

Annexure to the Deed dated 17th day of January 2012

**INDEPENDENT LIVING FUND (2006)**

**CONFORMED COPY OF THE TRUST DEED DATED 10<sup>th</sup> APRIL 2006 AS AMENDED BY DEEDS DATED 21<sup>st</sup> AUGUST 2007, 1<sup>st</sup> OCTOBER 2007, 31<sup>ST</sup> MARCH 2008, 31 MARCH 2009, 29 APRIL 2010, 16<sup>th</sup> DECEMBER 2010, 31<sup>st</sup> MARCH 2011, 29<sup>th</sup> JULY 2011 AND 17<sup>TH</sup> JANUARY 2012**

**THIS DEED** is made the tenth day of April 2006 between THE SECRETARY OF STATE FOR WORK AND PENSIONS of the one part and Margaret Rosemary Cooper of ‘Holly Island House’, 18 Algeo Drive, Enniskillen, Co Fermanagh, BT74 6JL and Michael Beresford Boyall of 24 Belle Baulk Towcester Northants NN12 6YE and Marie Theresa Martin of 2 Seymour Road, Hampton Hill, Middlesex, TW12 1DD (“the Original Trustees”) of the other part.

**WHEREAS:**

- (1) The Secretary of State for Work and Pensions wishes to create a discretionary trust to be called "the Independent Living Fund (2006)" whose trustees are to have power to make payments to assist certain severely disabled people to live independently.
- (2) In pursuance of the said wish the Secretary of State for Work and Pensions has transferred the sum of £100 to the Original Trustees to be held upon the trust and with and subject to the powers and provisions hereinafter appearing.
- (3) The intention is that the Trust will operate as a non-departmental public body (as designated by the Cabinet Office) and will commence making payments on 1 October 2007<sup>1</sup> and, after a hand over period<sup>2</sup>, will operate in place of the Independent Living (Extension) Fund and the Independent Living (1993) Fund.

**NOW THIS DEED WITNESSETH** as follows:

**Definitions and interpretation**

1. (1) In this deed and the Schedules hereto the following expressions shall where the context permits have the following meanings:
  - (a) “**Candidate**” means any person whose application for financial assistance from the Trust Fund was received prior to 31st March 2011 and who for the time being satisfies the eligibility criteria set out in the First Schedule hereto.

<sup>1</sup> Date changed from 1 July 2007 by an Amendment made by Deed dated 21 August 2007

<sup>2</sup> Words “of two months” deleted by Deed dated 21 August 2007

- (b) **“Care Establishment”** means:
- (i) Any care home as defined by section 3 of the Care Standards Act 2000;
  - (ii) Any place providing a care home service as defined by section 2 of the Regulation of Care (Scotland) Act 2001;
  - (iii) Any residential or care home as defined by Articles 10 and 11 respectively of The Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003;
  - (iv) Any hospital as defined by section 128 of the National Health Service Act 1977 or by section 108 of the National Health Service (Scotland) Act 1978 or by Article 2 of the Health and Personal Social Services (Northern Ireland) Order 1972;
  - (v) Any residential establishment as defined by section 93 of the Children (Scotland) Act 1995 (which definition includes, for the avoidance of doubt, establishments in England and Wales and Northern Ireland as well as Scotland); or
  - (vi) Such other establishment as the Secretary of State may from time to time by written notice to the Trustees specify is to be treated as a care establishment for the purposes of the Trust.
- (c) **“the Common Eligibility Criteria”** means the criteria for determining the eligibility of a Candidate set out in Part II of the First Schedule hereto.
- (d) **“Direct Payment”** means monies paid pursuant to section 57 of the Health and Social Care Act 2001 in England and Wales, pursuant to section 12B of the Social Work (Scotland) Act 1968 in Scotland, or pursuant to section 8 of the Carers and Direct Payments Act (Northern Ireland) 2002 in Northern Ireland.
- (e) **“Financial Year”** means a year running from 1<sup>st</sup> April to 31<sup>st</sup> March, unless policies made pursuant to clause 5(3) of this Deed for the management of the Trust provide otherwise.
- (f) **“the Grant Conditions”** means the terms and conditions upon or pursuant to which Public Funds are or are to be paid to the Trust from time to time pursuant to clause 5(4) hereof.
- (g) **“Independent Living”** means residing otherwise than in a Care Establishment and in an environment in which the Candidate has such degree of choice and control over the provision to him or her of Qualifying Support and Services as is, in the reasonable opinion of the Trustees, consistent with his or her living independently and “to Live Independently” shall be interpreted accordingly.

- (h) **“the Independent Living (Extension) Fund”** means the charitable trust of that name declared by a deed dated 25 February 1993 (as modified from time to time).
- (i) **“the Independent Living (1993) Fund”** means the trust of that name declared by a deed dated 25 February 1993 (as modified from time to time).
- (j) **“Local Authority”** means:
  - (i) in relation to England, the council of a County, District, Metropolitan or London Borough, the Common Council of the City of London or the Council of the Isles of Scilly;
  - (ii) in relation to Wales, the council of a County or County Borough;
  - (iii) in relation to Scotland, a council constituted under section 2 of the Local Government etc (Scotland) Act 1994;
  - (iv) in relation to Northern Ireland, a Health and Social Care Trust<sup>3</sup>; and
  - (v) such other body as the Secretary of State may from time to time by written notice to the Trustees specify is to be treated as a local authority for the purposes of the Trust.
- (k) **“the Maximum Sum”** means:
  - (i) For a candidate within Group 1 referred to in the First Schedule hereto, such sum as may be prescribed from time to time in the Grant Conditions for the purposes of clause 3(1) hereof or (if no such sum has been prescribed) the sum of £815<sup>4</sup> per week;
  - (ii) For a candidate within Group 2 referred to in the First Schedule hereto, such sum as may be prescribed from time to time in the Grant Conditions for the purposes of clause 3(1) hereof or (if no such sum has been prescribed) the sum of £475<sup>5</sup> per week;
  - (iii) For a candidate within any of the other groups referred to in the First Schedule hereto, such sum as that Schedule identifies as the maximum sum for a candidate in that group.

For the avoidance of doubt, the Trustees may pay more than the Maximum Sum in the circumstances set out in clause 3(1)(c) hereof.

- (l) **“a partner”** means the other member of a couple, where “couple”

<sup>3</sup> Health and Social Care Trust substituted by an Amendment made by Deed dated 31 March 2008

<sup>4</sup> Figure substituted by an Amendment made by Deed dated 31 March 2009.

<sup>5</sup> Figure substituted by an Amendment made by Deed dated 31 March 2009.

means:

- (i) a man and a woman who are married to each other and are members of the same household;
- (ii) a man and a woman who are not married to each other but are living together as husband and wife;
- (iii) two people of the same sex who are civil partners of each other and are members of the same household; or
- (iv) two people of the same sex who are not civil partners of each other but are living together as if they were civil partners;

and for the purposes of sub-paragraph (iv), two people of the same sex are to be regarded as living together as if they were civil partners if, but only if, they would be regarded as living together as husband and wife were they instead two people of the opposite sex.

- (m) **“Public Funds”** means monies paid or payable to the Trustees upon the Trust by a Minister of the Crown out of monies provided by Parliament.
- (n) **“Qualifying Support and Services”** (subject to paragraph 5(d) of the First Schedule hereto) means support and services in respect of those matters set out in the Second Schedule hereto or as may be prescribed from time to time in the Grant Conditions.
- (o) **“Relative”** means:
  - (i) a person’s partner; or
  - (ii) any of a person’s parent, child, grandchild, grandparent, aunt, uncle, niece, nephew or sibling; or
  - (iii) any of a person’s step-relations or his or her partner’s relations within the degrees of relationship set out in (ii) above and whether arising through marriage or through civil partnership; or
  - (iv) the partner of any person falling within (ii) or (iii) above.
- (oa) **“the Right to Control Pilot Scheme”** means the Trust as operated in accordance with the provisions of clause 2A of and the Fifth Schedule to this Deed.
- (p) **“the Secretary of State”** means the person who from time to time shall be the Secretary of State for Work and Pensions in Her Majesty’s Government or, if there shall be no such person, such representative of Her Majesty’s Government as is substantially responsible for performing the duties now performed by the said Secretary of State.

- (q) **“the Specified Period”** (subject to clause 19 hereof) means an initial period of five years from the date hereof and such further period or periods as the Secretary of State may specify in writing to the Trustees provided that the Specified Period shall in no event end after 31st March 2026.
- (r) **“the Threshold Sum”** means such sum or sums as may be prescribed from time to time in the Grant Conditions for the purposes of paragraph 5(d) of the First Schedule hereto or (if no such sum or sums has been prescribed):

In relation to a Candidate ordinarily resident in Great Britain:

- (i) subject to (ii) and (iv)<sup>6</sup>, for a Candidate:
- (1) in receipt of financial assistance from the Trust prior to 1<sup>st</sup> April 2008; or
  - (2) who had received financial assistance from the Independent Living (1993) Fund but was immediately before 1<sup>st</sup> October 2007 being treated by the trustees of that trust as being temporarily suspended from eligibility. Provided that such period had not (unless expressly approved by resolution of the Trustees at a meeting) commenced before 1<sup>st</sup> April 2007; or
  - (3) who had made a new application for financial assistance received prior to 1<sup>st</sup> April 2008;
- the sum of £10,400 per annum; or
- (ii) for a request made by a Candidate in receipt of financial assistance from the Trust prior to 1<sup>st</sup> April 2008 for an increase of financial assistance from the Trust (in respect of increased need for Qualifying Support and Services) received on or after 1<sup>st</sup> April 2008 but before 1st May 2010<sup>7</sup>, the sum of £16,640 per annum; or
- (iii) for a new application for financial assistance from the Trust received on or after 1<sup>st</sup> April 2008 but before 1st May 2010<sup>8</sup>, the sum of £16,640 per annum; or
- (iv) for a request made by a Candidate in receipt of financial assistance from the Trust prior to 1st May 2010 for an increase of financial assistance from the Trust (in respect of increased need for Qualifying Support and Services) received on or after 1st May 2010, the sum of £17,680 per annum; or

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<sup>6</sup> Words “and (iv)” inserted by Deed dated 29 April 2010

<sup>7</sup> Words “but before 1st May 2010” inserted by Deed dated 29 April 2010

<sup>8</sup> Words “but before 1st May 2010” inserted by Deed dated 29 April 2010

- (v) for a new application for financial assistance from the Trust received on or after 1st May 2010, the sum of £17,680 per annum<sup>9</sup>.

In relation to a Candidate ordinarily resident in Northern Ireland:

- (i) subject to (ii) and (iv)<sup>10</sup>, for a Candidate:
  - (1) in receipt of financial assistance from the Trust prior to 1<sup>st</sup> July 2008; or
  - (2) who had received financial assistance from the Independent Living (1993) Fund but was immediately before 1<sup>st</sup> October 2007 being treated by the trustees of that trust as being temporarily suspended from eligibility. Provided that such a period had not (unless expressly approved by resolution of the Trustees at a meeting) commenced before 1<sup>st</sup> April 2007; or
  - (3) who had made a new application for financial assistance received prior to 1<sup>st</sup> July 2008;

the sum of £10,400 per annum; or

- (ii) for a request made by a Candidate in receipt of financial assistance from the Trust prior to 1<sup>st</sup> July 2008 for an increase of financial assistance from the Trust (in respect of increased need for Qualifying Support and Services) received on or after 1<sup>st</sup> July 2008 but before 1st May 2010<sup>11</sup>, the sum of £16,640 per annum; or
- (iii) for a new application for financial assistance from the Trust received on or after 1<sup>st</sup> July 2008 but before 1st May 2010<sup>12</sup>, the sum of £16,640 per annum;<sup>13</sup> or
- (iv) for a request made by a Candidate in receipt of financial assistance from the Trust prior to 1st May 2010 for an increase of financial assistance from the Trust (in respect of increased need for Qualifying Support and Services) received on or after 1st May 2010, the sum of £17,680 per annum; or
- (v) for a new application for financial assistance from the Trust received on or after 1st May 2010, the sum of £17,680 per annum.<sup>14</sup>

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<sup>9</sup> Sub-paragraphs (iv) and (v) inserted by Deed dated 29 April 2010

<sup>10</sup> Words “and (iv)” inserted by Deed dated 29 April 2010

<sup>11</sup> Words “and (iv)” inserted by Deed dated 29 April 2010

<sup>12</sup> Words “but before 1st May 2010” inserted by Deed dated 29 April 2010

<sup>13</sup> Threshold Sum changed by an Amendment made by Deed dated 31 March 2008

<sup>14</sup> Sub-clauses (iv) and (v) inserted by Deed dated 29 April 2010

- (s) **“the Trust”** means the trust established by this Deed and thus the totality of the trusts, powers and provisions created and conferred by or contained in this Deed.
  - (t) **“the Trust Fund”** means the said sum of £100 paid to the Trustees by the Secretary of State and all property from time to time added thereto by way of further payments whether from Public Funds or otherwise and any cash investments and property from time to time representing the same.
  - (u) **“the Trustees”** means and includes the Original Trustees and the trustee or trustees for the time being of this Deed and "Trustee" means any one of the Trustees.
- (2) Unless the context otherwise requires the singular includes the plural and the masculine includes the feminine and vice versa.
  - (3) References herein and in the Schedules hereto to any statute include any amendment, modification or consolidation or re-enactment of that statute and any statutory instrument, regulation or order made thereunder and for the time being in force.
  - (4) Clause headings are for reference only and shall not be taken into account in the interpretation of this Deed.

Name of the Trust

- 2. The Trust established by this Deed shall be called the "Independent Living Fund (2006)".

Right to Control Pilot Scheme

- 2A. (1) Subject to sub-clause 2(A)(3) below, the Right to Control Pilot Scheme will operate:
  - (a) in relation to the pilot areas specified in paragraph 1(a), (d), (e), (f) (h) and (j) of the Fifth Schedule hereto, from 13<sup>th</sup> December 2010 until 13<sup>th</sup> December 2012;
  - (b) in relation to the pilot areas specified in paragraph 1(b) and (k) of the Fifth Schedule hereto, from 1<sup>st</sup> March 2011 until 13<sup>th</sup> December 2012: and
  - (c) in relation to the pilot areas specified in paragraph 1(c), (g), (i), (l) and (m) of the Fifth Schedule hereto, from 1<sup>st</sup> April 2011 until 13<sup>th</sup> December 2012.
- (2) The provisions of this Deed and of the Grant Conditions will apply in the areas and for the periods set out in sub-clause (1), subject to the modifications set out in Parts II and IV of the Fifth Schedule hereto and the additional provisions set out in Part III of the Fifth Schedule hereto.

- (3) Regulation 22 of the Disabled People's Right to Control (Pilot Scheme) (England) Regulations 2010 ( S.I. 2010 No.2862) applies.

Power to make payments

3. (1) The Trustees shall have power during the Specified Period to pay the whole or any part or parts of the Trust Fund and the income thereof to or for the benefit of all or such one or more (exclusive of the other or others) of the Candidates in such shares and in such manner as the Trustees shall in their discretion think fit. PROVIDED THAT under this clause 3(1):
- (a) No payment shall be made to any Candidate other than for the purpose of assisting the Candidate to meet a liability that has actually been or will be<sup>15</sup> incurred and that is, in the reasonable opinion of the Trustees, the sort of liability that might properly be incurred in order to obtain Qualifying Support and Services required to assist that Candidate to Live Independently;
  - (b) Subject to sub-paragraph (c) below, the total sum paid to or for the benefit of a Candidate in respect of any week shall not exceed the Maximum Sum payable to that Candidate according to his or her group;
  - (c) Notwithstanding sub-paragraph (b) above, the Trustees may, in their discretion, pay more than the Maximum Sum in any week or weeks in a Financial Year provided that they are reasonably of the opinion and take reasonable steps to ensure that the total of the sums paid to or for the benefit of that Candidate over that year will not exceed either (i) the Maximum Sum for a Candidate of that group multiplied by 52 or (ii) (if less) that Maximum Sum multiplied by the number of weeks in that year in which in the reasonable opinion of the Trustees that Candidate is likely to be eligible to receive financial assistance from the Trust;
  - (d) No payment shall be made to or for the benefit of a Candidate otherwise than in compliance with such Grant Conditions as may apply at the relevant time;
  - (e) In deciding whether to exercise their discretion to make a payment, the Trustees shall have regard to the matters specified in the Third Schedule hereto; and
  - (f) For the avoidance of doubt, a payment to or for the benefit of a Candidate may be made to the Candidate or at the discretion of the Trustees to any third party.
- (2) The Trustees shall also have power during the Specified Period to pay such part or parts of the Trust Fund and the income thereof as they think fit to any Candidate or to any applicant to the Trust. PROVIDED THAT under this

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<sup>15</sup> Words "or will be" inserted by Deed dated 1 October 2007

clause 3(2):

- (a) No payment shall be made other than to compensate a person for financial loss, gross inconvenience or gross embarrassment which in the reasonable opinion of the Trustees that person has suffered by reason of maladministration and/or excessive and unwarranted delay on the part of the Trust in dealing with the affairs of that Candidate or that person's application for assistance from the Trust; and
- (b) The total sum paid to a person shall not exceed £300 in any Financial Year or such other sum as may from time to time be prescribed in the Grant Conditions.

#### Declaration of trust

4. Subject to each and every exercise of the powers conferred by clause 3 hereof the Trustees shall hold the Trust Fund and the income thereof upon trust for the Secretary of State absolutely.

#### Powers of the Trustees

5. In furtherance of the above trusts and powers but not further or otherwise the Trustees shall have the following powers:
  - (1) To employ such persons (who shall not be Trustees) to perform such duties as the Trustees consider necessary for the proper administration of the Trust at such reasonable salaries and on such reasonable terms as to notice and otherwise as the Trustees think fit and to provide for the payment of such pension and superannuation for such persons as may be reasonable.
  - (2) To delegate to a committee or committees consisting of such three or more of the Trustees any of the powers, duties and discretions imposed or given to the Trustees hereby (other than those imposed by clause 8(1) of this Deed) or by law provided that all proceedings of any such committee are reported in writing in due course to the Trustees.
  - (3) To make, vary and revoke from time to time policies as to the management of the Trust. Without prejudice to the generality of this power, such policies may relate to the making of applications for financial assistance from the Trust, the quantification of such assistance, the manner of its payment, the regulation of meetings of the Trustees and of any committee formed pursuant to clause 5(2) hereof, and the treatment of conflicts of interest affecting Trustees. Provided that no policy shall be made that is inconsistent with:
    - (a) the powers conferred by clause 3 of this Deed;
    - (b) the trusts hereof; or
    - (c) (save where otherwise provided hereby) the express provisions hereof for the management of the Trust.

- (4) To consult, co-operate and enter into arrangements with the Crown acting through the Secretary of State or otherwise in the course of the administration of the Trust and without prejudice to the generality of the foregoing from time to time to negotiate and agree Grant Conditions including (for the avoidance of doubt and notwithstanding anything elsewhere contained in this deed but without prejudice to the generality of the foregoing):
- (a) conditions relating to the eligibility of applicants for financial assistance from the Trust;
  - (b) the amount of the Maximum Sum (if any);
  - (c) conditions restricting the circumstances in which payments can be made from the Trust Fund;
  - (d) such other conditions as may be appropriate for the management of the Trust as a non-departmental public body;

and to enter into an agreement pursuant to section 6 of the National Audit Act 1983.

- (5) To defray out of the capital or income of the Trust Fund the reasonable costs and expenses of administering the Trust.
- (6) To retain or invest monies subject to the Trust in any account or accounts at a bank or a building society at interest and provided that they first obtain the written consent of the Secretary of State in the purchase of such other investments or property subject to which consent the Trustees shall have the same full and unrestricted powers of retaining, investing and transposing monies and investments as if they were beneficially entitled to the Trust Fund and the income thereof.
- (7) To borrow provided they first obtain the written consent of the Secretary of State which consent may be given on such terms (whether of a general nature or by reference to the particular borrowing proposed) as the Secretary of State may think fit. Monies received pursuant to this clause may be invested or otherwise dealt with and applied as part of the Trust Fund.
- (8) To give a good receipt for any moneys paid or transferred to the Independent Living Fund (2006).
- (9) Subject to clause 6 of this Deed to do all such other lawful acts and things as may be necessary or expedient for the proper administration of the Trust or shall further the proper and efficient exercise of the powers conferred by clause 3 of this Deed.

#### Limitations on the Powers of the Trustees

6. The Trustees shall not:
- (1) lend, or
  - (2) subject to sub-clause (3), enter into or give charges or other security over the Trust Fund or guarantees or indemnities or letters of comfort.
  - (3) The Trustees may indemnify the trustees of the Independent Living (Extension) Fund and/or the trustees of the Independent Living (1993) Fund for any losses and/or liabilities arising from the transfer of the assets of those funds to the Trustees<sup>16</sup>.

#### The Number and Appointment of the Trustees

7. (1) Subject to clause 7(6), the Trustees of this Deed shall be a minimum of three and a maximum of nine in number.
- (2) The Secretary of State shall have the power in his absolute discretion:
- (a) to remove at any time by deed any Trustee from office and to appoint a new Trustee in his or her place; and
  - (b) subject to clause 7(1) hereof, by deed to appoint additional Trustees;
- provided that the Secretary of State:
- (i) shall not appoint either the Secretary of State or any other minister, officer or servant of the Crown as a Trustee;
  - (ii) shall follow such guidance as may exist from time to time as to the appointment of trustees for non-departmental public bodies, which guidance is presently contained in the Commission for Public Appointments Code of Practice on Ministerial Appointments to Public Bodies;
  - (iii) shall not exercise the powers in such a way that half or more of the total number of Trustees are Candidates or a relative of a Candidate or a person to whom or on whose behalf any payment has been made by the Trust; and
  - (iv) on appointing a new or additional trustee (and without prejudice to his power of removal or to section 39 of the Trustee Act 1925), may specify a period for which such new or additional trustee will be a trustee
- (c) subject to clause 7(5), by deed to appoint a chairperson who has been and remains or will, at the same time as being appointed as chairperson, be appointed as a Trustee; and

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<sup>16</sup> Sub-clause (3) added by an Amendment made by Deed dated 31 March 2008

- (d) to remove at any time a chairperson and to appoint a new one in his or her place;

provided that the Secretary of State on appointing a chairperson (without prejudice to his power of removal), may specify a period for which that chairperson will be the chairperson.

The provisions of sections 36, 39 and 40 of the Trustee Act 1925 in regard to the appointment and removal of trustees shall have effect accordingly.

- (3) Every new Trustee shall before acting in the trusts of this Deed sign in the minute book for which provision is made a declaration of acceptance of willingness to act in the trusts hereby declared.
- (4) A chairperson appointed under clause 7(2)(c) will be an officeholder of the Trust.
- (5) A chairperson appointed by the Trustees prior to 1st May 2010 may continue as chairperson until such time as he or she resigns or is removed as a Trustee under clause 7(2)(a) or until the expiry of any period specified under clause 7(2)(b)(iv).
- (6) Where a chairperson appointed by the Trustees prior to 1st May 2010 resigns as chairperson, that person will be entitled to remain as a Trustee until the expiry of any period specified on his or her appointment under clause 7(2)(b)(iv) or until he or she resigns as a Trustee, notwithstanding that the total number of Trustees exceeds the maximum set in clause 7(1) from the date of the appointment of a new chairperson until the expiry of the specified period, the effective date of resignation or the resignation of another Trustee (whichever occurs first).

#### The Management of the Trust and the Procedure of the Trustees

- 8. The following provisions shall govern the management of the Trust and the procedure of the Trustees.
  - (1) The Trustees shall hold the following meetings in each calendar year at which they will consider and carry out the matters set out below and such other matters as they may think fit:
    - (a) A meeting in February to:
      - (i) review expenditure for the current Financial Year to date; and
      - (ii) review the programme, forecasts and budgets for the current Financial Year.
    - (b) A meeting in April to:

- (i) agree and set a programme, budgets and forecasts of and concerning expenditure pursuant to the powers conferred by clause 3 of this Deed and running costs in line with the Public Funds published as being payable to the Trust in the Main Supply Estimates for that Financial Year; and
    - (ii) review the pre audit expenditure for the previous Financial Year.
  - (c) A meeting in July to:
    - (i) review the audited year end expenditure; and
    - (ii) approve the annual report and accounts for the previous Financial Year.
  - (d) A meeting in September to:
    - (i) review expenditure for the current Financial Year to date; and
    - (ii) review the programme, forecasts and budgets for the current Financial Year.
  - (e) A meeting in November to:
    - (i) review expenditure for the current Financial Year to date;
    - (ii) review the programme, forecasts and budgets for the current Financial Year; and
    - (iii) consider the estimate of expenditure pursuant to the powers conferred by clause 3 of this Deed and running costs for the next Financial Year for the purpose of discussing with the Secretary of State the Public Funds that will be made available to the Trust in the next Financial Year.
  - (f) A meeting in December to agree the estimate of expenditure pursuant to the powers conferred by clause 3 of this Deed and running costs for the next Financial Year for the purpose of discussing with the Secretary of State the Public Funds that will be made available to the Trust in the next Financial Year.
- (2) The Trustees shall hold such further meetings in each calendar year for the purpose of considering and completing the matters mentioned in clause 8(1) of this Deed and for administering the Trust as they shall from time to time decide.
- (3) The Trustees shall employ a person not being a Trustee and who is approved in writing by the Secretary of State as the Chief Executive of the Trust (“the Chief Executive”) and shall provide that the Chief Executive shall have the functions and responsibilities set out in the Fourth Schedule hereto, or as may

be prescribed from time to time in the Grant Conditions and such other functions and responsibilities as the Trustees (with the written approval of the Secretary of State) may, in writing, agree with such Chief Executive.

- (4) The Trustees shall with the assistance of the Chief Executive:
  - (a) monitor the efficient management of the Trust;
  - (b) monitor and take reasonable steps to ensure compliance with the terms and conditions upon which money has been paid to and accepted by the Trustees as part of the Trust Fund;
  - (c) monitor and take reasonable steps to ensure that expenditure in any Financial Year does not exceed the programme, budgets and forecasts in respect of that Financial Year and the amount of Public Funds provided by way of grant made to the Trust for that Financial Year;
  - (d) monitor and take reasonable steps to recover payments made otherwise than in accordance with the provisions of the Trust and any overpayments made to Candidates; and
  - (e) take reasonable steps to safeguard against fraud or theft.
- (5) The Trustees shall keep and maintain books, records and accounts and apply accountancy practices and financial systems which fully and properly record all money received and paid respectively by or on behalf of the Trustees for the purposes of the Trust.
- (6) The Trustees shall with the assistance of the Chief Executive apply accountancy practices and financial systems to the administration of the Trust so as to enable them to comply with clauses 8(4) and (5) of this Deed.
- (7) The Trustees:
  - (a) shall open and maintain in the name of the Trust an account at such bank or building society as they shall from time to time decide; and
  - (b) may from time to time open and maintain in the name of the Trust a further account or accounts at such bank or building society as they shall from time to time decide, and may at any time pay any money forming part of the Trust Fund or the income thereof to the credit of any such account or accounts or place the same on deposit with any bank or building society and all cheques and orders for the payment of money shall be signed by at least two of the Trustees or by such persons as they may from time to time authorise in writing to sign cheques, orders or other documents.
- (8) The Trustees shall arrange for the accounts of the Trust to be audited yearly and such audit shall be completed not later than 4 months after the end of each Financial Year.

- (9) There shall be a quorum:
- (a) at a meeting of the Trustees; and
  - (b) at a meeting of a committee formed pursuant to the power contained in clause 5(2) of this Deed

when three Trustees are present. Provided that there shall not be a quorum where a half or more of the Trustees present at such meeting are Candidates or a relative of a Candidate or a person to whom or on whose behalf any payment has been made by the Trust.

- (10) Unless policies made pursuant to clause 5(3) of this Deed provide otherwise, the following shall be elected by the Trustees:

- (a) The deputy chairperson of the Trust, and
- (b) The members and the chairperson of any committee established by the Trust pursuant to the power in clause 5(2).

- (11) At any meeting of the Trustees or of any committee formed pursuant to the power conferred by clause 5(2) of this Deed every matter shall be determined by the majority of votes of the Trustees or members of such committee present and voting on the question.

- (12) Meetings of the Trustees shall be chaired by the chairperson of the Trust or in his or her absence by the deputy chairperson or in the absence of either, by such person as may be elected by the Trustees to chair the meeting.

- (13) Meetings of committees shall be chaired by the chairperson of that committee or in his or her absence by such person as may be elected to chair the meeting by the other members of that Committee who are present.

- (14) The person chairing a meeting of the Trustees or of a committee shall have a second or casting vote at such meeting.

- (15) Resolutions and decisions of the Trustees or a committee formed pursuant to the power conferred by clause 5(2) of this Deed may be made otherwise than in a meeting providing they are recorded in writing and signed by all the Trustees or the members of the committee respectively.

- (16) Any resolution or decision of the Trustees or a committee formed pursuant to the power conferred by clause 5(2) of this deed may be rescinded or varied from time to time by respectively the Trustees or the members of such committee from time to time.

- (17) The Trustees shall provide and keep minute books in which shall be entered, among other things, the proceedings of the Trustees and of any committee formed pursuant to the power contained in clause 5(2) of this Deed and a

record of those present and which shall be signed by the Chairman at the conclusion of each meeting or at some future date if the minutes have been duly confirmed.

#### Employment of Servants or Agents and the delegation of powers

9. The Trustees:

- (1) Shall not be bound in every case to act personally but shall be at liberty to employ any servant or agent (not being a Trustee) to transact all or any business of whatever nature required to be done in pursuance of the Trust including the day to day management of the Trust and the receipt and payment of money.
- (2) May in policies made under clause 5(3) or otherwise in writing, delegate to its servants or agents any of the powers in clause 3 and/or clause 5 and/or clauses 8(4), (5), (6), (7), (8) and (17) of this Deed in which case such servants or agents shall be entitled to form on behalf of the Trustees those opinions as are necessary for the exercise of such powers including (for example) the opinions referred to in clauses 1(g), 3(1)(a), 3(1)(c), 3(2)(a) and the First Schedule hereto.
- (3) May in policies made under clause 5(3) or otherwise in writing, delegate to their servants or agents consideration of applications for financial assistance from the Trust Fund that would not normally be considered for funding in accordance within paragraphs 2, 3, 4, 8, 9 or 10 of the Third Schedule hereto.<sup>17</sup>

10. The Trustees shall delegate to the Chief Executive the necessary authority for the efficient and effective discharge of those functions and responsibilities that are set out in the Fourth Schedule hereto or prescribed from time to time in the Grant Conditions.

#### Trustees' Remuneration and Expenses

11. (1) A Trustee shall be remunerated out of the Trust Fund for fulfilling their respective roles in the furtherance of the Trust in the manner set out immediately below.

##### Part 1

On 31<sup>st</sup> March 2008, each Trustee will be paid the sum specified below according to their position within the Trust.

<b>Position</b>	<b>Amount</b>
Chairman	£9,750

<sup>17</sup> Sub-paragraph (3) was inserted by Deed dated 31 March 2008

Chairman of sub-committee	£8,150
Member of sub-committee	£7,400
Trustee	£6,600

## Part 2

From 1<sup>st</sup> April 2008, each Trustee will be paid an annual sum as may be prescribed from time to time in the Grant Conditions or (if no such sum has been prescribed), the sum specified below, according to their position within the Trust, paid by monthly instalments in arrears.

<b>Position</b>	<b>Amount</b>
Chairman	£19,500
Chairman of sub-committee	£16,300
Member of sub-committee	£14,800
Trustee	£13,200

- (2) A Trustee may be reimbursed out of the Trust Fund all reasonable and proper expenses incurred by him in carrying out his duties, including travelling or other expenses incurred by him as Trustee.<sup>18</sup>

## Trustees' Interests and Conflicts of Interest

12. A person shall not be barred from being a Trustee by reason of his or her being a Candidate or a relative of a candidate or by reason of any payment having been made by the Trust to that person or for his or her benefit.
13. Every Trustee shall abide by the terms of such written policy as may from time to time be approved by the Trustees and the Secretary of State regarding the treatment of a conflict between a Trustee's own interests and his or her duties as a Trustee. Unless and until a different policy is so approved, the policy of the Trust regarding conflicts of interest shall be as set out in the documents entitled:
- (1) Conflict of Interest;
  - (2) Guidelines on Policy and Procedure to declare private interests relating to public duty as a Trustee of the ILF; and
  - (3) Guidelines on Policy and Procedure to manage conflicts of interest;

as ratified on 9 June 2004 by the trustees of the Independent Living (Extension) Fund and of the Independent Living (1993) Fund.

## Trustees' Indemnity

14. A Trustee, acting in good faith, shall not be liable for any loss or damage which may happen to the Trust or any part thereof, or its income, or otherwise for breach of trust at any time or from any cause whatsoever unless such loss or damage shall

<sup>18</sup> Paragraph was amended to include Trustees' Remuneration by Deed dated 31 March 2008

be caused by his own reckless, fraudulent or dishonest acts or omissions.

#### Exclusion of Statutory Powers

15. The statutory powers of maintenance and advancement conferred by section 31 and 32 of the Trustee Act 1925 shall not be exercisable.

#### Provision of Information

16. The Trustees shall:

- (1) Provide the Secretary of State with such information about the affairs of the Trust as he or she may from time to time require;
- (2) Provide the Secretary of State with a written annual report on the affairs of the Trust;
- (3) Permit the Secretary of State to attend and take part in any deliberations (but not decisions) of the Trustees or of any committee formed pursuant to the power contained in clause 5(2) of this Deed; and
- (4) Permit the Secretary of State and the Comptroller and Auditor General to have access to and inspect the books, records and accounts of the Trust.

#### Amendments

17. The Secretary of State may from time to time during the Specified Period by any deed or deeds revocable or irrevocable amend the Trust by revoking or varying any of the trusts powers or provisions of this Deed (whatever their nature and including the Schedules) or by adding any new clause (regard being had to the law relating to perpetuities and remoteness).
18. The Trustees may from time to time amend the Trust by revoking or varying any of the trusts powers or provisions of this Deed (whatever their nature and including the Schedules) or by adding any new clause, either generally, or with respect to a specific group of people and for a specified time period so as to enable the Trustees to take part in pilot schemes. PROVIDED THAT:
- (1) Such amendment must be made by a resolution in writing signed by all the Trustees or passed by a two-thirds majority of the Trustees present at a meeting of the Trustees;
  - (2) The Secretary of State must have given his written consent to such resolution;
  - (3) In the case of a resolution passed at a meeting of the Trustees at least 28 days notice in writing of the proposed amendment and the meeting at which it is to be considered must have been given to all the Trustees;
  - (4) Regard must be given to the law relating to perpetuities and remoteness;

- (5) Nothing in this clause 18 shall authorise any amendment to be made to the Trust of this Deed which would have the effect of:
- (a) Terminating the Trust before the Specified Period has expired;
  - (b) Permitting the payment of Trustees other than as provided for under clause 3 hereof or in reimbursement of expenses under clause 11 hereof;
  - (c) Changing the position regarding the appointment or removal of Trustees; and
  - (d) Changing the position regarding the quorum for meetings of the Trustees referred to in clause 8(9) hereof.

Termination

19. Notwithstanding the definition of Specified Period in clause 1 hereof, the Secretary of State may (with or without giving any advance notice) terminate the Trust on such date as he may specify in writing to the Trustees. Provided that if the Secretary of State gives advance notice of termination, such notice may be revoked at any time before it becomes effective.

Governing law

20. This Trust shall be governed by English law.

IN WITNESS whereof the Official Seal of the Secretary of State for Work and Pensions has hereunto been affixed and the Original Trustees have hereunto set their respective hands the day and year first above written.

## FIRST SCHEDULE

### THE INDEPENDENT LIVING FUND (2006)

#### Part I

#### ELIGIBILITY CRITERIA FOR CANDIDATES

1. To be eligible as a Candidate, a person must be within one of the following 5 groups.

#### Group 1

2. Subject to paragraphs 3 and 4 below, a person is a Candidate within Group 1 if, in the reasonable opinion of the Trustees, it is established that:

- (a) he or she satisfies all of the Common Eligibility Criteria; and

- (b) he or she:

- (i) was in receipt of financial assistance from the Independent Living (Extension) Fund in respect of any day in September 2007; or<sup>19</sup>

- (ii) had received financial assistance from the Independent Living (Extension) Fund but was immediately before 1 October 2007<sup>20</sup> being treated by the trustees of that trust as being temporarily suspended from eligibility. Provided that such period had not (unless expressly approved by resolution of the Trustees at a meeting) commenced before 1 October 2006<sup>21</sup>.

In determining whether a person satisfies any of sub-paragraphs (i) or (ii) above, the Trustees shall be entitled to rely on information provided to them by the trustees of the Independent Living (Extension) Fund; and

- (c) he or she remains entitled to at least the rate of the Care Component of Disability Living Allowance, Attendance Allowance or Constant Attendance Allowance that he or she was entitled to on 1 October 2007<sup>22</sup>.

3. Where a person satisfies paragraph 2(b) above but at any time after 1 October 2007<sup>23</sup> ceases to satisfy paragraph 2(a) and/or 2(c) above, then subject to the exceptions in paragraph 4 of this Schedule, such person cannot thereafter be a Candidate within Group 1.

4. The exceptions are any person in respect of whom, in the reasonable opinion of the

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<sup>19</sup> Date changed from June 2007 by an Amendment made by Deed dated 21 August 2007

<sup>20</sup> Date changed from 1 July 2007 by an Amendment made by Deed dated 21 August 2007

<sup>21</sup> Date changed from 1 July 2006 by an Amendment made by Deed dated 21 August 2007

<sup>22</sup> Date changed from 1 July 2007 by an Amendment made by Deed dated 21 August 2007

<sup>23</sup> Date changed from 1 July 2007 by an Amendment made by Deed dated 21 August 2007

Trustees, it is established:

- (a) failed to satisfy the Common Eligibility Criteria during a period in which he or she was being treated by the Trustees as being temporarily suspended as a Candidate; or
- (b) failed to satisfy the Common Eligibility Criteria only because he or she was staying in a Care Establishment. Provided that this was for a period that had not exceeded 28 days or for periods that taken together had not exceeded 26 weeks in any 52 week period; or
- (c) failed to satisfy paragraph 2(c) above for the period ending with a successful appeal against the Secretary of State's decision not to award the rate of benefit required by that paragraph.

A person within (a), (b) or (c) above may, at the end of the relevant period or (as the case may be) upon ceasing to stay in a Care Establishment and provided that they again satisfy paragraphs 2(a) and (c) above, qualify as a Candidate within Group 1.

## Group 2

5. A person is a Candidate within Group 2 if, in the reasonable opinion of the Trustees, it is established that:
- (a) he or she satisfies all of the Common Eligibility Criteria; and
  - (b) he or she is less than 65 years of age at the date that his or her application for assistance is received by the Trustees or, in the case of a person whose application for assistance was made before 1 October 2007<sup>24</sup> to the trustees of the Independent Living (1993) Fund, was less than 66 years of age at the date on which that application was received by those trustees; and
  - (c) he or she is receiving the highest rate of the Care Component of a Disability Living Allowance, or the highest rate of Attendance Allowance, or at least the financially equivalent rate of Constant Attendance Allowance; and
  - (d) he or she is a person to whom a Local Authority is providing and will (until it gives notice in writing to the Trustees that it is ceasing to do so) continue to provide ongoing Qualifying Support and Services by way of service provision and/or Direct Payments to the monetary value of at least:-
    - (i) the Threshold Sum per annum, (if a Candidate is likely to be eligible to receive financial assistance from the Trust for every week in that year); or
    - (ii) (if, in the Trustees' reasonable opinion, the Candidate is likely to be eligible for some lesser period than a year), such sum as is the result of

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<sup>24</sup> Date changed from 1 July 2007 by an Amendment made by Deed dated 21 August 2007

the Threshold Sum divided by fifty-two and multiplied by the number of weeks that, in the reasonable opinion of the Trustees, that Candidate is likely to be eligible to receive financial assistance from the Trust.

For the purposes of determining whether a Candidate is likely to be eligible to receive financial assistance from the Trust and for how long, the Trustees must not take into account whether or not the Candidate would satisfy the eligibility condition contained in this paragraph 5(d).<sup>25</sup>

For the purposes of this paragraph only, Qualifying Support and Services will include support and services of the type set out in the Second Schedule hereto<sup>26</sup> and will also include respite care and the provision of transport to and from a daycentre or respite care.

(e)...<sup>27</sup>

### Group 3

6. A person is a Candidate within Group 3 if, in the reasonable opinion of the Trustees, it is established that he or she was formerly but has ceased to be a Candidate within either Group 1, Group 2 or Group 4<sup>28</sup>.
7. Provided that:
  - (a) No payment may be made to a Candidate within Group 3 other than in respect of a period not exceeding 12 weeks starting with the date on which he or she ceased to be a Candidate within Group 1, Group 2 or Group 4<sup>29</sup> (as the case may be);
  - (b) Where a person is treated by the Trustees as being temporarily suspended from Group 1, Group 2 or Group 4<sup>30</sup>, payments may be made to such person as a person within Group 3 for a period not exceeding 12 weeks starting either with the date referred to in sub-paragraph (a) above or with the date when his or her period of temporary suspension comes to an end (but not both); and
  - (c) For the purposes of clause 3(1) hereof and subject to the power set out in clause 3(1)(c) hereof, the total sum paid to or for the benefit of such a person in respect of any of those 12 weeks shall not exceed the Maximum Sum applicable to the group of Candidate to which such person had formerly belonged.

### Group 4

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<sup>25</sup> Paragraph inserted by Deed dated 1 October 2007

<sup>26</sup> Words "even if provided at a daycentre, it" and "such" removed by Deed dated 1 October 2007

<sup>27</sup> Paragraph (e) (as amended by Deed dated 1 October 2007) setting out the maximum amount of financial assistance deleted by Deed dated 31 March 2009.

<sup>28</sup> Group 4 inserted by Deed dated 1 October 2007

<sup>29</sup> Group 4 inserted by Deed dated 1 October 2007

<sup>30</sup> Group 4 inserted by Deed dated 1 October 2007

8. A person is a Candidate within Group 4 if, in the reasonable opinion of the Trustees, it is established that:
- (a) he or she satisfies all of the Common Eligibility Criteria; and
  - (b) he or she was formerly a Candidate within Group 1 or Group 2 but has ceased to be so only because he or she no longer satisfies the requirement set out in paragraph 2(c) or paragraph 5(c) (as the case may be) of Part 1 of this Schedule; or he or she was formerly a Candidate within Group 5 but has ceased to be for the same reason<sup>31</sup>; and
  - (c) he or she:
    - (i) is awaiting the outcome of a request for reconsideration or revision of the relevant disability benefit decision, or<sup>32</sup> is in the process of a first appeal (presently to a Social Security Appeal Tribunal) against the Secretary of State's decision not to award the rate of benefit required by the relevant paragraph; or
    - (ii) remains entitled to the rate of benefit required, but is not receiving it because payment has been suspended for a whole or a part of the week because of the effect of an Interim Custody Order; or
    - (iii) remains entitled to the rate of benefit required, but it not receiving the whole of the weekly amount of that benefit because daily payments of that benefit are being made.
9. Provided that for the purposes of clause 3(1) hereof and subject to the power set out in clause 3(1)(c) hereof, the total sum paid to or for the benefit of a Candidate within Group 4 in respect of any week:
- (a) shall not exceed the Maximum Sum applicable to the group of Candidate to which such person had formerly belonged; and
  - (b) in the case of a Candidate who falls within this Group 4 by reason of paragraph 8(c)(ii) of this Schedule, the sum that would otherwise be payable (up to the maximum sum) shall be apportioned to reflect the number of days in that week on which that person is in custody and the number of days on which he or she was Living Independently.

