Direct Payment Education SEN Agreement form v2 updated **04.03.15** LS HT FINAL

WEST SUSSEX COUNTY COUNCIL

DIRECT PAYMENT AGREEMENT FORM

**This Agreement is made for the benefit of:**

-------------------------------------------------------- (referred to as “the Child or Young Person”)

**This Agreement is made between:**

1. West Sussex County Council (referred to as “the Council”)

and

1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (referred to as “Parent/Carer/YoungPerson ”)

Whose address is:

----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**The Agreed Goods and Services\***

|  |
| --- |
| \**Detail the agreed provision that will be purchased and/or arranged by way of Direct Payment (by reference to the provision detailed in Part F of the EHC Plan)* |

**The Agreement**

The Agreement is that the Council will make payments to the Parent/Carer/Young Person , who will use the money to pay for the provision detailed in Part F (referred to as “the Agreed Goods and Services”) of the Education Health and Care Plan (EHC Plan).

In entering into this Agreement, the Parent/Carer/Young Person promises to carry out all the responsibilities involved in managing the money. These include:

a. Complying with all relevant legal obligations.

b. Making sure that the money is used effectively to provide the agreed provision.

c. Keeping within the available budget.

d. Telling the Council of any relevant change of circumstances which would impact on the need for the Agreed Goods and Services.

The Council and the Parent/Carer/Young Person shall keep to the conditions set out in this Agreement.

**Receiving Direct Payments**

The Parent/Carer/Young Person has confirmed that they are willing to receive Direct Payments and that they are able to manage the Direct Payments on their own or with assistance.

**Conditions and Restrictions** *(where appropriate)*

The Council is applying the following conditions or restrictions, which it considers reasonable and necessary:

a.

b.

c.

**1. Assessment and Education Health and Care Plan**

* 1. The Council has assessed the education, health and social care needs of the Child or Young Person named in this Agreement and developed a support plan to achieve the identified objectives and outcomes, this is called an Education, Health and Care Plan (EHC Plan).
  2. The EHC Plan may also describe the Social Care Services or Health Services that the Child/Young Person should receive from the Council.
  3. The Parent/Carer/Young Person has told the Council that they would like to arrange some or all of the provision detailed in Part F of the EHC Plan and to receive a direct payment from the Council to buy and manage the provision required.
  4. The management of the Direct Payments can either be carried out by the Parent/Carer/Young Person without assistance or with assistance (see paragraph 13).

* 1. The Council has agreed to give the Parent/Carer/Young Person a sum of money sufficient to secure the full cost of the agreed provision.
  2. This Agreement describes the rules about receiving Direct Payments
  3. This Agreement is made pursuant to the Children and Families Act 2014 and The Special Educational Needs (Direct Payments) Regulations 2014.
  4. The Parent/Carer/Young Person is required to notify the Council immediately if they become unable to manage Direct Payments even with assistance.

**2. The Personal Budget**

* 1. The Child/Young Person has been assessed as eligible for the following:
* Element 3 (Top Up) Special Educational Needs Funding
* Children and Young People’s Continuing Care
* Social Care Services
  1. The agreed outcomes to be achieved by the EHC Plan are:
* XXX
* XXX
* XXX
* XXX
* XXX
  1. The annual sum of money to be paid by the Council to the Parent/Carer/Young Person is £xxxxxxx and this will be used to secure the Agreed Goods and Services
  2. The annual sum will be paid to the Parent/Carer/Young Person in advance every 4 weeks or monthly via cheque requisition and payment plan.
  3. The Council will pay the agreed amount of money into the account set up under paragraph 4.1 on the dates below, and will write to the Parent/Carer/Young Person to confirm this. The Council may agree to make different arrangements in some cases:

