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| Bringing together services from  **ELC-19-2131**  **STANDARD RESIDENTIAL CARE HOME CONTRACT (NON NCHC).**  **TERMS AND CONDITIONS** |

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**This Contract is prepared and entered into by the Council and the Provider for the purpose of securing the Service in the Provider’s Care Home and is pursuant to each Individual Placement Agreement.**

It is agreed between the Council and the Provider as follows:-

**Section A**

**A.1 DEFINITIONS INTERPRETATIONS AND RELATED MATTERS**

A.1.1 Any reference to any Act of Parliament shall be deemed to include any amendment, replacement or re-enactment thereof for the time being in force and to include any bye-laws, statutory instruments, rules, regulations, orders, notices, codes of practice, directions, consents or permissions (together with any conditions attaching to the foregoing) made thereunder.

A.1.2 In the Contract, words importing the singular number only shall be deemed to include the plural number and vice versa unless the context otherwise requires and words importing the masculine gender shall be deemed to include the feminine gender and vice versa unless the context otherwise requires.

A.1.3 Reference to persons in the Contract shall include all entities with legal personality including natural persons, partnerships and companies save where the context otherwise requires.

A.1.4 Any reference to a Clause, Section or Schedule shall be a construed respectively as a reference to a Clause, Section or Schedule of this Contract.

A.1.5 A failure by either the Council, or the Provider to exercise or enforce any rights conferred on them by this Contract shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement of such rights at any subsequent time or times except in respect of the provisions of Clause C.2.4 of the Contract.

A.1.6. Wherever provision is made in this Contract for the giving or issue of any notice, consent, approval, certificates, determination, demand or waiver by any person unless otherwise specified, such notice, consent, approval, certificate, determination, demand or waiver shall be in writing and related parts of speech such as, without limitation, notify and notification shall be construed accordingly.

A.1.7 Anything including any decision or action that the Council is required or authorised to take or do under the Contract may be taken or done by any person so authorised either generally or specially by the Council.

A.1.8 In this Contract, unless the context otherwise requires, the following terms shall have the meaning given to them below:-

**“Additional Care”** means any personal care, support or nursing services identified in the Resident’s Care Assessment that it is agreed by Parties shall require more resources than the Provider would normally need to apply for a Resident assessed as requiring Standard Care;

**“Additional Care Charge”** means the negotiated cost for Additional Care that is referred to in the Individual Placement Agreement;

**”Additional Service Charge**” means the agreed cost of the Additional Services, being the difference between the Approved Rate and any agreed Additional Costs;

**“Additional Services”** means facilities, goods and non-Care services that are significantly and demonstrably higher than those expected by the Care Standards or other Clauses of this Contract and which are detailed in Schedule 1;

**“Adults at Risk”** means as defined within Section 3(1) of the Adult Support and Protection (Scotland) Act 2007 (and where the context so applies the meaning pursuant to the Care Act 2014) as adults who;

* are unable to safeguard their own well-being, property, rights or other interests;
* are at risk of harm or neglect; and

because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than adults who are not so affected;

**“Agreed Rate”** means the rate agreed between the Parties for the provision of the Service as specified in the IPA and/or Purchase Order.

**“Approved Rate”** means the rate assessed by the Provider and agreed with the Council and specified on the Purchase Order.

**“Care”** means Standard Care and any Additional Care that the Council has assessed the Resident as requiring;

**“Care Assessment”** means the community care assessment of the needs of the Resident as arranged and approved by the Council;

**“Care Home”** means the establishment which provides accommodation together with nursing, personal care or personal support for persons by reason of their vulnerability or need, in accordance with paragraph 2 of Schedule 12 to the Public Services Reform (Scotland) Act 2010. This definition shall also include the whole buildings and associated lands used as a Care Home by the Provider to which Residents may be admitted and may include any alternative accommodation approved by the Council in the event of an emergency for the purposes of temporarily accommodating the whole or any part of the group of management, Staff and Residents;

**“Care Inspectorate”** means Social Care and Social Work Improvement Scotland (SCSWIS) being the body established under section 44 of the Public Services Reform (Scotland) Act 2010, having its headquarters for the time being at Compass House, 11 Riverside Drive, Dundee, DD1 4NY, (or if the Care is being provided in England, the Care Quality Commission, the regulator of health and adult social care in England having its business address at 44 Watford Way, London, NW4 3AL) and any other body with statutory functions of inspection and scrutiny of the Service or any part thereof;

**“Care Manager”** means such person(s) as may be appointed by the Council from time to time to assess, oversee and review the Care provided to the Resident by the Provider;

**“Care and Support Plan”** means the document that sets out the level of Care and target Outcomes identified by the Council as required by and requested for the Resident based on the Care Assessment;

