

Sample Deferred Payment Agreement

DATE:

201*

DEFERRED PAYMENT AGREEMENT UNDER THE CARE ACT 2014

BETWEEN
BATH AND NORTH EAST SOMERSET COUNCIL

AND

For and on behalf of
XXXX

This Agreement is dated [insert date]

PARTIES

- (1) BATH AND NORTH EAST SOMERSET COUNCIL (the "Local Authority")
Guildhall, High Street, Bath, BA1 5AW
- (2) _____ of _____ acting in his capacity as
attorney for and on behalf of _____ ("you" or "your") of

- (3) [CO-OWNER NAME] of [CO-OWNER 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] OR [permitted to do so under regulation 3] 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 or supported living accommodation.
- c) On the basis that your financial assessment has determined that you own capital in excess of the 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 .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:

Accommodation	Means the details of the care home or the supported living accommodation identified in Schedule 1.
Administrative Charges	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.
Agreement	Means the terms and conditions of this deferred payment agreement together with the Schedules.
Care Charges	Means the charges for the Accommodation, care and/or support that require to be paid since the Accommodation first commenced. The details of the current level of charges are set out in Schedule 1.
Contribution	Means the amount that you will be required to pay directly towards the Care Charges.
Debt	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.
Equity Limit	<p>Means the maximum amount that the Local Authority will defer and can be accrued against the Property. Schedule 1 sets out the equity limit that is applicable to you at the time of entering into the agreement.</p> <p>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.</p>
Financial Assessment	Means the financial assessment carried out under section 17 of the Care Act 2014
Financial Resources Threshold	Means the sum specified in regulation 12 of the Care and Support (Charging and Assessment of Resources) Regulations 2014.
Income	Means your income as calculated in accordance with the Financial Assessment carried out under section 17 of the Care Act 2014.
Interest	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%.
Local Authority Contact	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.
Property	the property over which the Local Authority takes Security as identified in Schedule 1.
Relevant Period	Means the period starting on either 1 st January and ending on 30 th June in any year, or 1 st July and ending on 31 st December in any year.
Relevant Rate	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.
Security	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.

- 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. 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. Where any sums are advanced to you in accordance with this Agreement, you must apply such sums to the payment of the Care Charges and not for any other purposes.
- 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 or other supported living accommodation, you should give us 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 and 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 10.2.
- 2.6 The amount of the Care Charge takes into account your Income. If your Income exceeds the Income threshold, 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 and the amount of the Care Charges 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 if the Equity Limit has been reached;
 - 2.9.4 in accordance with clause 10.2 below;
 - 2.9.5 if you are in breach of your obligations under clause 10.3 below;
 - 2.9.6 if 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 that it has lent you and any future loans that are to be provided;
 - 2.9.7 If the Local Authority reasonably finds that your financial resources do not exceed the Financial Assessment Threshold;
 - 2.9.8 If any valuation report (obtained in accordance with clause 9) concludes that the value of your interest in the Property does not equate to or exceed the Debt until, subject to the Equity Limit, such time as the value of the property has increased to the Local Authority's satisfaction;
- 2.10 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.

Interest

- 2.11 Interest will be charged on the Debt. This will be a compound interest rate applied daily from the date the Accommodation commenced. The interest rate for the initial Relevant Period is set out in Schedule 2 of this Agreement.
- 2.12 If you decide that you wish to pay the Interest separately rather than adding the Interest to the Debt, you should give the Local Authority at least fourteen (14) days written notice. If you do this you may return to paying interest at any time by giving the Local Authority at least fourteen (14) days' written notice that you wish to do so. Once this notice has taken effect the Local Authority will invoice you separately for the interest which has accrued on an annual basis. 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.
- 2.13 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.
- 2.14 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.

3. Costs and Interest on Costs

- 3.1 The Local Authority will 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. 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.
- 3.2 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.

4. Repayment

- 4.1 The Debt is to be repaid to the Local Authority on the earliest of the following dates:
- 4.1.1 the date of any sale or other disposal of the Property;
 - 4.1.2 90 days after your date of death.

- 4.2 You will be required to immediately repay parts of the Debt together with Interest, 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 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).
- 4.3 If the Local Authority lends or 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).

5. Security

- 5.1 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.
- 5.2 You agree to grant the Security in the form set out at Schedule 3 to this agreement and 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. 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.