1. **Purchase of Equipment**
   1. If the Parent/Carer/Young Person uses the Direct Payment to purchase any equipment, or to purchase a minor adaptation for equipment that is already owned, this will be paid by the Council as a one off lump sum. If the Parent/Carer/Young Person uses the Direct Payment to purchase items that exceed the amount of the Direct Payment, they will be responsible for making up the difference out of their own money. The Parent/Carer/Young Person will be liable for all legal and contractual responsibilities and consequences that may arise from such purchase.
   2. Unless otherwise agreed in writing, the Parent/Carer/Young Person is responsible for any insurance, maintenance and servicing of equipment or adaptations purchased with the Direct Payments.
   3. In the event that the equipment is no longer required the Parent/Carer/Young Person will be responsible for the disposal and any consequential costs. The Council may, at its discretion, agree to remove any equipment or minor adaptations free of charge. If the Council chooses to do this, the Council will be free to make use of the equipment as it sees fit and will not be regarded as having bought the equipment from the Parent/Carer/Young Person.
2. **Bank Account** 
   1. The Parent/Carer/Young Person will open a separate bank or building society account to receive the Direct Payments and will provide details of the account to the Council. This account must only be accessible by the Parent/Carer/Young Person.
   2. The Parent/Carer/Young Person will keep the account in credit, and will not allow it to become overdrawn or to be used as security for a loan.
   3. The Parent/Carer/Young Person will not request or accept an overdraft facility on the account.
   4. The Parent/Carer/Young Person will be responsible for any bank charges or other charges applied to the account and the benefits of any interest may be accrued to the account.
   5. The Parent/Carer/Young Person will ask for two copies of the statement of the account to be issued every month. One must be sent (currently) to the Finance Officer attached to the Special Educational Needs and Assessment Team Room 001 County Hall Chichester with such other documents as may be required(see Section 6 below). Monthly bank statements must be kept for a period of six years.
3. **Using the Direct Payments** 
   1. The Parent/Carer/Young Person will use the Direct Payments to purchase or arrange the Agreed Goods and Services to meet the agreed outcomes in paragraph 2.2 and as described in the EHC Plan and as agreed by the Council, and not for anything else.
   2. The Parent/Carer/Young Person will make all payments by cheque, debit card or internet bank transfer. Payments in cash can only be made in exceptional circumstances and only with the prior written agreement of the Council. Any cash payments will be recorded on a receipt signed by the Parent/Carer/Young Person and the person receiving the money.
   3. If the Parent/Carer/Young Person fails to provide receipts to prove that money has been used for the Agreed Goods and Services, the full amount of the Direct Payment must be repaid to the Council.
4. **Keeping records** 
   1. The Parent/Carer/Young Person will keep clear records of how the Direct Payments have been spent and will allow the Council see those records on a quarterly basis or within 28 days if requested.
   2. The Parent/Carer/Young Person will retain all invoices, payslips (showing staff details, hours worked and payments made, as well as payments which the Parent/Carer/Young Person has made to the Inland Revenue, time sheets, agency invoices and receipts (if appropriate), receipts for one-off payments for Agreed Goods or Services purchased.
   3. Where the Council requires other information about the use of the Direct Payment funds, it will write to the Parent/Carer/ Young Person to say how this should be provided.
   4. Where the Parent/Carer/ Young Person uses the money to pay for the delivery of Agreed Services by an individual, they will keep records to meet their obligations under employment, tax, and National Insurance regulations. If requested by the Council, the Parent/Carer/Young Person will provide copies of such records to confirm that these obligations are met. However, the Council will not require these to be routinely sent in.
   5. Where the Parent/Carer/Young Person engages a domiciliary care agency or other service provider, they will keep invoices or other records of the services purchased.
5. **What the Parent/Carer/Young Person agrees to do**
   1. The Parent/Carer/Young Person will notify the Council immediately of any change of circumstances which may affect the Child or Young Persons eligibility to receive Direct Payments.
   2. The Parent/Carer/Young Person is responsible for negotiating any specific terms and conditions of contract and any terms and conditions of employment with any provider or individual delivering all or part of the Agreed Goods and Services.
   3. The Parent/Carer/Young Person must seek prior written agreement of the headteacher or principal if any of the Agreed Services are to be delivered in school or college.
   4. The Parent/Carer/Young Person will be responsible for ensuring that any healthcare provider or agencies used to provide any Agreed Service are registered with the Care Quality Commission and are qualified to provide the required service and are registered and maintain their professional registration with the relevant professional body.
   5. The Parent/Carer/Young Person will be responsible for ensuring the health and safety of any individual employed to deliver any Agreed Service and that they are approved or certified by the Disclosure and Barring Service (DBS).
   6. The Parent/Carer/Young Person is not permitted to use any money from the Direct Payments outside the United Kingdom.
   7. The Parent/Carer/Young Person will be responsible for ensuring that any individual employed to deliver any of the Agreed Service is lawfully permitted to work in the United Kingdom.
   8. The Parent/Carer/Young Person will comply with all legislation and take full responsibility for meeting all of the legal requirements under employment law, including (but not limited to) minimum wage, redundancy, sickness, pensions, Income Tax and National Insurance within the agreed budget and where appropriate the Parent/Carer/Young Person will register with HM Revenue and Customs as an employer.
   9. The Parent/Carer/Young Person will be expected to pay for relevant employment costs out of the Direct Payments, for example:

