALS): \_\_\_\_\_

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

Occupation: \_\_\_\_\_



THE COMMON SEAL of  
**GLOUCESTERSHIRE COUNTY COUNCIL**  
was hereunto affixed  
in the presence of:-

For Assistant Director of Legal Services

Name (IN BLOCK CAPITALS): \_\_\_\_\_

**SCHEDULE 1**  
**KEY CONTRACT INFORMATION**

<b>Accommodation</b>	[ADDRESS OF CARE HOME]										
<b>Administrative Charges</b>	<p><i>You have opted to pay the Administrative Charges separately in accordance with the Agreement.</i></p> <p><b>OR</b></p> <p><i>You have agreed that any Administrative Charges will be added to the amount of the Debt and will be subject to the addition of Interest.</i> An estimate of these costs and/or a copy of the Administrative Charges of the Local Authority that are applicable at the time of entering into the Agreement are included in Schedule 2.</p>										
<b>Care Charges</b>	<p>These charges are those Care Charges which are to be provided by the Local Authority under this Agreement. These charges can be amended from time to time by the Local Authority in the event of changes to your income or the cost of your care and support. As at the time of entering into the agreement, your Care Charge has been calculated as follows:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%;"><b>Price:</b></td> <td style="width: 60%;">£***** per week</td> </tr> <tr> <td><b>Agreed Top-Up:</b></td> <td>£***** per week</td> </tr> <tr> <td><b>Less Client Contribution:</b></td> <td>£***** per week</td> </tr> <tr> <td><b>Less FNC Contribution:</b></td> <td>£***** per week</td> </tr> <tr> <td><b>Care Charge:</b></td> <td>£***** per week</td> </tr> </table> <p>The total payable for your care and support while you are living in the Accommodation may be more than the Care Charges shown above. The Care Charges will comprise of those charges which the Local Authority consider to be necessary to meet your needs while you are living in the Accommodation. <b>OR those charges that are, in addition to the charges which the Local Authority considers to be necessary to meet your needs, being incurred to meet your preferences being:</b> [insert details of the additional costs and the preferences to which they relate].</p>	<b>Price:</b>	£***** per week	<b>Agreed Top-Up:</b>	£***** per week	<b>Less Client Contribution:</b>	£***** per week	<b>Less FNC Contribution:</b>	£***** per week	<b>Care Charge:</b>	£***** per week
<b>Price:</b>	£***** per week										
<b>Agreed Top-Up:</b>	£***** per week										
<b>Less Client Contribution:</b>	£***** per week										
<b>Less FNC Contribution:</b>	£***** per week										
<b>Care Charge:</b>	£***** per week										
<b>Equity Limit</b>	<p>At the time of entering into the agreement, the Equity Limit applicable to you is:</p> <p>£*****</p> <p>This amount can be amended from time to time by the Local Authority in the event of changes in the value of your interest in the Property or where other lending or changes in circumstances occur.</p> <p>This amount has been calculated by taking into account 90% of the value of your interest of the Property (being the current market or surrender value at the relevant time) that the Local Authority has obtained as Security for the Care Charges together with any Administrative Charges and Interest which are to be treated as part</p>										

	<p>of the Debt, less £14,250 and the amount of any encumbrance secured on it which ranks in priority to the Local Authority's Security.</p> <p>If the amount being lent to you would exceed the Equity Limit as a result of the Local Authority lending an amount that it would otherwise be due to lend for Care Charges, the Local Authority will not lend that amount. This means, for example, that if 90% of the value of the Property, less the amount of any indebtedness secured over the Property by a charge with priority over the Local Authority's security and less £14,250, is £70,000, and you have already been lent a total of £70,000, you will not be lent any more unless or until the value of the Property increases. However, where, due to a fall in the value of the Property, the amount of the Debt comes to exceed the Lending Limit on a date which falls after the date on which the Local Authority last lent an amount in respect of Care Charges and on or before the date on which it is next due to lend an amount in respect of Care Charges, the Local Authority will lend on that next occasion even though lending on that occasion will result in the Debt further exceeding the Equity Limit. After that, the Local Authority will not lend any further amount unless or until the value of the Property increases.</p>
<b>Interest</b>	<p>Rate of Interest at Commencement Date: 0.75%</p> <p><i>You have agreed that any Interest will be added to the amount of the Debt.</i></p> <p><b>OR</b></p> <p><i>You have opted to pay interest separately in accordance with the Agreement.</i></p>
<b>Local Authority Contact</b>	<p>Samantha Evans, Deferred Payments &amp; Property Monitoring Officer.    Financial Assessment and Benefits Team, Shire Hall, Westgate Street, Gloucester, GL1 2TR    Tel: 01452 426681</p>
<b>Property</b>	[PROPERTY ADDRESS]

**SCHEDULE 2**  
**ADMINISTRATIVE CHARGES**

The Care Act 2014 permits the Council to charge administration charges that reflect the actual costs of providing the deferred payment as the deferred payment agreement scheme is intended to be run on a cost neutral basis.