6. Possession and use of the Property

- 6.1 If you intend to let the Property or allow the Property to be occupied by any person you must:
- 6.1.1 first obtain the Local Authority's prior written consent; and
 - 6.1.2 pay for and maintain adequate insurance including where appropriate landlord's insurance 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 one month's written notice, after the expiry of an initial term of no more than 6 months.

7. Insurance and maintenance of the Property

- 7.1 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.

- 7.2 If satisfactory evidence is not provided to the Local Authority that the Property is adequately insured the Local Authority may, where reasonably required, 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.
- 7.3 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 prepay the Debt, the proceeds of insurance shall be used, at the option of the Local Authority, to prepay the Debt.
- 7.4 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.
- 7.5 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.

8. Valuations

- 8.1 If at any time the Local Authority has reasonable grounds for concluding that the Debt exceeds the value of your interest in the Property or exceeds the Equity Limit, it may take reasonable steps to ascertain the value of 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.
- 8.2 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.

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

- 9.1 You must inform the Local Authority as soon as reasonably practicable if any of the following happens:
- 9.1.1 your income exceeds, or is expected to exceed, £144 in any week or, where your income has already exceeded £144 in any week;
 - 9.1.2 there is any change to the amount or frequency of your Care Charges;

- 9.1.3 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);
 - 9.1.4 you cease to live in a care home or supported living accommodation;
 - 9.1.5 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;
 - 9.1.6 a decision is taken to sell, encumber or otherwise dispose of the Property or any part of it.
- 9.2 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.
- 9.3 You undertake to inform the Local Authority of other relevant information that may reasonably impact on this Agreement and to comply with the following obligations:
- 9.3.1 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;
 - 9.3.2 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;
 - 9.3.3 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);
 - 9.3.4 not to sell, transfer or otherwise dispose of the Property without the prior consent of the local authority;
 - 9.3.5 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);
 - 9.3.6 to notify the Local Authority of any changes to your financial position or any income that you receive;
 - 9.3.7 not to change or alter the Property without the Local Authority's consent (not to be unreasonably withheld or delayed).

10. Ending this Agreement

10.1 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.

10.2 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 4 above.

10.3 The Local Authority will not lend or 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.

10.4 If a failure to comply occurs, as described in term 11.3, the Local Authority may:

10.4.1 cancel any commitment to lend whereupon it shall immediately be cancelled; and/or

10.4.2 declare the Security enforceable.

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 4 above.

11.3 The Local Authority will not lend or 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:

11.4.1 cancel any commitment to lend whereupon it shall immediately be cancelled; and/or

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.

13. 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.

14. How notices or statements are to be given

Any notice or statement 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.

- 14.1 Any notice which you give to the Local Authority under this Agreement is to be given in writing to the Local Authority Contact.
- 14.2 Any notice or statement 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 or statement 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.

15. Assignment and transfer

- 15.1 The Local Authority may:

- 15.1.1 assign any or its rights under this Agreement or the Security; or

- 15.1.2 transfer all of its rights or obligations by novation,

to a bank, financial institution or other institution.

16. Severance

- 16.1 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.
- 16.2 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.

17. Applicable law

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

18. Variation

18.1 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.

19. Co-owners

19.1 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.

19.2 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

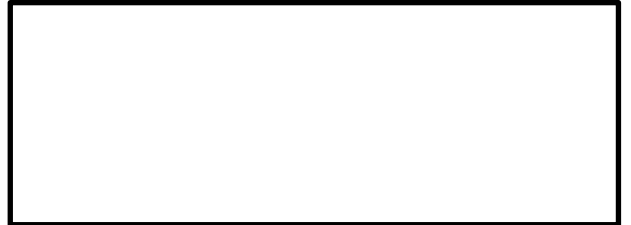
If you or any guarantor is dissatisfied with any action or omission on the part of the Local Authority under or in connection with this Agreement, in the first instance

please write to your Local Authority Contact. If your complaint is not resolved by the Local Authority to your satisfaction, you may have a right of appeal under the complaints procedure set out on the Local Authority's website.

THE PROPERTY SECURING THIS BORROWING MAY BE REPOSSESSED IF YOU DO NOT KEEP UP REPAYMENTS ON THE LOAN OR COMPLY WITH THE OBLIGATIONS OF THIS AGREEMENT

Signed by

_____ (as attorney for)



in the presence of

Date of signature:

Witnessed by:

Witness signature

witness name

address

occupation

Signed for and on behalf of the Local Authority:

Name of person signing:

Position of person signing:

Date of signature on behalf of the local authority :

Witnessed by: