

Dear

THIRD PARTY TOP-UP AGREEMENT

I refer to my letter of

This letter represents the Agreement between us and by signing and returning it to us you are agreeing to be bound by the terms and conditions contained herein.

For the purposes of this Agreement "you" means and "us" means Devon County Council (**DCC**). The "service user" means .

Summary of the Top-Up

As you know, DCC has calculated a Personal Budget of per week which is the cost of a suitable placement at . As the Personal Budget is equal to the costs of care at , would not have to pay anything other than assessed financial contribution. However, you and/or have indicated that would prefer to live at (**the Placement**). As you know, this care home is not prepared to accept DCC's standard residential care fees and the costs therefore exceed Personal Budget.

However has a right to choose to live in whatever care home wishes and in circumstances where the costs are greater than the person's Personal Budget, your Third Party Top-Up, as set out in this Agreement, will enable the Placement to be made.

The mechanism that DCC operates for such Third Party Top Up Agreements, is set up on what we call a gross basis. This means DCC contracts directly with the provider of the Placement, pays the full amount of fees charged and then recoups the difference between Personal Budget and the fees charged by the Placement from you.

The Current Financial Costs and Payment

The initial arrangement for _____ is as follows:

Weekly cost of placement at _____ £
DCC's weekly contribution (including _____ assessed contribution) £
Weekly Third Party Top Up from you £ **(Top-Up Amount)**

Therefore, you must pay DCC each week the sum of _____, being the Third Party Top Up Amount, in order to maintain the Placement.

To set your obligations out clearly, this sum would accrue as follows:

Per week £
4x weekly £
After 1 year £
After 3 years £
After 5 years £

The above calculation only demonstrates your agreed Third Party Top Up contribution and does not include _____ own assessed financial contribution. This is calculated separately in accordance with a national charging policy. For clarity, _____ assessed contribution is payable regardless of whether this Agreement is in place and _____ total contribution would remain the same.

Changes to Payments

From time to time, DCC revises its standard residential care fees and you will be notified of any such changes in advance of them coming into force. Whatever the amount of DCC's contribution, you will remain liable for the difference between the total cost of the Placement and DCC's contribution which will be based upon _____ Personal Budget at that moment in time.

Providers often review their fees annually and, more often than not, this will result in an increase in the total costs of the Placement. Should this happen, DCC will not revise its contribution towards the Placement and you agree to pay DCC any additional sums charged by the provider of the Placement, by way of increasing your weekly Third Party Top Up. The revised Top-Up Amount will be notified to you in writing and you will be liable to pay the revised Top-Up Amount from the date specified by DCC.

It should also be made clear that _____ assessed contribution towards the cost of their care will have no bearing on the sum that DCC is prepared to contribute towards their care costs or the sum that you are required to pay in order to maintain the Placement. Therefore, any changes in _____ financial circumstances that result in a change to their assessed contribution will have no effect on the amount you are required to pay under the Agreement.

Review

We will review all Third Party Top-Up arrangements at least annually. This will involve us checking that payments have been made consistently and making a decision as to whether the arrangement continues to be sustainable. This will involve checking whether you are still willing and able to make the necessary payments. It will also discuss the implications of any changes to payments as detailed above.

Consequences of failure to pay the top-up

If you do not maintain payments in accordance with this Agreement, it is likely that you will be required to leave your home and will be placed in an alternative residential care setting at a cost that is within your Personal Budget. Details of the arrangements for such a change are set out below in the section headed Termination of this Agreement.

In the event that one payment of the Top-Up Amount is missed, DCC will send a letter attached hereto at Appendix 1 (**Reminder Letter**) requesting that the missing payment is made within 14 days of the date of the Reminder Letter.

If no payment is received after this time, DCC will refer the matter to its debt recovery team for commencement of DCC's standard recovery procedure. This may result in enforcement action before the County Court where we will ask that interest is added to the debt being accrued.

If payment is not received within 14 days of the Reminder Letter, and pre-litigation debt recovery action does not result in payment, DCC shall be entitled to exercise its rights as set out in the section below headed 'Termination of this Agreement'.

If payment is made, DCC will confirm receipt and the Reminder Letter will be logged on our records held within the Charging for Care Services Team

If any more than three Reminder Letters are sent within any 12 month period, DCC shall be entitled to exercise its rights to terminate this Agreement as set out below in the section headed 'Termination of this Agreement'.

Changes in your Financial Circumstances

If your financial circumstances change meaning that you are unable make the necessary payment of the Top-up Amount, DCC would ask that you notify us immediately in order that we can discuss your options and to avoid the risk of a debt accruing that you may not be able to repay and so that consideration can be given to the potential termination of this Agreement.

Termination of this Agreement

DCC may bring this Agreement to an end if any of the following occurs:

1. You fail to make payment of the Third Party Top-Up Amount in full within 14 days of the date of a Reminder Letter.
2. You fail to make three payments of the Third Party Top-Up Amount on time in any 12 month period.
3. You notify DCC in writing that you are no longer able to sustain the agreed weekly payments, i.e. the Third Party Top-Up Amount, due to a change in your financial circumstances.
4. You notify DCC in writing that you would like the Agreement to end.

In the event that one of the termination triggers detailed above arises and DCC chooses to exercise its right to bring this Agreement to an end, it is likely that [redacted] will be required to move into alternative accommodation where such accommodation would be suitable to meet their needs and the cost of which is within the their Personal Budget.

Before any decision to move [redacted] is taken, a new assessment of need will be undertaken. The final decision as to whether [redacted] will need to move to alternative accommodation will rest with the relevant manager who will take into account all of the circumstances of the case including having regard to their wellbeing.

As set out in my letter previous letter DCC has to consider other service users and its resources as a whole when funding placements. Only in exceptional cases (e.g. the person has been diagnosed as being close to end of life) will considerations relating to the wellbeing of the service user make it appropriate for DCC to continue a placement that requires it to pay more than a service user's personal budget.

DCC wishes to make clear that, simply because it could be argued that it would be in the service user's best interests to remain living at the Placement, this will not be a factor that compels DCC to maintain the Placement if you are unable to continue paying the Top-up Amount.

If DCC decides to terminate the Agreement, it will serve notice on you providing you with the same period of notice as is required in accordance with the contract it has with the provider. In most cases the period of notice that DCC is required to give to a provider will be 28 days and on the assumption that this is the position in this case the service user will be required to leave the Placement no later than the end of the 28 day notice period.

During the 28 days, or such other period of time as is prescribed in the contract with the provider of the Placement, DCC will commission care in an alternative placement that is willing to meet the service user's assessed needs for a sum that is equal to or within their personal budget. This will be in line with the usual arrangements put in place for service users who have not previously received the benefit of a Third Party Top-Up.

Joint Third Party Arrangements

If this Agreement involves more than one third party making contributions to the service user's care costs, the duties arising are joint and several. This means that if one or more of the third-parties fails to pay their agreed contribution, the other third-parties to the agreement will be liable to DCC for the full amount of defaulting party's share.

In entering into this Agreement, you agree to be liable for the contributions of the other third parties, should they fail to maintain their contributions. If the remaining third parties are unable to pay the Top-up Amount in full, DCC will consider the need to exercise its rights to terminate this agreement. For the avoidance of doubt the third parties entering into this agreement are as follows:

- 1.
 - 2.
- (etc)

General

This Agreement is legally binding and any dispute or claim arising out of or in connection with it shall be governed by and construed in accordance with English law.

We would recommend that you take independent financial advice before committing to the obligations to make payments as required under this Agreement. As this Agreement is legally binding upon you, you may also wish to take independent legal advice on its suitability. As mentioned in our previous letter, if you require general clarification on the meaning of any terms herein, please do contact us to discuss these further.

If you agree with the terms and conditions set out in this Agreement I would be grateful if you could sign and date this agreement below.

Yours sincerely

I confirm I have been given sufficient information and advice to be able to make an informed decision before entering into this Third Party Top Up Agreement.

I declare I am willing and able to afford and sustain my commitment for the likely duration of the agreement, and that I have read and fully understand the terms and conditions.

Signed by..... Dated.....

Print Name.....

Cc The Service User or their representative

SAMPLE