Therefore Gloucestershire County Council will make the following charges for the administration of deferred payments which will be payable in advance:

<b>Set up fee and costs</b>	
Set up fee covers staff time including legal costs of reviewing and processing the DPA, printing, postage and telephone calls. It will also cover the cost of redemption.	£500
<b>Independent Valuation</b>	Actual costs
<b>Land Registry search and legal charge registration fees</b>	Actual costs
<b>Annual fee</b>	
Annual administration fee covers staff time on review of agreement, printing, postage and telephone calls.	£100
<b>Independent Valuation - In the event that a further valuation is required to determine the equity in the property.</b>	Actual costs

**Land registry fees**

As at 1 April 2015 search fee is £3.00 and the fee for registering a legal charge is calculated in accordance with the schedule below:

**Cost to register charge through CH1 and AP1 forms**

Maximum value of equity that can be deferred against.	Fee Electronic (£) – using the portal or Business Gateway for transfers of whole, charges of whole, transfers of charges and other applications of whole of registered titles
£0 to £100,000	20
£100,001 to £200,000	30
£200,001 to £500,000	45
£500,001 to £1,000,000	65
£1,000,001 and over	140



**SCHEDULE 3**  
**SECURITY**

A Legal Charge over the Property in the form of a duly executed Land Registry Form CH1 annexed to this agreement

**HM Land Registry**  
 Legal charge of a registered estate

**CH1**

**This form should be accompanied by either Form AP1 or Form FR1**

**Any parts of the form that are not typed should be completed in black ink and in block capitals.**

If you need more room than is provided for in a panel, and your software allows, you can expand any panel in the form. Alternatively use continuation sheet CS and attach it to this form.

Conveyancer is a term used in this form. It is defined in rule 217A, Land Registration Rules 2003 and includes persons authorised under the Legal Services Act 2007 to provide reserved legal services relating to land registration and includes solicitors and licensed conveyancers.

For information on how HM Land Registry processes your personal information, see our [Personal Information Charter](#).

Leave blank if not yet registered.

1	Title number(s) of the property:
2	Property:
3	Date:
4	<p>Borrower:</p> <p><u>For UK incorporated companies/LLPs</u>            Registered number of company or limited liability partnership including any prefix:</p> <p><u>For overseas companies</u>            (a) Territory of incorporation:            (b) Registered number in the United Kingdom including any prefix:</p>

Give full name(s).

Complete as appropriate where the borrower is a company.

Give full name(s).

Complete as appropriate where the lender is a company. Also, for an overseas company, unless an arrangement with HM Land Registry exists, lodge either a certificate in Form 7 in Schedule 3 to the Land Registration Rules 2003 or a certified copy of the constitution in English or Welsh, or other evidence permitted by rule 183 of the Land Registration Rules 2003.

Each proprietor may give up to three addresses for service, one of which must be a postal address whether or not in the UK (including the postcode, if any). The others can be any combination of a postal address, a UK DX box number or an electronic address.

Place 'X' in any box that applies.

Add any modifications.

Place 'X' in the appropriate box(es).

You must set out the wording of the restriction in full.

Standard forms of restriction are set out in Schedule 4 to the Land Registration Rules 2003.

Insert details of the sums to be paid (amount and dates) and so on.

The borrower must execute this charge as a deed using the space opposite. If there is more than one borrower, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If a note of an obligation to make further advances has been applied for in panel 8 this document must be signed by the lender or its conveyancer.

Examples of the correct form of execution are set out in [practice guide 8: execution of deeds](#). Execution as a deed usually means that a witness must also sign, and add their name and address.

**9 Additional provisions**

The Charge referred to in Panel 7 is made pursuant to the Deferred Payment Agreement dated ("the Agreement") which is made under S34 of the Care Act 2014 and to which the Borrower and the Lender are parties and the Borrower acknowledges that the Property is charged by way of legal mortgage as security for the repayment to the Lender of the total amount of the Debt (as defined within the Agreement) and which may be owing from time to time by the Borrower to the Lender the repayment thereof (together with any interest due) to be deferred on the terms set out in Clause 5 of the Agreement

**10 Execution**

**SIGNED as a DEED by  
REP as attorney  
for SU**

In the presence of:

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

Name (IN BLOCK CAPITALS): \_\_\_\_\_

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

**SIGNED as a DEED by  
REP as attorney  
for SU**

In the presence of:

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

Name (IN BLOCK CAPITALS): \_\_\_\_\_

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

**SIGNED as a DEED by  
SERVICE USER'S NAME  
acting by NAME OF  
DEPUTY pursuant to an  
Order of the Court of  
Protection dated ...**

In the presence of:

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

Name (IN BLOCK CAPITALS): \_\_\_\_\_

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

**THE COMMON SEAL of  
GLOUCESTERSHIRE  
COUNTY COUNCIL  
was hereunto affixed  
in the presence of:**

For Assistant Director of Legal Services

Name (IN BLOCK CAPITALS): \_\_\_\_\_

**WARNING**

If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

Failure to complete this form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register.

Under section 66 of the Land Registration Act 2002 most documents (including this form) kept by the registrar relating to an application to the registrar or referred to in the register are open to public inspection and copying. If you believe a document contains prejudicial information, you may apply for that part of the document to be made exempt using Form EX1, under rule 136 of the Land Registration Rules 2003.

