

*CARE ACT 2014  
DEFERRED PAYMENT AGREEMENT*

*CHESHIRE WEST AND CHESTER BOROUGH COUNCIL*

AND

*(insert service user details)*

*by (insert Power of Attorney details) acting under Power of Attorney*

PROPERTY:

*(property details)*

## PART A

This Agreement is dated .....2021

Parties:

- (1) Cheshire West and Chester Borough Council, of 4 Civic Way, Ellesmere Port, CH65 0BE (“the local authority”); and
- (2) [SERVICE USER DETAILS] by [ATTORNEY DETAILS] acting under Power of Attorney (“you”, “the borrower”), of [SERVICE USER ADDRESS]

### 1. Interpretation

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

**Accommodation:** the care home identified in Schedule 1 as it may be amended in accordance with term 2.7 below;

**Administration Fee:** a contribution to the local authority’s administrative reasonably incurred in respect of this Agreement, which is payable under term 4 below, and set out in Schedule 1;

**Agreement:** the terms set out in Part A of this document ;

**Care Charges:** those charges for care and/or support which are specified by description and weekly amount in Schedule 1, as they may be amended in accordance with any of terms 2.7, 2.8 or 2.10 below;

**Co-Owner:** (Co-owner details) of (co-owner address)

**Debt:** the balance from time to time of the Loan which has not yet been repaid, together with any interest not yet paid;

**Loan:** the total amount, at any time, which has been lent under this Agreement to pay Care Charges or, where the local authority is the care provider, the total amount of Care Charges which have been deferred, and the words “lend”, “lending” and “lent” are used in this Agreement to describe

the act of deferring a Care Charge or Care Charges payable to the local authority.

**Lending Limit:** the limit on lending as set out in Schedule 1 (see also term 2.2);

**Property:** the property and any other assets identified on page 1 of this Agreement;

**Rate of Interest:** the annual rate of interest stated in Schedule 1.

Where a reference is made in this Agreement to any legislation or legislative provision, it includes reference to that statute or statutory provision as it may from time to time be amended, extended or re-enacted.

- 1.2 Where the context allows or requires, words in the singular include the plural and words in the plural include the singular.
- 1.3 Where a reference is made in this Agreement to your income, it means your income as calculated in accordance with regulations made under section 17 of the Care Act 2014.

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

- 2.1 The local authority agrees, subject to the Lending Limit and to the limits related to income, as set out in 2.8 to 2.10 below, to lend amounts to you, the borrower. Each amount will be subject to a maximum of the weekly Care Charge specified in Schedule 1 or, if less, the weekly care charge which is actually payable and which meets the Description of Care Charges in Schedule 1. The Loan will be made by deferring your obligation to pay Care Charges which are payable to the local authority. The details of the Accommodation and the Care Charges are set out in Schedule 1 at the end of this Agreement, together with the Lending Limit.
- 2.2 If the Loan would exceed the Lending 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 Loan 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 Loan further exceeding the Lending Limit. After that, the local authority will not lend any further amount unless or until the value of the Property increases.

- 2.3 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.
- 2.4 If there is any change in the frequency of the Care Charges or any change in the amount of the charges which the care provider is charging you for care, you must inform the local authority as soon as reasonably practicable, giving advance notice of any such change to the local authority whenever you have advance notice of the change.
- 2.5 You may, at any time, pay the Care Charges, or part of the Care Charges, yourself, when they become payable, in which case you must give advance notice to the local authority of the amount you are going to pay separately (“your contribution”), specifying whether your contribution is to be made on only one occasion or on a specified number of occasions or on each occasion when a Care Charge becomes payable until further notice.
- 2.6 The local authority will not be required to change the frequency with which, or the amounts in which, it lends under this Agreement any sooner than the fourteenth day after the local authority receives notice of any change in the frequency with which or the amounts which, as applicable, you are charged, or which you require the local authority to lend under this Agreement.
- 2.7 If you move from the Accommodation into another care home, that new accommodation will be substituted as the Accommodation, and the care charges payable in respect of the new Accommodation (or if less that part of those new

care charges which are equal to the existing Care Charges) will be substituted as the Care Charges if they meet the description which is given of the Care Charges in the Schedule or, where they do not meet that description, if the local authority is either required under the Care Act 2014 to agree to lend in respect of those care charges or permitted to do so under the Care Act 2014 and willing to do so. The times for payment of the Care Charges will be substituted for the times shown in the Schedule once at least fourteen days' notice of those times has been given to the local authority.

2.8 The amount of the four weekly Care Charge for which the local authority is to lend, takes into account the fact that your income exceeds a maximum of £144 per week and the fact that the local authority requires you to contribute to the payment of each four weekly payment care charge, as it falls due, the amount by which your income exceeds a maximum of £144 in that four weekly period. The four weekly Care Charge for which the local authority will lend will be increased by an amount which is equivalent to any reduction in your income up to the maximum of the four weekly care charge which is actually payable subject to the Lending Limit.

2.9 The local authority may, upon giving you at least 30 days' written notice within 30 days after:

- (a) it comes to the attention of the local authority that your income has exceeded a maximum of £144 in any week while this Agreement is subsisting, or
- (b) where, at or since the date of this Agreement, your income has already exceeded a maximum of £144 per week, it comes to the attention of the local authority that your income has further exceeded a maximum of £144 in any week while this Agreement is subsisting,

require you to repay the amount, if any, by which that part of the Loan already provided under this Agreement for Care Charges in respect of that week exceeded the difference between the care charges actually payable and the amount by which your income exceeded a maximum of £144 in that week.

2.10 The local authority may, upon giving you at least 30 days' written notice within 30 days after it comes to the attention of the local authority that your income is

to exceed, or further exceed, £144 in any week while this Agreement is subsisting, reduce the amount that it will lend in respect of the care charges for each subsequent week that your income is so to exceed £144 by the amount by which your income is so to exceed £144 in that week and the amount of the Care Charge specified in Schedule 1 will be amended accordingly.

2.11 The local authority will not lend any further amount under this Agreement, even where the total amount of the Loan already provided is less than the Lending Limit, at any time when:

2.11.1 you are no longer receiving care and support in a care home;

2.11.2 in the reasonable view of the local authority your needs should no longer be met by the provision of care and support in a care home.

2.11.3 the Property can no longer be insured against all usual risks, unless there are reasonable grounds for concluding that the site value of the Property, disregarding any building on the property, is adequate security for the Debt, together with such further lending as is to be provided.

2.11.4 If your financial resources in terms of capital and as calculated for the purposes of the financial assessment carried out under section 17 of the Care Act 2014 are not more than the sum specified in regulation 12 of the Care and Support (Charging and Assessment of Resources) Regulations 2014 (currently £23,250) and since the date of this Agreement the Property has become occupied by your partner or by your child who is under 18, or by another member of your family who is aged over 60 or who is incapacitated or by a relative of yours who is aged over 60 or who is incapacitated and for the purposes of assessing your financial resources in terms of capital the local authority has decided to disregard the value of the Property.

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

### **3. Interest**

Interest will be charged daily in line with the accrual of the Debt at the daily equivalent of the Rate of Interest from the first day of the agreement and will be compounded until all the debt is settled in full. The interest rate is based on the cost of Government borrowing (the 15-year average gilt yield, as set out by the Office for Budget Responsibility twice a year in their Economic and Fiscal Outlook report.). The local authority will review this every January and July. Details of interest accrued to date will be included on the bi-annual statement issued by the Local Authority.

- 3.1 Interest will be added to the Debt each 4 weekly period, on the date when an amount is lent to you for Care Charges
- 3.2 The local authority may vary the Rate of Interest so as to reflect, in a proportionate and reasonable way any change in the cost of funding the Loan (or so much of such a change as the local authority may choose should be reflected in a variation to the Rate of Interest), upon giving you at least 14 days' written notice if the Rate of Interest is to be increased or without notice if the Rate of Interest is to be reduced, provided that:
  - 3.2.1 the Rate of Interest may never exceed the maximum rate which the local authority is permitted to charge by regulations made under the Care Act 2014; and
  - 3.2.2 if the local authority exercises its power to increase the Rate of Interest, it will also subsequently exercise its power so as to reduce the Rate of Interest so as to reflect, in a proportionate and reasonable way, any reduction in the cost of funding the Loan which occurs after such increase or increases in the rate of interest.