#### Group 5

10. A person is a Candidate within Group 5 if, in the reasonable opinion of the Trustees, it is established that:
- (a) he or she was formerly but has ceased to be a Candidate within either Group 1,

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<sup>31</sup> Group 5 inserted by Deed dated 1 October 2007

<sup>32</sup> Words "is awaiting the outcome of a request for reconsideration or revision of the relevant disability benefit decision, or" inserted by Deed dated 1 October 2007

Group 2 or Group 4<sup>33</sup> for the reason that he or she is staying in a Care Establishment; and

(b) he or she is severely disabled whether physically, mentally or sensorially to the extent that he or she will need extensive help in respect of Qualifying Support and Services to enable him or her to Live Independently when he or she returns home from a Care Establishment; and

(c) he or she satisfies paragraphs 2 to 4 of the Common Eligibility Criteria.

11. Provided that payments to a Candidate within Group 5 under clause 3(1) hereof<sup>34</sup>:

(a) shall not be made for more than 4 consecutive weeks nor for more than 26 weeks in any 52 week period; and

(b) (subject to the power set out in clause 3(1)(c) hereof), the total sum paid to or for the benefit of a Candidate under Group 5 in respect of any week shall not exceed the Maximum Sum applicable to the Group of Candidate to which that person had formerly belonged.

## **Part II**

### **COMMON ELIGIBILITY CRITERIA**

The Common Eligibility Criteria are as follows:

1. A person must be severely disabled, whether physically, mentally or sensorially, to the extent that he or she needs extensive help in respect of Qualifying Support and Services to enable him or her to Live Independently.
2. A person must have attained the age of 16 years.
3. A person must satisfy the following residence and presence requirements:
  - (a) he or she is ordinarily resident in the UK;
  - (b) he or she is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999;
  - (c) he or she is present in the UK; and
  - (d) he or she has been present in the UK for a period of not less than 26 of the preceding 52 weeks.

Provided that the Trustees shall have discretion to dispense with requirements (c) and/or (d) if in the reasonable opinion of the Trustees, it is established that a

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<sup>33</sup> Group 4 inserted by Deed dated 1 October 2007

<sup>34</sup> Original paragraph (a) restricting payments to a Candidate within Group 5 to the costs of employing a personal assistant to provide Qualifying Support and Services deleted by Deed dated 1 October 2007.

person's absence from the UK is and when it began was, for a temporary purpose and has not lasted for a continuous period exceeding 26 weeks; or it is established that a person's absence from the UK is temporary and for the specific purpose of being treated for incapacity or for a disabling condition which commenced before he or she left the UK<sup>35</sup>.

4. A person must satisfy one of the conditions contained in any one of sub-paragraphs (a) or (b) or (c) below:

(a) Income Support, Income-based Jobseeker's Allowance or Income-related Employment and Support Allowance condition

- (i) A person or their partner (or if a third party is in receipt of child benefit in respect of that person, that third party or their partner) is in receipt of Income Support; or
- (ii) A person or their partner (or if a third party is in receipt of child benefit in respect of that person, that third party or their partner) is in receipt of Income-based Jobseeker's Allowance;<sup>36</sup> or
- (iii) A person or their partner (or if a third party is in receipt of child benefit in respect of that person, that third party or their partner) is in receipt of Income-related Employment and Support Allowance.<sup>37</sup>

(b) Guarantee Credit part of State Pension Credit and capital condition

A person or their partner (or if a third party is in receipt of child benefit in respect of that person, that third party or their partner):

- (i) is in receipt of the Guarantee Credit part of State Pension Credit; and
- (ii) has capital of less than the amount from time to time prescribed in the Grant Conditions.

(c) Weekly resources and capital condition

A person or their partner (or if a third party is in receipt of child benefit in respect of that person, that third party or their partner) must have:

- (i) relevant weekly resources that are less than their weekly needs (which resources and needs are to be determined in accordance with the provisions from time to time prescribed in the Grant Conditions); and
- (ii) capital of less than the amount from time to time prescribed in the Grant Conditions.

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<sup>35</sup> Paragraph changed by an Amendment made by Deed dated 1 October 2007

<sup>36</sup> Conditions relating to Income-based Jobseeker's Allowance added by an Amendment made by Deed dated 31 March 2008

<sup>37</sup> Conditions relating to Income-related Employment and Support Allowance added by an Amendment made by Deed dated 31 March 2009.

## **SECOND SCHEDULE**

THE INDEPENDENT LIVING FUND (2006)

### **QUALIFYING SUPPORT AND SERVICES**

Qualifying Support and Services means those types of support and service as may from time to time be prescribed in the Grant Conditions or unless excluded by anything in the Grant Conditions means support and services only in respect of –

- cleaning and other domestic duties
- cooking and preparing food and drink
- laundering and ironing
- shopping
- personal hygiene and grooming
- dressing
- eating
- drinking
- physical movement such as turning, walking
- supervision in order to avoid substantial danger to him or herself or others.

## **THIRD SCHEDULE**

### THE INDEPENDENT LIVING FUND (2006)

#### **MATTERS SPECIFIED FOR THE PURPOSES OF CLAUSE 3(1)(e)**

In relation to a Candidate ordinarily resident in Great Britain:

1. The Trustees will give priority firstly to:
  - (a) an existing beneficiary of financial assistance from the Trust within either Groups 1, 2, 4, or 5;and secondly to:
  - (b) a Candidate in remunerative work (either employed or self employed work) of at least 16 hours a week.
2. In relation to applications for financial assistance received on or after 1<sup>st</sup> April 2008, the Trustees will not normally offer financial assistance from the Trust to a Candidate unless:
  - (a) the Candidate or their partner (or if a third party is in receipt of Child Benefit in respect of the Candidate, that third party or their partner) is in receipt of Income Support, Income-Based Jobseeker's Allowance, Income-related Employment and Support Allowance or Pension Guarantee Credit or with income that in the reasonable opinion of the Trustees is of a similar level to that which the Candidate or their partner (or the relevant third Party or their partner) would have if they were in receipt of Income Support, Income-Based Jobseeker's Allowance, Income-related Employment and Support Allowance or Pension Guarantee Credit or such other level as may be determined from time to time by the Trustees and notified on the Independent Living Fund's website;<sup>38</sup> and
  - (b) in the reasonable opinion of the Trustees the value of a Candidate's needs for Qualifying Support and Services (from a Local Authority and from the Trust) to enable them to Live Independently is likely to be at least £500 a week on average for a period of six months from the date in respect of which payments are first made from the Trust, or such other amount as may be determined from time to time by the Trustees and notified on the Independent Living Fund's website.
3. The Trustees will not normally make payments in respect of Qualifying Support and Services provided by a relative who is living in the same house as the Candidate, or provided by a Local Authority.

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<sup>38</sup> Conditions relating to Income-related Employment and Support Allowance added by an Amendment made by Deed dated 31 March 2009.

4. In relation to applications for financial assistance received on or after 1<sup>st</sup> April 2008, Trustees will not normally offer financial assistance from the Trust to a Candidate who either:
  - (a) has been awarded damages or a payment of compensation for personal injury in excess of such sum as may be prescribed from time to time in the Grant Conditions or (if no such sum has been prescribed) £23,250; or
  - (b) is a beneficiary under a trust fund with a capital value in excess of such sum as may be prescribed from time to time in the Grant Conditions or (if no such sum has been prescribed) £23,250.

In relation to a Candidate ordinarily resident in Northern Ireland, for the period up to 30<sup>th</sup> June 2008:

5. The Trustees will give priority to any Candidate who is young and in work. Thereafter, they will give priority equally to Group 1 and Group 2 Candidates.
6. The Trustees will not normally make payments in respect of Qualifying Support and Services provided by a relative who is living in the same house as the Candidate, or provided by a Local Authority.