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## APPENDIX 2

# **Deferred Payment Agreement**

## **(Loan style)**



**DATE:**

**DEFERRED PAYMENT AGREEMENT UNDER THE CARE ACT 2014**  
**(LOAN)**

BETWEEN

**GLOUCESTERSHIRE COUNTY COUNCIL**

AND

**[SERVICE USER]** acting by **[REPRESENTATIVE]** as *attorney/deputy*  
under *Lasting/Enduring Power of Attorney*

AND

**CO-OWNER**

AND

**CO-OWNER**



This Agreement is dated

## PARTIES

- (5) **GLOUCESTERSHIRE COUNTY COUNCIL** (the "Local Authority")
- (6) **SERVICE USER** of [ADDRESS] and [CARE HOME ADDRESS] acting by **[REPRESENTATIVE]** as NAME OF SERVICE USER 'attorney/deputy under Lasting/Enduring Power of Attorney ("you" or "your")
- (7) **CO-OWNER** of [ADDRESS] ("Co-Owner")
- (8) **CO-OWNER** of [ADDRESS] ("Co-Owner")

## BACKGROUND

- f) This deferred payment agreement has been entered into between the parties on the basis that the Local Authority is required to do so under regulation 2 of the Care and Support (Deferred Payment) Regulations 2014.
- g) It has been identified that you require care in the form of residential accommodation in a care home.
- h) On the basis that your financial assessment has determined that you own capital in excess of the Financial Resources Threshold limit, it has been identified that you are required to pay the cost of your care in full.
- i) You will be required to contribute your weekly income towards the costs of care, with the exception of your weekly disposable income allowance.
- j) You have a beneficial interest in the Property over which the charge is being made. The Local Authority has offered you a deferred payment agreement over the property, allowing the costs of care that are being loaned to you to accrue against property owned by you. The Local Authority is also entitled to make a charge for Administrative Charges in putting place the arrangements for meeting your care needs and to apply interest to the accrued amounts. Such charges will be applied in accordance with the terms and conditions of this agreement.

## 19. Interpretation

19.1 In this Agreement, the following words have the following meanings:

<b>Accommodation</b>	Means the details of the care home or the supported living accommodation identified in Schedule 1.
<b>Administrative Charges</b>	Means the costs that the Local Authority incurs and is permitted to charge you in relation to your deferred payment agreement in accordance with paragraph 10(3) of the Care and Support (Deferred Payment) Regulations 2014. These charges may include, but are not limited to, those charges identified in Schedule 2.
<b>Agreement</b>	Means the terms and conditions of this deferred payment agreement together with the Schedules.

<b>Care Charges</b>	Means the charges for the Accommodation, care and/or support that are required to be paid. The details of these charges are set out in Schedule 1.
<b>Commencement Date</b>	Means the date that the Local Authority shall commence payment being <b>[SERVICE START DATE]</b> .
<b>Contribution</b>	Means the amount that you will be required to pay directly towards the Care Charges being the amount by which your weekly income exceeds £144.00. You are entitled to retain £144.00 per week as your disposable income allowance, but you may agree with us that you retain a lower sum if you wish to.
<b>Debt</b>	Means the balance from time to time of the amount of the Care Charges, Administrative Charges and Interest which has not yet been repaid and is accrued against the Property.
<b>Disposable Income Allowance</b>	Means the weekly sum of £144.00 or such other sum as provided in the Regulations relating to deferred payments made under the Care Act 2014.
<b>Equity Limit</b>	Means the maximum amount that the Local Authority will lend to you or can be accrued against your interest in the Property. Schedule 1 sets out the equity limit that is applicable to you at the time of entering into the agreement.  This is calculated by taking into account 90% of the value of your interest in the Property (being the current market or surrender value at the relevant time) that the Local Authority has obtained as Security for the Care Charges together with any Administrative Charges and Interest which are to be treated as part of the Debt, less £14,250 and the amount of any encumbrance secured on it which ranks in priority to the Local Authority's Security. This amount can be amended from time to time by the Local Authority.
<b>Financial Assessment</b>	Means the financial assessment carried out under section 17 of the Care Act 2014
<b>Financial Resources Threshold</b>	Means the sum specified in regulation 12 of the Care and Support (Charging and Assessment of Resources) Regulations 2014.
<b>Income</b>	Means your income as calculated in accordance with the Financial Assessment carried out under section 17 of the Care Act 2014.
<b>Interest</b>	Means the interest that the Local Authority may charge on the amounts that it has loaned you and that have accrued against the Property (including the Care Charges and the Administrative Charges). This rate will not exceed the Relevant Rate for the Relevant Period plus 0.15%.
<b>Local Authority Contact</b>	Means the representative of the Local Authority who you should notify of any change in circumstances or any other information required to be given under the Agreement. The name and contact details of this representative are included in Schedule 1.
<b>Property</b>	Means the property over which the Local Authority takes Security as identified in Schedule 1.
<b>Relevant Period</b>	Means the period starting on either 1 <sup>st</sup> January and ending on 30 <sup>th</sup> June in any year, or 1 <sup>st</sup> July and ending on 31 <sup>st</sup> December in any year.
<b>Relevant Rate</b>	Means the weighted average interest rate on conventional gilts specified for the financial year in which the Relevant Period starts in the most recent report published before the start of the Relevant

	Period by the Office of Budget Responsibility under section 4(3) of the Budget Responsibility and National Audit Act 2011.
<b>Security</b>	Means the security which the Local Authority takes in respect of the Property to protect repayment of the amount of charges that it has loaned to you together with the Administrative Charges and the Interest. This will take the form of a charge by way of legal mortgage which is capable of being registered as a legal charge in favour of the Local Authority in the land register or any other security which the Local Authority considers to be sufficient to secure payment and as attached (or substantially in the form attached) to this agreement at Schedule 3.

19.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

19.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

19.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

19.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

19.6 This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

19.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made under it from time to time.

19.8 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

## 20. How the loan will be made

20.1 The Local Authority agrees, subject to the Equity Limit, to lend you amounts up to a maximum of the Care Charges from the Commencement Date. This loan will be made by either:

20.1.1 Lending you an amount to pay Care Charges by paying such sum directly to you two days before the date you have to pay them (not including Saturdays, Sundays, or public holidays); or

- 20.1.2 Lending you the amounts payable by you in Care Charges by paying them to your care provider at the times when they become payable.
- 20.2 Where the Care Charges are payable to a care provider other than the Local Authority, the Local Authority will pay the amount of the Care Charges to the care provider.
- 20.3 If you are notified of any change in the amount of the Care Charges or the frequency with which they must be paid, you must notify the Local Authority in writing as soon as you reasonably can and where possible, in advance of the change taking effect. If the Local Authority receives less than fourteen (14) days notice of a change it cannot guarantee that the requested change will be made in time to take effect on the required date.
- 20.4 If you decide at any time to pay the Care Charges or any part of them yourself you must give the Local Authority at least fourteen (14) days advance written notice before the payment is due of:
  - 20.4.1 the amount that you are going to pay;
  - 20.4.2 the number of times you will be making the payment (whether this will be a one-off payment, a set number of payments or if the payments will be made until further notice).
- 20.5 If you move from the Accommodation into another care home, you should give the Local Authority at least fourteen (14) days written notice of the change and that you wish the Local Authority to substitute the Care Charges with the charges applicable to the new accommodation. The Local Authority will do this if they meet the description of the Care Charges or if the Local Authority continues to be required to lend you the charges under the Care Act 2014. Any changes notified and agreed will take effect on the expiry of the fourteen (14) days notice. If the Local Authority do not believe that they continue to be required to lend you the Care Charges as a result of the change in Accommodation, it will notify and discuss with you the impact of this as soon as possible and may not be required to lend you any further amounts in accordance with clause 10.1.
- 20.6 The amount of the Care Charge takes into account your Income. If your Income exceeds the disposable income allowance, the Local Authority will require you to make the Contribution towards the charges due. The Care Charge which the Local Authority has agreed to lend will be reduced by the amount of the Contribution.
- 20.7 If your Income exceeds £144 per week, the Local Authority may require you to repay any amounts forming part of the Debt that should have been funded by your Contribution, by giving you at least 30 days' written notice from the date that it comes

to the attention of the Local Authority that you are required or should previously have been required to make a Contribution during the term of this Agreement.

20.8 If you notify the Local Authority (or the Local Authority is otherwise notified) that your Income will or is due to exceed £144 per week, the Local Authority will give you at least thirty (30) days written notice from the date that it comes to the Local Authority's attention, that it will reduce the amount that it will lend you and the amount of the Care Charges will be amended accordingly to take into account the Contribution you will be required to make.

20.9 The Local Authority will not lend any further amount under this Agreement (even if the Equity Limit has not been reached) if at any time:

- 20.9.1 you are no longer receiving care and support in the Accommodation or other applicable care home or supported living accommodation;
- 20.9.2 your needs should no longer be met by the provision of care and support in the Accommodation, or other applicable care home or supported living accommodation;
- 20.9.3 the Equity Limit has been reached;
- 20.9.4 an event occurs as specified in clause 10.2 below;
- 20.9.5 you are in breach of your obligations under clause 10.3 below;
- 20.9.6 the Property can no longer be insured against all usual risks, save where at the Local Authority's discretion it believes that there are reasonable grounds for concluding that the site value of the Property, disregarding any building on the property, is adequate security for the amount deferred and any future deferred payments that are to be provided;
- 20.9.7 the Local Authority reasonably finds that your financial resources do not exceed the Financial Assessment Threshold;

20.10 The Local Authority will have the discretion as to whether it will lend any further amount under this Agreement (even if the Equity Limit has not been reached) if at any time the valuation report (obtained in accordance with clause 9) concludes that the Debt exceeds 90% of the value of your interest in the Property (as determined by the Local Authority) until, such time as the value of the property has increased to the Local Authority's satisfaction.

20.11 The Local Authority will give you at least 30 days' written notice of the date on which it believes that the Equity Limit will be reached unless it is not reasonably practicable to do so because, for example, the Equity Limit is reached by reason of a fall in the value of the Property.



## **21. Interest**

- 21.1 Interest will be charged and accrue on the Debt calculated on a daily compounded equivalent of the Relevant Rate plus 0.15%.
- 21.2 If you decide that you wish to pay the Interest separately rather than adding the Interest to Debt, you should give the Local Authority at least fourteen (14) days written notice. If you do this you may return to adding interest to the Debt at any time by giving the Local Authority at least fourteen (14) days' written notice that you wish to do so.
- 21.3 Interest will be added to the Debt each month, on the date when an amount is lent to you for Care Charges, unless the Interest is paid before that date.
- 21.4 The Local Authority may, by giving you at least fourteen (14) days written notice, vary the Interest by an amount that it chooses, to reflect, in a proportionate and reasonable way any change in the cost of funding the Loan as long as the amount does not exceed the Relevant Rate.

## **22. Costs and Interest on Costs**

- 22.1 The Local Authority may charge you the Administrative Charges. Unless otherwise agreed at the commencement of this Agreement, the Administrative Charges will be added to the Debt and Interest will be charged on the amount of the Administrative Charges.
- 22.2 If you wish to pay the Administrative Charges separately (and not include these in the amount of the Debt) you should give the Local Authority fourteen (14) days written notice. Once this notice has taken effect the Local Authority will invoice you separately for such Administrative Charges as they become due. If you do not then reimburse the invoiced amount within 28 days after such notice is given, the amount of those costs will be added to the Debt and Interest will be charged from that date.
- 22.3 A copy of the Local Authority's current tariff of charges will be provided to you with this Agreement. The Local Authority will give you notice of any changes to the tariff of charges by sending you a copy of the tariff when it is changed, and you may obtain a copy of the current tariff of charges on request at any time.