#### **4. Administration Fee and Interest**

You must pay the Administration Fee, which is set out in Schedule 1. The Administration Fee represents a contribution to the local authority's expenses in relation to ascertaining the value of the Property, registration of the legal charge, perfecting of the security and discharging the security including any staffing and managements costs to administer the scheme. If you have not paid the Administration Fee to the local authority prior to the date of this agreement, the

Administration Fee will be added to the Debt and interest will be charged on the Administration Fee in accordance with term 3 above

## **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 If the local authority discovers that any part of the Loan has not been used to pay the Care Charges for which it was lent, then, unless the reason why you have not used that part of the Loan to pay the Care Charges is an unintended error which you are able and willing to have promptly corrected, the local authority may give not less than 28 days' notice to you:

5.2.1 demanding that you repay that part of the Loan, together with the interest payable on that part of the Loan in accordance with term 3 above; and/or

5.2.2 to cancel the local authority's commitment to lend any further amount under this Agreement.

5.3 If the local authority gives notice to you in accordance with term 5.2.1, the part of the Loan referred to in the notice, together with the interest payable on that part of the Loan in accordance with term 3 above, will become immediately payable by you upon the expiry of the period of not less than 28 days which is stated in the notice.

5.4 If the local authority gives notice to you in accordance with term 5.2.2, the local authority's commitment to provide any further lending under this Agreement will be cancelled upon the expiry of the period of not less than 28 days which is stated in the notice.

5.5 If the local authority provides any part of the Loan under this Agreement upon the mistaken assumption that it is required to provide that part of the Loan when in fact it is not and when you ought reasonably to realise that the local authority is not required to provide that part of the Loan (because, for example, you are no



longer living in the Accommodation) that part of the Loan will be immediately repayable to the local authority, together with interest calculated in accordance with term 3 above.

- 5.6 If the local authority provides any part of the Loan under this Agreement upon the mistaken assumption that it is required to provide that part of the Loan when in fact it is not and when it is not the case that you ought reasonably to realise that the local authority is not required to provide that part of the Loan, that part of the Loan will be repayable to the local authority, together with interest calculated in accordance with term 3 above, upon the local authority giving you not less than three months' notice to repay it.
- 5.7 In order for the local authority to pursue the Debt in the event of your death, the details of your Executors are set out in Schedule 1.

## **6. Security**

- 6.1 The local authority's rights to repayment and to be paid interest under this Agreement are to be secured by a legal charge over the Property.
- 6.2 The Borrower agrees to the form of legal charge in Part B of this Agreement.

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

- 7.1 If the Property becomes vacant, the Borrower agrees to make reasonable efforts to let out the Property, but subject to the requirements of term 7.2.
- 7.2 The Property must not be let or occupied by any person without the local authority's prior written consent, which will not be unreasonably withheld provided that the property is to be occupied upon an assured shorthold tenancy which enables an order for possession to be obtained, after the expiry of an initial term of no more than 6 months, upon one month's written notice.

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

- 8.1 We require evidence that the Property is adequately insured against all usual risks and is adequate security for the Debt.

- 8.2 If satisfactory evidence is not provided to the local authority that the Property is adequately insured against all usual risks, the local authority may itself insure the Property under an appropriate policy of insurance and against all usual risks unless there are reasonable grounds for concluding that the site value of the Property, disregarding any building on the property, 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.
- 8.3 The local authority will give you notice of any costs reasonably incurred by the local authority in so insuring the Property and if the borrower does not reimburse the amount of those costs to the local authority within 28 days after such notice is given, the amount of those costs will be added to the Debt and interest will be charged on the amount of those costs in accordance with term 3 above in respect of the period starting on the 29th day after notice of the costs is given to you, or, if later than the 29th day after advance notice is given that such an item, or items, of costs will be incurred, the date on which such item, or each such item of costs is incurred .
- 8.4 The Borrower or other owner of the Property must ensure that the Property is maintained in reasonable condition (and in particular that fixed items such as bathroom and kitchen fittings are not removed unless they are replaced in a manner which does not have a detrimental effect on the market value of the Property)
- 8.5 The local authority, or any appropriately qualified person acting on behalf of the local authority, may, no more than once a year, and upon giving at least 14 days' notice to the borrower or other owner of the Property, 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.
- 8.6 The local authority, or any appropriately qualified person acting on behalf of the local authority, may, upon giving not less than 14 days' notice to you, carry out such works of maintenance and/or repair as the local authority reasonably considers 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; provided that no more than 56 days and not less than 28 days before, you were given notice by the local authority (or any appropriately qualified person acting on behalf of the local authority) requesting that you carry out or have those works carried out, and those works have not been carried out to the reasonable satisfaction of the local authority or the appropriately qualified person.