In relation to a Candidate ordinarily resident in Northern Ireland, as from 1<sup>st</sup> July 2008:

7. The Trustees will give priority firstly to:
  - (a) an existing beneficiary of financial assistance from the Trust within either Groups 1, 2, 4, or 5;and secondly to:
  - (b) a Candidate in remunerative work (either employed or self employed work) of at least 16 hours a week.
8. In relation to applications for financial assistance received on or after 1<sup>st</sup> July 2008, the Trustees will not normally offer financial assistance from the Trust to a Candidate unless:
  - (a) the Candidate or their partner (or if a third party is in receipt of Child Benefit in respect of the Candidate, that third party or their partner) is in receipt of Income Support, Income-Based Jobseeker's Allowance, Income-related Employment and Support Allowance or Pension Guarantee Credit or with income that in the reasonable opinion of the Trustees is of a similar level to that which the Candidate or their partner (or the relevant third Party or their partner) would have if they were in receipt of Income Support, Income-Based Jobseeker's Allowance, Income-related Employment and Support Allowance or Pension Guarantee Credit or such other level as may be determined from time to time

by the Trustees and notified on the Independent Living Fund's website;<sup>39</sup> and

- (b) in the reasonable opinion of the Trustees the value of a Candidate's needs for Qualifying Support and Services (from a Local Authority and from the Trust) to enable them to Live Independently is likely to be at least £500 a week on average for a period of six months from the date in respect of which payments are first made from the Trust, or such other amount as may be determined from time to time by the Trustees and notified on the Independent Living Fund's website.
9. The Trustees will not normally make payments in respect of Qualifying Support and Services provided by a relative who is living in the same house as the Candidate, or provided by a Local Authority.
10. In relation to applications for financial assistance received on or after 1<sup>st</sup> July 2008, the Trustees will not normally offer financial assistance from the Trust to a Candidate who either:
- (a) has been awarded damages or a payment of compensation for personal injury in excess of such sum as may be prescribed from time to time in the Grant Conditions or (if no such sum has been prescribed) £23,250; or
  - (b) is a beneficiary under a trust fund with a capital value in excess of such sum as may be prescribed from time to time in the Grant Conditions or (if no such sum has been prescribed) £23,250.<sup>40</sup>

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<sup>39</sup> Conditions relating to Income-related Employment and Support Allowance added by an Amendment made by Deed dated 31 March 2009.

<sup>40</sup> Third Schedule substituted by an Amendment made by Deed dated 31 March 2008

## **FOURTH SCHEDULE**

### THE INDEPENDENT LIVING FUND (2006)

#### **FUNCTIONS AND RESPONSIBILITIES OF THE CHIEF EXECUTIVE FOR THE PURPOSES OF CLAUSE 8(3)**

1. The Chief Executive shall be the Accounting Officer, as designated by the Permanent Secretary to the Department for Work and Pensions and as such is personally responsible for safeguarding the Public Funds; for ensuring propriety and regularity in the handling of the Public Funds and for the day-to-day operations and management of the Trust.
2. The Chief Executive shall be the Trust's Consolidation Officer, as appointed by HM Treasury and as such shall be personally responsible for preparing the consolidation information, financial results and audit report for the Principal Consolidation Officer nominated by the Treasury.
3. The Chief Executive, as Accounting Officer, shall, so far as the stewardship of the Public Funds is concerned, have the same responsibilities as those of the Principal Accounting Officer of the Department for Work and Pensions.
4. The Chief Executive, as Accounting Officer, shall act in accordance with the HM Treasury's "Government Accounting" and other instructions and guidance issued from time to time by the Department for Work and Pensions, the Treasury and the Cabinet Office - in particular the Treasury documents "The Responsibilities of an NDPB Accounting Officer", presently contained in Chapter 8 of "Government Accounting"; "Regularity and Propriety" and the "Government Financial Reporting Manual".
5. The Chief Executive, as Accounting Officer, must personally sign a Statement of Accounting Officer responsibilities and a Statement of Internal Control within the accounts and in doing so accepts personal responsibility for the proper presentation of the accounts.
6. The Chief Executive shall ensure that proper records are kept relating to the accounts and that the accounts are properly prepared and presented according to the appropriate legislation and guidance. The Chief Executive must personally sign the accounts and in doing so accepts personal responsibility for them.
7. The Chief Executive shall be liable to be summoned to appear together with the Principal Accounting Officer for the Department for Work and Pensions, on any matter relating to the Public Funds which may arise before the Public Accounts Committee.
8. The Chief Executive shall establish and maintain adequate controls over income, expenditure, assets and liabilities of the Trust and maintain adequate levels of risk

management and internal controls over its activities, including ensuring that a system of risk management is maintained to inform decisions and assist in the achievement of objectives.

9. The Chief Executive shall be responsible for ensuring the Trust's compliance with the requirements of being a Non-Departmental Executive Body.
10. The Chief Executive shall be responsible for ensuring compliance with the Data Protection Act 1998 and the Freedom of Information Act 2000, and shall, in relation to the latter Act, establish and maintain a Publication Scheme.
11. The Chief Executive shall, where appropriate, assist the Trustees on the discharge of their responsibilities under the terms of the Trust and the Grant Conditions and shall ensure that the Trustees observe all relevant legislation and any relevant guidance issued by Government and put into effect any relevant recommendations accepted by the Government from the Public Accounts Committee, other Parliamentary Select Committees or other Parliamentary Authority.
12. The Chief Executive shall ensure that financial considerations are fully taken into account at all stages by the Trustees in framing and reaching their decisions and policies.
13. The Chief Executive shall ensure that the Public Funds are applied only to the purposes of the Trust.
14. The Chief Executive shall ensure records of gifts, bequests, losses due to fraud and overpayments are kept.
15. The Chief Executive shall ensure that the Trust's assets, equipment and employees are used economically, efficiently and effectively.
16. The Chief Executive shall ensure that effective procedures for handling complaints are established and maintained.
17. The Chief Executive shall be responsible for the day to day management and administration of the Trust, including having responsibility for:
  - (a) the management of the staff and Independent Living Fund Assessors engaged by the Trust and monitor the quality and value for money aspects of the Trust's Independent Living Fund Assessors;
  - (b) arranging for the Independent Living Fund Assessors in conjunction with Local Authorities and Candidates or applicants, to recommend a joint programme of care for each person to whom the Trust provides financial assistance;
  - (c) the detailed arrangements whereby applications to the Trust are considered and payments made to Candidates, in accordance with the Trust, Grant Conditions and Trustee's policies;

- (d) ensuring effective Human Resources policies and procedures are established and maintained, including an Equal Opportunities policy;
  - (e) the management of the budget by the production of monthly forecasts and profiles of expenditure to date so as to enable the Trustees to take decisions in accordance with and manage actual and forecast expenditure.
18. The Chief Executive shall have the discretion to delegate the day-to-day administration of the responsibilities outlined above to the Finance Director or such other person as appropriate. However, the Chief Executive shall not assign absolutely to any other person any of these responsibilities.
19. In all matters, the Chief Executive shall act in accordance with the provisions of the Trust, the Grant Conditions, Trustee's policies and relevant legislation and guidance.

## FIFTH SCHEDULE

### THE INDEPENDENT LIVING FUND (2006)

#### RIGHT TO CONTROL PILOT SCHEME

##### Part I

#### PILOT AREAS AND INTERPRETATION

1. The pilot areas for the Right to Control Pilot Scheme are as follows:
  - (a) the London borough of Barnet;
  - (b) the metropolitan district of Barnsley;
  - (c) the metropolitan district of Bury;
  - (d) the non-metropolitan district of Epsom and Ewell;
  - (e) the county of Essex;
  - (f) the non-metropolitan district of Leicester;
  - (g) the metropolitan district of Manchester;
  - (h) the London borough of Newham;
  - (i) the metropolitan district of Oldham;
  - (j) the non-metropolitan district of Reigate and Banstead;
  - (k) the metropolitan district of Sheffield;
  - (l) the metropolitan district of Stockport;
  - (m) the metropolitan district of Trafford.
  
2. In this Schedule the following expressions will, where the context permits, have the following meanings:
  - (a) “**Community Care Services**” has the meaning given by section 46(3) of the National Health Service and Community Care Act 1990.
  - (b) “**Relevant Authority**”, “**Responsible Authority**” and “**Right to Control Service**” have the meaning given by regulation 2(1) of the Right to Control Regulations.
  - (c) “**Right to Control Regulations**” means the Disabled People’s Right to Control (Pilot Scheme) (England) Regulations 2010 (S.I. 2010/2862).
  - (d) “**Trust Deed**” means the Deed, including the Schedules thereto, made on the tenth day of April 2006 between the Secretary of State for Work and Pensions of the one part and Margaret Rosemary Cooper of ‘Holly Island House’, 18 Algeo Drive, Enniskillen, Co Fermanagh, BT74 6JL and Michael Beresford Boyall of 24 Belle Baulk Towcester Northants NN12 6YE and Marie Theresa Martin of 2 Seymour Road, Hampton Hill, Middlesex, TW12 1DD (“the Original Trustees”) of the other part, as amended pursuant to clauses 17 and 18 of that Trust Deed by each and all supplemental deeds that have been made after

the tenth day of April 2006.