## **23. Repayment**

- 23.1 The Debt is to be repaid to the Local Authority on the earliest of the following dates:
  - 23.1.1 the date of any sale or other disposal of the Property;
  - 23.1.2 90 days after your date of death.
- 23.2 You will be required to immediately repay parts of the Debt together with Interest, if you do not use the sums loaned to you to repay the Care Charges or the Local Authority lends you sums on the mistaken assumption that it is required to make such payments



(and it is not actually required to lend you those sums) and you should reasonably realise that you were not entitled to the benefit of these sums (for example where you no longer live in the Accommodation).

23.3 If the Local Authority lends you sums on the mistaken assumption that it is required to make such payments (and it is not actually required to lend you those sums) and it is not reasonable for the Local Authority to expect you to realise that you were not entitled to the benefit of these sums, then the Local Authority will give you three months notice to repay part of any part of the Debt (together with Interest).

## 24. Security

24.1 The Local Authority's rights to repayment of the Debt will be secured by way of the Security (also called a legal charge) over the Property.

24.2 You agree to grant the Security in a form acceptable to the Local Authority and at the time of entering into this agreement will execute Form CH1 annexed to this agreement to enable the legal charge to be registered.

24.3 You will obtain all necessary consents to grant the Security. For example, if the Property is already secured to another party, or somebody already has a legal charge that ranks in priority to the Security that the Local Authority requires, you may need that other party's consent to grant the Security to the Local Authority.

24.4 The Local Authority will not be able to lend any amounts until it has received genuine and informed consent in writing by any party who has an interest in the Property.

## 25. Possession and use of the Property

25.1 If you intend to let the Property or allow the Property to be occupied by any person you must:

- 25.1.1 first obtain the Local Authority's prior written consent; and
- 25.1.2 pay for and maintain adequate insurance, including landlord insurance where appropriate, in relation to the Property on terms satisfactory to the Local Authority.

The Local Authority will not unreasonably withhold or delay its consent provided that the Property will be occupied on the basis of an assured shorthold tenancy which enables an order for possession to be obtained on two month's written notice, after the expiry of an initial term of no more than 6 months.

## 26. Insurance and maintenance of the Property

26.1 You agree to adequately insure the Property against all usual risks and provide evidence of such insurance at the reasonable request of the Local Authority.

26.2 If satisfactory evidence is not provided to the Local Authority that the Property is adequately insured or the cost of such insurance would cause your weekly Income to fall below the current disposable income allowance, the Local Authority may itself insure the Property under an appropriate policy of insurance. The cost of this insurance will be included in the Administrative Charges to be charged to you.

26.3 You shall apply all moneys received or receivable under any insurance in respect of the Property towards replacing, restoring or reinstating the Property or towards compensating the applicable third party as appropriate. To the extent that the relevant insurance policy does not restrict the proceeds of insurance being used to repay the Debt, the proceeds of insurance shall be used, at the option of the Local Authority, to repay the Debt.

26.4 The Local Authority, or any appropriately qualified person acting on behalf of the Local Authority will give you at least fourteen (14) days notice that it is going to inspect the Property for the purposes of ascertaining whether the Property is being maintained in reasonable condition and/or whether there are works of maintenance and/or repair which should be undertaken to the Property in order to preserve or restore its value at or to a value which is adequate Security for the Debt, together with a reasonable amount by which it is anticipated that the Debt will increase in the foreseeable future. The Local Authority will not carry out this inspection more than once a year.

26.5 If, following an inspection under clause 8.4, the Local Authority reasonably considers that works need to be undertaken, the Local Authority will give notice (of not more than 56 days and not less than 28 days or such other notice period taking into account the urgency of such works) to you of this requirement requesting that either you carry out such works to the reasonable satisfaction of the Local Authority or stating that the Local Authority will undertake such works and recover the reasonable costs of such works as Administrative Charges.

## 27. Valuations

27.1 If at any time the Local Authority has reasonable grounds for concluding that the Debt exceeds 70% of the value of your interest in the Property or exceeds the Equity Limit, it may take reasonable steps to ascertain the value of your interest in the property and in particular instruct a suitably qualified valuer to inspect the Property and to provide a report to the Local Authority on the market value of the Property.

27.2 The cost of obtaining this valuation report or costs incurred in otherwise ascertaining the value of the Property may be included in the Administrative Charges.

**28. Keeping the Local Authority informed and undertakings that you give to the Local Authority**

28.1 You must inform the Local Authority as soon as reasonably practicable if any of the following happens:

- 28.1.1 your income exceeds, or is expected to exceed, £144 in any week or, where your income has already exceeded £144 in any week;
- 28.1.2 there is any change to the amount or frequency of your Care Charges;
- 28.1.3 you have not paid any Care Charge in full when it has become due (other than any which is payable to the Local Authority or which the Local Authority is to pay on your behalf under this Agreement);
- 28.1.4 you cease to live in a care home or supported living accommodation;
- 28.1.5 there is a change to your needs for care and support the effect of which is that you may no longer require your needs to be met by the provision of the Accommodation;
- 28.1.6 a decision is taken to sell, encumber or otherwise dispose of the Property or any part of it.

28.2 If any of the events listed in clause 10.1.3 to 10.1.6 occur the Local Authority may not be obliged to lend you any more money.