* Employer’s liability insurance
* Payroll services (where needed)
* Health and safety items (equipment)
* Expenses (where needed)
* Tax and insurance, holiday pay etc
* Additional car insurance (where needed)
* Recruitment expenses (where needed)
* Sickness (where needed)
* Pensions (where needed)
* Other employment related costs e.g. redundancy payments

(This list is not exhaustive and the Parent/Carer/Young Person’s employment advice service will be expected to advise on any further costs)

* 1. Where Direct Payments are used to employ an individual, the Parent/Carer/Young Person will be the employer of that individual and the Parent/Carer/Young Person must keep records to meet their obligations under employment, tax, and National Insurance responsibilities. If asked by the Council, the Parent/Carer/Young Person will provide copies of these records.
  2. The Parent/Carer/Young Person will ensure that all employees or prospective employees recruited to deliver any Agreed Service are not discriminated against based on disability, age, gender, race or ethnic origin, religious beliefs or sexual orientation and will comply with all relevant legislation.
  3. The Parent/Carer/Young Person will take out and maintain insurance to cover any employment related claims, public liability, professional indemnity and liability, and where relevant, medical malpractice insurance within the agreed budget.
  4. The Parent/Carer/Young Person will ensure that there are contingency arrangements in place in case the services or support needed by the child or young person is temporarily disrupted within the agreed budget. This will include (but is not limited to) both planned and unplanned absences of an employee due to sickness or annual leave.
  5. The Parent/Carer/Young Person will ensure that the Direct Payments are not used to:
* Employ any partner (married, unmarried or in a civil partnership) or any close relative living in the same house hold as the child or young person;
* Pay for anything that is for someone else
* Pay for household expenses such as food or bills, rent or mortgage payments;
* Pay for anything illegal; or
* Gamble or buy lottery tickets, raffle tickets, bingo, alcohol or cigarettes.

1. **What the Council agrees to do**
   1. The Council will act in the best interests of the Child or Young Person and will work flexibly to meet the agreed outcomes and assessed needs.
   2. The Council will offer the Parent/Carer/Young Person independent support and advice from the organisation Independent Lives to help manage the obligations of this Agreement (see paragraph 13).
   3. The Council agrees to make the payments to the Parent/Carer/Young Person as detailed in paragraph 2.4.
   4. The Council continues to have a duty to meet the eligible assessed needs of the Child or Young Person should the arrangements defined in this Agreement breakdown and where difficulties cannot be resolved.
2. **Reviews** 
   1. From time to time, the Parent/Carer/Young Person will meet with the Child’s/Young Person’s Care Manager/ Planning Coordinator Special Educational Needs and Assessment team (SENAT) and/or a member of the Direct Payments Team to discuss:

* Whether the assessed needs have changed;
* How the Direct Payment System is working;
* The quality of the assistance or services that they are receiving;
* Whether they remain entitled to receive Direct Payments.
  1. The first of these review meetings will take place about 12 weeks after the Direct Payments begin, and then at 6 monthly intervals. Extra meetings can take place if either the Parent/Carer/Young Person or the Planning Coordinator in SENAT/Care Manager has something that needs to be discussed, or if there has been a change to the Agreed Goods and Services or if the Council has a question to do with financial records.
  2. The review of the Direct Payments may be incorporated into the Annual Review of the EHC Plan and there will be consideration of the impact of the Direct Payment on the progress of the Child/Young Person. Annual Reviews are arranged by the School/College/other educational setting.
  3. Following a review the Council may:

1. Change the name of the person receiving the Direct Payments
2. Increase, maintain or reduce the amount of the Direct Payments
3. Require the Parent/Carer/Young Person to comply with the following further conditions:

* that the Agreed Goods and Services may not be secured from a particular provider
* that the Parent/Carer/Young Person must provide such further information as the Council consider necessary.

1. Suspend or Stop making payments
2. Take any other action the Council considers necessary.
3. **Ending, Suspending or Altering the Amount of Direct Payment**
   1. The Parent/Carer/ Young Person can choose to end the Direct Payments if this system is no longer their chosen way of receiving support for the Child/Young Person. A decision to end the Direct Payments must be notified to the Council in writing with at least 4 weeks notice in line with payment plan processes.
   2. The Council will provide the Parent/Carer/Young Person with at least 4 weeks notice (in linewith payment plan processes) of any decision to reduce, increase, suspend or stop the Direct Payment.
   3. The Council may stop Direct Payments if:

* it appears that the money has not been used for the Agreed Goods and Services;
* the terms of this Agreement have not been met;
* the Parent/Carer/Young Person is unable to continue to consent to receiving the Direct Payments;
* the Parent/Carer/Young Person does not manage the Direct Payments (alone or with assistance) to obtain the necessary support;
* the Young Person or Child becomes ineligible to receive Direct Payments.
* The Parent/Carer/Young Person ceases to be a person to whom a Direct Payment can be made
* It appears to the Council that the Agreed Goods and Services can no longer be secured by way of Direct Payments.
* The Child or Young Person begins a 52 week residential placement
  1. If Direct Payments are stopped for any reason but the Child/Young Person still needs the Agreed Goods and Services, this will be arranged by the Council.
  2. The Council may suspend or reduce the Direct Payment if:
* A surplus has accrued on account, unless the accrual has been previously agreed with the Council in writing;
* An overpayment has been made;
* The eligible needs of the Child or Young Person have reduced
* The Child/Young Person does not need the assistance for a time – for example, if they are in hospital;
* The Parent/Carer/Young Person fails to comply with the review and monitoring process;
* Criminal activity or deliberate misuse of funds is suspected by the Council

1. **Repaying Direct Payment money** 
   1. In some circumstances the Parent/Carer/Young Person may be asked to repay some or all of the Direct Payments to the Council.
   2. The Council will seek repayment of the Direct Payment if:

* the money has not been used for the Agreed Goods and Services;
* there is an accidental overpayment;
* excess money builds up in the account which is more than is needed to pay for assistance to meet the Agreed Goods and Services.
* the money has been used illegally or fraudulently;
* the Parent/Carer/Young Person is found to have provided fraudulently information
* the Parent/Carer/Young Person fails to provide the required documentation or has otherwise failed to follow the terms of this Agreement.