- 8.7 In the event that the local authority has reasonable grounds to believe that works of maintenance and/or repair are or may be required as a matter of urgency, the notice requirements under 8.5 and 8.6 above are to be replaced with a requirement to take reasonable steps to notify you as soon as reasonably practicable.
- 8.8 The local authority will give you notice of any reasonable costs reasonably incurred by the local authority in relation to the maintenance and/or repair of the Property and if you do not reimburse the amount of those costs to the local authority within 28 days after such notice is given, the amount of those costs will be added to the Debt and interest will be charged on the amount of those costs in accordance with term 3 above in respect of the period starting on the 29th day after notice of the costs was given to you until payment to the local authority.

## **9. Valuations and Sale**

- 9.1 If at any time the local authority has reasonable grounds for concluding that the Debt exceeds 50% of the value of the Property, or if the local authority has reasonable grounds for concluding that term 9.3 below has not been complied with, the local authority 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.
- 9.2 The local authority will give you notice of any reasonable Costs reasonably incurred by the local authority in obtaining a valuation report or otherwise ascertaining the value of the Property and if you do not reimburse the amount of those Costs to the local authority within 28 days after such notice is given, the amount of those Costs will be added to the Debt and interest will be

charged on the amount of those Costs in accordance with term 3 above in respect of the period starting on the 29th day after notice of the Costs was given to you until payment to the local authority

9.3. Any sale of the Property should be for a price equal to its open market value.

## **10. Keeping the local authority informed**

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 per week, it further exceeds, or is expected to further exceed, £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.

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 or otherwise dispose of the Property or any of it.

10.2 You must, whenever asked to do so by the local authority, provide evidence to the local authority, as soon as reasonably practicable, that the Property is adequately insured against all usual risks. The local authority will not request the provision of such evidence during a period in respect of which evidence has already been provided to the local authority that the Property is adequately covered by an insurance policy, provided that evidence has also been provided to the local authority that the premium and insurance premium tax payable for that policy have been paid.

## **11. Ending this Agreement**

11.1 This Agreement has no fixed duration.

11.2 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.

11.3 If you do not bring the Agreement to an end early under 11.2 above, the Agreement will come to an end when the Debt is paid in accordance with term 5 above.

## **12. Statements**

The local authority will provide you with a written statement, informing 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 any costs which have accrued since the Agreement was made :

12.1 at the end of the period of six months beginning with the date of this Agreement;

12.2 every six months after the date of the first statement; and

12.3 within 28 days of a request to the local authority for such a statement made by you or on your behalf.

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

13.1 Any notice or statement which the local authority is to give, or may give, to you under this Agreement is to be given by sending the notice by second class prepaid post to you at the Accommodation or to such other person and at such address as has been agreed between the Local Authority and you from time to time.

13.2 Any notice which you give to the local authority under this Agreement is to be given by contacting Stephen Rigby, Client Finance, Corporate Assessment Team Supervisor, 4 Civic Way, Ellesmere Port, CH65 OBE.

13.3 Any notice or statement which is sent by second class prepaid post is to be treated as having been served on the third day after it is posted, excluding Sundays and public holidays.

#### **14. Applicable law**

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

#### **15. Variation**

Any variation to this Agreement must be in writing and signed both by the borrower and on behalf of the local authority.

#### **16. Information**

The Borrower(s) affirm that they have received adequate information on options for paying for their care, that they understand how this agreement works and understand the agreement they are entering into; and that they have had the opportunity to ask questions about it.