28.3 You undertake to inform the Local Authority of other relevant information that may reasonably impact on this Agreement and to comply, at your own cost, with the following obligations:

- 28.3.1 to obtain any waiver, consent, authorisation or other permission necessary to comply with this Agreement and to enable the Local Authority to take out the Security over the Property;
- 28.3.2 to obtain consent and agreement from any occupiers of the Property that any interest they have in the Property whatsoever will rank behind the interests of the Local Authority including, for the avoidance of doubt, any Security or legal charge granted in favour of the Local Authority;
- 28.3.3 not to create or permit to subsist any security over the Property without the prior consent of the Local Authority (such consent to be subject to the security being reasonable to the Local Authority but not to be otherwise unreasonably withheld or delayed);
- 28.3.4 not to sell, transfer or otherwise dispose of the Property without the prior consent of the local authority;
- 28.3.5 not to increase any existing indebtedness which is secured against the Property nor to borrow any more money secured against your Property without the prior



consent of the Local Authority (such consent not to be unreasonably withheld or delayed);

- 28.3.6 to notify the Local Authority of any changes to your financial position or any income that you receive;
- 28.3.7 not to change or alter the Property without the Local Authority's consent (not to be unreasonably withheld or delayed).

**28.3.8** To apply for first registration of title to the Property at the Land Registry in the event that title is unregistered at the time of entering into this agreement.

## **29. Ending this Agreement**

- 29.1 You may bring the Agreement to an end at any time by giving reasonable written notice to the Local Authority and paying the whole of the Debt.
- 29.2 If you do not bring the Agreement to an end early in accordance with term 11.1, the Agreement will come to an end when the Debt is paid in accordance with clause 5 above.
- 29.3 The Local Authority will not lend any further sums under the Agreement if you fail to comply with your obligations and undertakings in this Agreement or in relation to the Security. For example, non-payment on any due amount pursuant to this Agreement or a legal charge.
- 29.4 If a failure to comply occurs, as described in term 11.3, the Local Authority may cancel any commitment to lend whereupon it shall immediately be cancelled.

## **30. Statements**

- 30.1 The Local Authority will provide you with a written statement:
  - 30.1.1 at the end of the period of six months beginning with the date of this Agreement;
  - 30.1.2 every six months after the date of the first statement; and
  - 30.1.3 within 28 days of a request to the Local Authority for such a statement made by you or on your behalf.
- 30.2 This statement will inform you of the amount which you would have to pay to the Local Authority if you were to bring the Agreement to an end on the date on which the statement is sent or such later date as has been requested by you, and the amount of Interest and Administrative Charges which have accrued since the Agreement was made.

### **31. How notices are to be given**

Any notice which the Local Authority gives to you in accordance with this Agreement will be sent by first class prepaid post to you at the Accommodation or by such other method by or to such other person and at such address as has been agreed in writing between you and the Local Authority from time to time.

- 31.1 Any notice which you give to the Local Authority under this Agreement is to be given in writing to the Local Authority Contact.
- 31.2 Any notice which is sent by first class prepaid post is to be treated as having been served on the second day after it is posted, excluding Sundays and public holidays. Any notice which is sent by fax or email to the Local Authority Contract or such other contact details as provided to either party, is to be treated as having been served at 9am on the business day after the date that it was sent, save where the party receives an error or failure message.

### **32. Assignment and transfer**

- 32.1 The Local Authority may:

- 32.1.1 assign any of its rights under this Agreement or the Security; or
- 32.1.2 transfer all of its rights or obligations by novation,

to a bank, financial institution or other institution.

### **33. Severance**

- 33.1 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.
- 33.2 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.



#### **34. Applicable law**

34.1 The interpretation, validity and performance of this Agreement shall be governed by the law of England and Wales.

#### **35. Variation**

35.1 Any variation to this Agreement must be in writing and signed both by you (or your appointed Attorney) and on behalf of the Local Authority.

#### **36. Co-owners**

36.1 The Co-Owner consents to you entering into the terms of this agreement. The Co-Owner agrees that he/she will join as a party to the creation of the Security which will be created under the terms of this agreement and will do all things necessary and sign all forms of consent appropriate to securing the registration of the Security in favour of the Local Authority under the terms of the agreement.

36.2 The Co-Owner acknowledges and agrees that it has been advised by the Local Authority to seek independent legal and financial advice before signing this agreement. In this context "independent advice" means advice from an advisor who is neither related to or acting on behalf of you.



**Your signature**

**Please read this Agreement carefully, including all the terms set out above and the information set out in the Schedules at the end of the Agreement. The Local Authority advises you to seek independent legal and financial advice before entering into this Agreement. Only sign below if you understand and accept the terms and information included.**

**Missing payments**

If you do not make payment when it falls due, legal proceedings may be issued against you for a judgment for the amount you owe and/or for possession of the Property. It could also make it more difficult or expensive for you to obtain credit in the future.

**Complaints**

If you or any guarantor is dissatisfied with any action or omission on the part of the Local Authority under or in connection with this Agreement, in the first instance please write to your Local Authority Contact. If your complaint is not resolved by the Local Authority contact to your satisfaction, you may make a complaint through Gloucestershire County Council's complaints process and subsequently to the Local Government Ombudsman. Details of the Local Authority's complaints process are available on the Gloucestershire County Council website.