1. **Emergencies** 
   1. Before starting to receive Direct Payments the Parent/Carer/Young Person will make plans, as far as reasonably possible, to deal with an interruption in the arrangements for their assistance. The Council may need to know that suitable back-up arrangements have been made before agreeing to start the Payments.
   2. If an arrangement breaks down and the Parent/Carer/Young Person has no other assistance, the Council will arrange a service to meet the need for the time being.
2. **Advice and Assistance** 
   1. Before receiving Direct Payments, the Parent/Carer/Young Person will meet at least once with a Direct Payments Adviser from the Independent Living Association and will take any other advice that may be needed, to make sure that they are aware of all the responsibilities which accompany Direct Payments, and is giving their informed agreement.
   2. The Parent/Carer/Young Person will confirm to the Council the name of the Adviser from the organisation Independent Lives.
3. **Complaints** 
   1. If the Parent/Carer/Young Person wishes to make a complaint about any action or decision taken by the Council’s officers, and the disagreement cannot be sorted out with the Planning Coordinator (SENAT)/ Care Manager, they should contact the Team Manager (SENAT) /Manager at the Children and Young People’s Services office where their case is dealt with. The Parent/Carer/Young Person will be advised about the Service’s complaints procedure.
   2. The Parent/Carer/Young Person also has the right to raise any issues about the Council’s actions with their County Councillor.
4. **Date and Duration of this Agreement** 
   1. This Agreement may be changed by agreement between the parties, and it may be ended at any time by the Council or by the Parent/Carer/ Young Person (see paragraph 10 above).
   2. The amount of money the Council pays to the Parent/Carer/Young Person may change from time to time to keep up with inflation. It will also change if the EHC Plan is amended.
   3. The Council will write to tell the Parent/Carer/Young Person about any changes in the amount of the Direct Payments. An alteration to the amount of money will not mean that there will be any change to the conditions of the Direct Payments scheme as set out in this Agreement.
5. **Law and Jurisdiction**
   1. This Agreement is governed by and construed in accordance with the law of England and Wales.

**Signed:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**(Parent/Carer/Young Person):**

**Print Name:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** Service Manager SENATon behalf of the Council:

**Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Dated:**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Definitions of Terms used in this Agreement**

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| --- | --- |
| **TERM** | **DEFININTION** |
| Accrual | A substantial amount of money (equivalent of 8 weeks) in the Child or Young Person’s personal budget that has not been spent to meet the agreed provision Any planned accrual will be accounted for in this Agreement or separately in writing. |
| Agreed Goods and Services | Any of the goods and services that form the special educational provision specified in Part F of the EHC Plan (but does not include the placement at a school or post 16 institution or other educational setting) |
| Agreed Provision | The provision referred to as the Agreed Good and Services to be purchased with Direct Payments as detailed in this Agreement. |
| Close relative | Spouse, partner, parent, brother, sister, step brother, step sister, son, daughter, grandparent, aunt or uncle. |
| Direct Payments | Payments made by the Council directly to the Parent/Carer/Young Person, allowing them to arrange the agreed provision detailed in the EHC Plan themselves instead of using services arranged and provided by the Council. |
| Disclosure and Barring Service (DBS) | The Disclosure and Barring Service replaces the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA) to help prevent unsuitable people from working with children and vulnerable adults. |
| Element 3 | funding (top-up funding) above the core education and additional support funding to meet the total cost of provision required by a High Needs student as assessed by the Council |
| EHC needs assessment (sometimes referred to as a Statutory Assessment) | An assessment of the educational, health care and social care needs of a child or young person carried out by the Council. |
| Independent Lives | Independent Lives is an organisation providing a range of support services for people with disabilities, care needs and caring responsibilities to enable them to lead full, active and independent lives. Their core work focuses on providing a direct payments support service to help people arrange and manage their own personalised care and support. |
| Objectives | The long term targets for the Child or Young Person as set out in their EHC plan. |
| Part F | Part F of the EHC Plan sets out the special educational provision required to meet the needs of the child or young person identified in the Plan |
| Personal Budget | An amount of money identified by the Council to deliver provision set out in an EHC plan where the Parent/Carer/Young Person is involved in securing that provision. |
| Social Care Worker | Working in a variety of settings, a social care worker provides assistance to people and their families in need of social care support to live as independently as possible. |
| SEN | Special Educational Needs |
| SENAT | Special Educational Needs Assessment Team |
| Service Provider | A public, independent, or voluntary organisation/agency providing services which can be purchased by the Customer to meet their educational and social care needs. |
| Young Person | A person over compulsory school age but under 25 (section 83(2) Children and Families Act 2014) |