## **Part II**

### **MODIFICATIONS TO THE TRUST DEED**

3. In the pilot areas listed in paragraph 1 of Part I of this Schedule, the provisions of the Trust Deed are modified in accordance with:-
  - (a) paragraphs 4 to 13 of Part II of this Schedule for the period of the Right to Control Pilot Scheme; and
  - (b) paragraph 1 of Part III of this Schedule for the period of the Right to Control Pilot Scheme.
4. For clause 3(1)(a), substitute:

“(a) No payment shall be made to any Candidate other than for the purpose of assisting the Candidate to meet a liability that has actually been or will be incurred and that is, in the reasonable opinion of the Trustees, the sort of liability that might properly be incurred in order to assist that Candidate to Live Independently and, where there exists a support plan for the Candidate developed under paragraph 17(b) of the Fourth Schedule hereto, is in accordance with that support plan;”
5. For clause 3(1)(c), substitute:

“(c) Notwithstanding sub-paragraph (b) above, the Trustees may, in their discretion, pay more than the Maximum Sum in any week or weeks in a Financial Year provided that they are reasonably of the opinion and take reasonable steps to ensure that the total of the sums paid to or for the benefit of that Candidate over that year will not exceed:

  - (i) the Maximum Sum for a Candidate of that group multiplied by 52;
  - (ii) (if less) that Maximum Sum multiplied by the number of weeks in that year in which in the reasonable opinion of the Trustees that Candidate is likely to be eligible to receive financial assistance from the Trust;” or
  - (iii) the Maximum Sum for a Candidate of that group multiplied by 56, where it is necessary as a result of a change in the payment cycle required as a result of the Right to Control Pilot Scheme;”
6. For clause 8(4)(d), substitute:

“(d) monitor or, where the Trustees have authorised another Relevant Authority to exercise their power to monitor the payments made, satisfy themselves that the monitoring arrangements put in place by that authority are adequate and appropriate and, in either case, take reasonable steps to recover payments made

otherwise than in accordance with the provisions of the Trust and any overpayments made to Candidates.”

7. In clause 9 insert the following sub-clause (4):

“(4) (a) May authorise any of their functions in so far as they:

(i) correspond to the functions of a Responsible Authority under any of regulations 7 to 11 and 13 of the Right to Control Regulations; or

(ii) relate to the monitoring of payments made to Candidates

to be exercised by any other Relevant Authority.

(b) Anything done or omitted to be done by or in relation to an authorised authority (or an employee of that authority) in, or in connection with, the exercise or purported exercise of the function concerned is to be treated for all purposes as done or omitted to be done by or in relation to the Trustees.

(c) But paragraph (b) does not apply for the purposes of-

(i) so much of any contract made between the authorised authority and the Trustees as relates to the exercise of the function, or

(ii) any criminal proceedings brought in respect of anything done or omitted to be done by an authorised authority (or an employee of that authority).

(d) In paragraphs (b) and (c), “authorised authority” means a Relevant Authority authorised to exercise any function by virtue of paragraph (a).”.

8. For paragraph 5(d) of Part I of the First Schedule, substitute:

“(d) he or she is a person to whom a Local Authority is providing and will (until it gives notice in writing to the Trustees that it is ceasing to do so) continue to provide ongoing Community Care Services by way of service provision and/or Direct Payments to the monetary value of at least:-

(i) the Threshold Sum per annum, (if a Candidate is likely to be eligible to receive financial assistance from the Trust for every week in that year); or

(ii) (if, in the Trustees’ reasonable opinion, the Candidate is likely to be eligible for some lesser period than a year), such sum as is the result of the Threshold Sum divided by fifty-two and multiplied by the number of weeks that, in the reasonable opinion of the Trustees, that Candidate is likely to be eligible to receive financial assistance from the Trust.

For the purposes of determining whether a Candidate is likely to be eligible to receive financial assistance from the Trust and for how long, the Trustees must not take into account whether or not the Candidate would satisfy the eligibility condition contained in this paragraph 5(d).”

9. For paragraph 2(b) of the Third Schedule, substitute:

“(b) in the reasonable opinion of the Trustees the value of a Candidate’s needs to enable them to Live Independently is likely to be at least £500 a week on average for a period of six months from the date in respect of which payments are first made from the Trust, or such other amount as may be determined from time to time by the Trustees and notified on the Independent Living Fund’s website.”

10. For paragraph 3 of the Third Schedule, substitute:

“The Trustees will not normally make payments in respect of support and services provided by a relative who is living in the same house as the Candidate or provided by a Local Authority”.

11. For paragraph 6 of the Third Schedule, substitute:

“The Trustees will not normally make payments in respect of support and services provided by a relative who is living in the same house as the Candidate or provided by a Local Authority”.

12. For paragraph 9 of the Third Schedule, substitute:

“The Trustees will not normally make payments in respect of support and services provided by a relative who is living in the same house as the Candidate or provided by a Local Authority”.

13. For paragraph 17(b) of the Fourth Schedule, substitute:

“(b) arranging either for:

(i) the Independent Living Fund Assessors in conjunction with Candidates and in conjunction with or on behalf of a Relevant Authority other than the Trust, to develop a support plan for each person to whom the Trust provides financial assistance; or

(ii) a Relevant Authority other than the Trust in conjunction with Candidates and in conjunction with or on behalf of the Trust and any other Relevant Authority, to develop a support plan for each person to whom the Trust provides financial assistance;

(ba) a support plan prepared in accordance with sub-paragraph (b) must set out, in relation to the Trust and each Right to Control Service to which it relates—

(i) the level of funding available to the Candidate and the basis on which the funding is provided,

(ii) where the Support Plan is agreed by the Candidate, the outcomes to be achieved by the Candidate,

(iii) the services that are to be provided by or on behalf of a Relevant Authority or whose provision is to be arranged by or on behalf of the Candidate,

(iv) whether any direct payments are to be made by a Relevant Authority and, if so, to whom those payments are to be made,

(v) the amount of any contribution payable by or on behalf of the Candidate, and

(vi) the intervals (of not more than 12 months) at which the plan is to be reviewed by the Trust or any other Relevant Authority referred to in the plan.

(bb) where a Relevant Authority is to develop or has developed a support plan by virtue of an arrangement made under paragraph (b)(ii), agreeing with that authority when an assessment or review is to be carried out and by whom it is to be carried out;

(bc) Where a support plan prepared in accordance with sub-paragraph (b), is current immediately before the expiry date, the duty of any Relevant Authority to provide services or direct payments in accordance with that plan continues until the time when the support plan would otherwise next fall to be reviewed;”

### **Part III**

#### **ADDITIONAL PROVISION**

##### **Additional powers of the trustees**

1. The Trustees shall have the power to exercise the functions of a Responsible Authority under any of regulations 7 to 11 and 13 of the Right to Control Regulations if authorised to do so by that Responsible Authority under regulation 20 of those Regulations and shall have the power to exercise the functions of a Local Authority providing Community Care Services if authorised to do so by that Local Authority.

### **Part IV**

#### **MODIFICATIONS TO THE GRANT CONDITIONS**

1. In the pilot areas listed in paragraph 1 of Part I of this Schedule, the provisions of the Grant Conditions are modified in accordance with paragraphs 2 to 4 of Part IV of this Schedule for the period of the Right to Control Pilot Scheme.

2. For clause 6.1 of the Grant Conditions, substitute:

“Further to clause 3(1)(d) of the Independent Living Fund (2006) Deed, a Candidate is usually expected to make a contribution towards the cost of enabling him or her to live independently. Therefore, the Trustees shall, subject to 6.2, 6.3 and 6.4 below, reduce the value of financial assistance from the Trust to a Candidate by the aggregate value of:

- (a) half the amount of Disability Living Allowance (care component) or Attendance Allowance received;
- (b) if the Candidate is in receipt of Constant Attendance Allowance, the lesser of half of the amount of Constant Attendance Allowance received or half of the amount of the highest rate of Disability Living Allowance (care component);
- (c) the full amount of Severe Disability Premium (paid with income support), the full amount of Severe Disability Premium (paid with Employment and Support Allowance) or the additional amount for persons severely disabled (paid with pension credit) received;
- (d) the full amount of any Special Transitional Additions received; and
- (e) if a Candidate or their partner (or if a third party is in receipt of child benefit in respect of that Candidate, that third party or their partner) is not in receipt of income support, income-based Jobseekers Allowance, Pension Guarantee credit or Income-related Employment and Support Allowance, the difference between their weekly resources, calculated in accordance with paragraph 7.4 below, and the Candidate’s weekly needs, calculated in accordance with paragraph 7.5(a) and (b) below;

minus the amount of any charges paid to a Local Authority in respect of Community Care Services provided by the Local Authority.”

3. For clause 6.4 of the Grant Conditions, substitute:

“From the 20<sup>th</sup> of August 2010, on the revision of an award no account shall be taken of any increases made by the Local Authority concerned (either before or after the 20<sup>th</sup> of August 2010) in charges made in respect of Community Care Services.”

4. For clause 7.5(c) of the Grant Conditions, substitute:

“the costs of the assistance which is needed in order to enable the Candidate to live independently.”

## **AMENDMENTS INCORPORATED IN THIS DRAFT**

1. Amendments made by a Deed dated 21 August 2007.

2. Amendments made by a Deed dated 1 October 2007.
3. Amendments made by a Deed dated 31 March 2008.
4. Amendments made by a Deed dated 31 March 2009.
5. Amendments made by a Deed dated 29 April 2010.
6. Amendments made by a Deed dated 16 December 2010.
7. Amendments made by a Deed dated 31 March 2011.
8. Amendments made by a Deed dated 29 July 2011.
9. Amendments made by a Deed dated 17 January 2012.