**THE PROPERTY SECURING THIS BORROWING MAY BE REPOSSESSED IF AMOUNTS ARE NOT REPAYED WHEN DUE OR YOU DO NOT COMPLY WITH THE OBLIGATIONS OF THIS AGREEMENT**



Signed by **[REPRESENTATIVE]** as attorney/deputy for **[SERVICE USER]**:

Date of signature: \_\_\_\_\_

Witnessed by:

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

Name (IN BLOCK CAPITALS): \_\_\_\_\_

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

Occupation: \_\_\_\_\_

Signed by **[REPRESENTATIVE]** as attorney/deputy for **[SERVICE USER]**:

Date of signature: \_\_\_\_\_

Witnessed by:

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

Name (IN BLOCK CAPITALS): \_\_\_\_\_

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

Occupation: \_\_\_\_\_



THE COMMON SEAL of  
**GLOUCESTERSHIRE COUNTY COUNCIL**  
was hereunto affixed  
in the presence of:-

For Assistant Director of Legal Services

Name (IN BLOCK CAPITALS): \_\_\_\_\_

**SCHEDULE 1**  
**KEY CONTRACT INFORMATION**

<b>Accommodation</b>	[ADDRESS OF CARE HOME]										
<b>Administrative Charges</b>	<p><i>You have opted to pay the Administrative Charges separately in accordance with the Agreement.</i></p> <p><b>OR</b></p> <p><i>You have agreed that any Administrative Charges will be added to the amount of the Debt and will be subject to the addition of Interest.</i> An estimate of these costs and/or a copy of the Administrative Charges of the Local Authority that are applicable at the time of entering into the Agreement are included in Schedule 2.</p>										
<b>Care Charges</b>	<p>These charges are those Care Charges which are to be provided by the Local Authority under this Agreement. These charges can be amended from time to time by the Local Authority in the event of changes to your income or the cost of your care and support. As at the time of entering into the agreement, your Care Charge has been calculated as follows:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%;"><b>Price:</b></td> <td style="width: 60%;">£***** per week</td> </tr> <tr> <td><b>Agreed Top-Up:</b></td> <td>£***** per week</td> </tr> <tr> <td><b>Less Client Contribution:</b></td> <td>£***** per week</td> </tr> <tr> <td><b>Less FNC Contribution:</b></td> <td>£***** per week</td> </tr> <tr> <td><b>Care Charge:</b></td> <td>£***** per week</td> </tr> </table> <p>The total payable for your care and support while you are living in the Accommodation may be more than the Care Charges shown above. The Care Charges will comprise of those charges which the Local Authority consider to be necessary to meet your needs while you are living in the Accommodation. <b>OR those charges that are, in addition to the charges which the Local Authority considers to be necessary to meet your needs, being incurred to meet your preferences being: [insert details of the additional costs and the preferences to which they relate].</b></p>	<b>Price:</b>	£***** per week	<b>Agreed Top-Up:</b>	£***** per week	<b>Less Client Contribution:</b>	£***** per week	<b>Less FNC Contribution:</b>	£***** per week	<b>Care Charge:</b>	£***** per week
<b>Price:</b>	£***** per week										
<b>Agreed Top-Up:</b>	£***** per week										
<b>Less Client Contribution:</b>	£***** per week										
<b>Less FNC Contribution:</b>	£***** per week										
<b>Care Charge:</b>	£***** per week										
<b>Equity Limit</b>	<p>At the time of entering into the agreement, the Equity Limit applicable to you is:</p> <p>£*****</p> <p>This amount can be amended from time to time by the Local Authority in the event of changes in the value of your interest in the Property or where other lending or changes in circumstances occur.</p> <p>This amount has been calculated by taking into account 90% of the value of your interest of the Property (being the current market or surrender value at the relevant time) that the Local Authority has obtained as Security for the Care Charges together with any Administrative Charges and Interest which are to be treated as part</p>										

	<p>of the Debt, less £14,250 and the amount of any encumbrance secured on it which ranks in priority to the Local Authority's Security.</p> <p>If the amount being lent to you would exceed the Equity Limit as a result of the Local Authority lending an amount that it would otherwise be due to lend for Care Charges, the Local Authority will not lend that amount. This means, for example, that if 90% of the value of the Property, less the amount of any indebtedness secured over the Property by a charge with priority over the Local Authority's security and less £14,250, is £70,000, and you have already been lent a total of £70,000, you will not be lent any more unless or until the value of the Property increases. However, where, due to a fall in the value of the Property, the amount of the Debt comes to exceed the Lending Limit on a date which falls after the date on which the Local Authority last lent an amount in respect of Care Charges and on or before the date on which it is next due to lend an amount in respect of Care Charges, the Local Authority will lend on that next occasion even though lending on that occasion will result in the Debt further exceeding the Equity Limit. After that, the Local Authority will not lend any further amount unless or until the value of the Property increases.</p>
<b>Interest</b>	<p>Rate of Interest at Commencement Date: 0.95%</p> <p><i>You have agreed that any Interest will be added to the amount of the Debt.</i></p> <p><b>OR</b></p> <p><i>You have opted to pay interest separately in accordance with the Agreement.</i></p>
<b>Local Authority Contact</b>	<p>Samantha Evans, Deferred Payments &amp; Property Monitoring Officer.    Financial Assessment and Benefits Team, Shire Hall, Westgate Street, Gloucester, GL1 2TR    Tel: 01452 426681    Email: <a href="mailto:deferredpayments@gloucestershire.gov.uk">deferredpayments@gloucestershire.gov.uk</a></p>
<b>Property</b>	[PROPERTY ADDRESS]

**SCHEDULE 2**  
**ADMINISTRATIVE CHARGES**

The Care Act 2014 permits the Council to charge administration charges that reflect the actual costs of providing the deferred payment as the deferred payment agreement scheme is intended to be run on a cost neutral basis.