#### **17. Co-Owner's Agreement**

The Co-owner consents to the Borrower entering into the terms of this Agreement. The Co-owner agrees that he/she will join as a party to the creation of the Legal Charge which will be created under the terms of this Agreement. The Co-owner agrees that he/she will do all things necessary and sign all forms of consent appropriate to securing the registration of the Legal Charge in favour of the local authority under the terms of this Agreement.

The Co-owner has been advised by the local authority to seek independent legal and financial advice before signing this Agreement and in this context 'independent advice' means advice from an advisor who is neither related to nor acting on behalf of the Borrower.

#### **Borrower's signature**

**Please read this Agreement carefully, including all the terms set out above, the information set out below and the terms and information set out in the Schedules at the end of the Agreement. Only sign below if you understand and accept those terms and information.**

Signed by [ATTORNEY DETAILS] .....  
as attorney for [SERVICE USER DETAILS] Attorney for [SERVICE  
under a power of attorney dated USER DETAILS]

Signed by (Co-owner details) ("the Co- .....  
Owner")

Signed on behalf of the Local Authority:

Name of person signing:

Position of person signing:

### **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 Solutions Team, HQ, Nicholas Street Chester CH1 2NP or telephone the Solutions Team on 01244 973280. If your complaint is not resolved by the local authority to your satisfaction, you may have a right of appeal to The Local Government Ombudsman, PO Box 4771, Coventry CV4 0EH, (tel. 0300 061 0614).

## SCHEDULE 1

**Accommodation:** (current location)

**Description of Care Charges:** charges which the local authority considers to be necessary to meet the borrower's needs while the borrower is living in the Accommodation

**Weekly Care Charge:** £

The Care Charges specified above are those Care Charges for which the Loan is to be provided by the local authority under this Agreement. The total payable for your care and support while the borrower is living in the Accommodation may be more than the Care Charges shown above.

**Date when first Care Charge to which this agreement relates will be incurred:**

### Executors Details:

Name(s) and Addresses of Executor(s)

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

**Lending Limit:** the lower of:

- (1) 90% of the market or surrender value of the Property less:
  - (a) the total amount of any indebtedness secured on that asset, or those assets, by security which has priority over the local authority's security, and
  - (b) £14,250; and
- (2) £



**Rate of Interest:** 4.75%

**Administration Fee: £1,067.89**

a contribution to the local authority's expenses in relation to ascertaining the value of the Property, registration of the legal charge, perfecting the security and discharging the security, (which will be added to the Debt if not paid within 28 days of the date of this agreement)

PART B

**HM LAND REGISTRY**

Administration Area: CHESHIRE WEST AND CHESTER Title No.

Property:

Date : .....20[xx]

**IN CONSIDERATION of the Loan specified in the Deferred Payment Agreement made between the parties (“the Agreement”) receipt of which is acknowledged.**

I, (service user details) by (POA details) acting under Power of Attorney (“the Borrower”) of (current location)

and

I, (co-owner details) (the “Co-Owner”) of (co-owner address)

with full title guarantee CHARGE by way of legal mortgage the Property (as referred to in the Agreement) with the payment to Cheshire West and Chester Borough Council of 4 Civic Way, Ellesmere Port, CH65 0BE (“the Local Authority”) of the total amount of the Loan owing from time to time by the Borrower to the Local Authority with interest at the rate and payable at the times specified in the Agreement.

Signed as a deed by [ATTORNEY DETAILS] .....

as attorney for [SERVICE USER DETAILS]	SIGNATURE of
under a power of attorney dated	[ATTORNEY DETAILS] as
	attorney for [SERVICE
	USER DETAILS

in the presence of:

Witness Signature:

Witness Name:

Witness Address:

Signed as a deed by (co-owner details)

.....

SIGNATURE OF (co-owner  
details)

in the presence of:

Witness Signature:

Witness Name:

Witness Address:

EXECUTED as a DEED by the affixing of the COMMON SEAL of

**CHESHIRE WEST AND CHESTER BOROUGH COUNCIL**

in the presence of:

.....

Authorised Signatory