Therefore Gloucestershire County Council will make the following charges for the administration of deferred payments which will be payable in advance:

<b>Set up fee and costs</b>	
Set up fee covers staff time including legal costs of reviewing and processing the DPA, printing, postage and telephone calls. It will also cover the cost of redemption.	£500
<b>Independent Valuation</b>	Actual costs
<b>Land Registry search and legal charge registration fees</b>	Actual costs
<b>Annual fee</b>	
Annual administration fee covers staff time on review of agreement, printing, postage and telephone calls.	£100
<b>Independent Valuation - In the event that a further valuation is required to determine the equity in the property.</b>	Actual costs

**Land registry fees**

As at 1 April 2015 search fee is £3.00 and the fee for registering a legal charge is calculated in accordance with the schedule below:

**Cost to register charge through CH1 and AP1 forms**

Maximum value of equity that can be deferred against.	Fee Electronic (£) – using the portal or Business Gateway for transfers of whole, charges of whole, transfers of charges and other applications of whole of registered titles
£0 to £100,000	20
£100,001 to £200,000	30
£200,001 to £500,000	45
£500,001 to £1,000,000	65
£1,000,001 and over	140



**SCHEDULE 3**  
**SECURITY**

A Legal Charge over the Property in the form of a duly executed Land Registry Form CH1 annexed to this agreement

**HM Land Registry**  
 Legal charge of a registered estate

**CH1**

**This form should be accompanied by either Form AP1 or Form FR1**

**Any parts of the form that are not typed should be completed in black ink and in block capitals.**

If you need more room than is provided for in a panel, and your software allows, you can expand any panel in the form. Alternatively use continuation sheet CS and attach it to this form.

Conveyancer is a term used in this form. It is defined in rule 217A, Land Registration Rules 2003 and includes persons authorised under the Legal Services Act 2007 to provide reserved legal services relating to land registration and includes solicitors and licensed conveyancers.

For information on how HM Land Registry processes your personal information, see our [Personal Information Charter](#).

Leave blank if not yet registered.

1	Title number(s) of the property:
2	Property:
3	Date:
4	<p>Borrower:</p> <p><u>For UK incorporated companies/LLPs</u>            Registered number of company or limited liability partnership including any prefix:</p> <p><u>For overseas companies</u>            (a) Territory of incorporation:            (b) Registered number in the United Kingdom including any prefix:</p>

Complete as appropriate where the borrower is a company.

Give full name(s).

Complete as appropriate where the lender is a company. Also, for an overseas company, unless an arrangement with HM Land Registry exists, lodge either a certificate in Form 7 in Schedule 3 to the Land Registration Rules 2003 or a certified copy of the constitution in English or Welsh, or other evidence permitted by rule 183 of the Land Registration Rules 2003.

Each proprietor may give up to three addresses for service, one of which must be a postal address whether or not in the UK (including the postcode, if any). The others can be any combination of a postal address, a UK DX box number or an electronic address.

Place 'X' in any box that applies.

Add any modifications.

Place 'X' in the appropriate box(es).

You must set out the wording of the restriction in full.

Standard forms of restriction are set out in Schedule 4 to the Land Registration Rules 2003.

Insert details of the sums to be paid (amount and dates) and so on.

The borrower must execute this charge as a deed using the space opposite. If there is more than one borrower, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If a note of an obligation to make further advances has been applied for in panel 8 this document must be signed by the lender or its conveyancer.

Examples of the correct form of execution are set out in [practice guide 8: execution of deeds](#). Execution as a deed usually means that a witness must also sign, and add their name and address.

**9 Additional provisions**

The Charge referred to in Panel 7 is made pursuant to the Deferred Payment Agreement dated ("the Agreement") which is made under S34 of the Care Act 2014 and to which the Borrower and the Lender are parties and the Borrower acknowledges that the Property is charged by way of legal mortgage as security for the repayment to the Lender of the total amount of the Debt (as defined within the Agreement) and which may be owing from time to time by the Borrower to the Lender the repayment thereof (together with any interest due) to be deferred on the terms set out in Clause 5 of the Agreement

**10 Execution**

**SIGNED as a DEED by  
REP as attorney  
for SU**

In the presence of:

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

Name (IN BLOCK CAPITALS): \_\_\_\_\_

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

**SIGNED as a DEED by  
REP as attorney  
for SU**

In the presence of:

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

Name (IN BLOCK CAPITALS): \_\_\_\_\_

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



**SIGNED as a DEED by  
SERVICE USER'S NAME  
acting by NAME OF  
DEPUTY pursuant to an  
Order of the Court of  
Protection dated ...**

In the presence of:

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

Name (IN BLOCK CAPITALS): \_\_\_\_\_

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

**THE COMMON SEAL of  
GLOUCESTERSHIRE  
COUNTY COUNCIL**  
was hereunto affixed  
in the presence of:

For Assistant Director of Legal Services

Name (IN BLOCK CAPITALS): \_\_\_\_\_

**WARNING**

If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

Failure to complete this form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register.

Under section 66 of the Land Registration Act 2002 most documents (including this form) kept by the registrar relating to an application to the registrar or referred to in the register are open to public inspection and copying. If you believe a document contains prejudicial information, you may apply for that part of the document to be made exempt using Form EX1, under rule 136 of the Land Registration Rules 2003.

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