**“Care Standards”** mean the New National Care Standards(or where the care is being provided in England, the equivalent, being the Care Quality Commission Fundamental Standards): Care Homes for Older People, published by the Scottish Ministers under the Regulation of Care (Scotland) Act 2001 and any applicable standards and outcomes published by the Scottish Ministers in accordance with the Public Services Reform (Scotland) Act 2010 that describe what the Resident can expect to receive from the Provider, and any subsequent replacement standards established by the Care Inspectorate;;

**“Complaints Procedure”** has the meaning set out in Regulation 18 of The Social Care and Social Work Improvement Scotland (Requirements for Care Services) (Scotland) Regulations 2011 (“SSI 2011/210) or (if the care is being provided in England the Local Authority Social Services and NHS Complaints Regulations 2009, made under powers in Sections 113 to 115 of the Health and Social Care (Community Health and Standards) Act 2003);

**“Contract”** or Standard Residential Care Home Contract means the contract constituted by this agreement and any Individual Placement Agreements entered into under this agreement;

**“Control”** means the ability to direct the affairs of the Provider, whether by virtue of the ownership of shares, contract or otherwise;

“**COSLA**” means the Convention of Scottish Local Authorities whose headquarters are at Verity House, 19 Haymarket Yards, Edinburgh, EH12 5BH;

**“Council's Approved Rate”** means the sum of the Council’s Contribution and the Resident’s Contribution, being the Provider’s price per week which the Provider is entitled to receive for providing Standard Care as specified in the Individual Placement Agreement and Purchase Order

**“Council's Contribution”** means the financial contribution per week which the Council shall make to the Provider for providing Standard Care which together with the Resident's Contribution amounts to the Council's Approved Rate;

**Default Rate”** means the Council’s Approved Rate less the Deduction Schedule that may be applied where the Provider fails to meet certain specified obligations under this Contract which support service quality;

**“Deduction**” means the sum equal to and pursuant to Clause A.20.10.

**“Disclosure”** means a criminal record certificate or enhanced criminal record certificate (also referred to as an “Enhanced Disclosure”) issued by Disclosure Scotland under Part V of the Police Act 1997 or if the care is being provided in England a basic disclosure certificate from the Disclosure and Barring Service (DBS).

“**Disclosure Information**” means disclosure records disclosed under section 52, 53 or 54 of the PVG Act and any information in such a disclosure record which is obtained only by virtue of section 51, 52, 53 or 54 of the PVG Act or if the care is being provided for in England the English equivalent ;

**“Disclosure Scotland”** means the Disclosure Bureau operated by the Scottish Criminal Records Office currently having its Head Office at 1 Pacific Quay, Glasgow. G5 1EA;

“**DWP**” means the Department for Work and Pensions;

“**Enhanced Disclosure**” means an enhanced criminal record certificate issued under Part V of the Police Act 1997;

**“Equal Opportunities”** means the comprehensive approach to addressing issues of equality and diversity in the conduct of the Provider’s business and provision of the Service so as to achieve the aims and objectives of the Equality Act 2010 and any law, enactment, order, or regulation relating to discrimination.

“**Equality and Human Rights Commission**” means the body set up by the Equality Act 2006 currently having its principal Scottish office at The Optima Building, 58 Robertson Street, Glasgow, G2 8DU and its successor/s;

**“Extras”** means any goods or services not included in the Service that the Resident is not obliged to accept but which the Provider may supply to the Resident if the Resident so agrees for a payment by the Resident that is not included in either the Council’s Approved Rate or the Additional Care Charge;

**“Financial Year 2013/2014”** means the period from the 8th April 2013 to the 6th April 2014, both dates inclusive;

**“Force Majeure”** means any cause affecting the performance of this Contract arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of either Party to perform;

**“Free Personal and/or Nursing Care Payments**” means payments made by the Council in respect of a Resident assessed as eligible for free personal care and/or free nursing care, as defined by the Community Care and Health (Scotland) Act 2002;

**“Individual Placement Agreement” “IPA”** means the letter or other document issued by the Council to the Provider in terms of the Council’s IPA containing the Purchase Order stipulating the Council’s Approved Rate and any additional support requirements and any other relevant information);

**“Introductory Pack”** means the introductory pack that Care Standards require the Provider to give to prospective residents;

**“Mediation Notice”** means a written request that a dispute between the Parties be referred to a mediation process as set out within that written request in the first instance;

**“Mental Welfare Commission”** means the Mental Welfare Commission for Scotland, as defined in the Mental Health (Care and Treatment) (Scotland) Act 2003 and having a place of business at Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HE, or if the care is being provided in England the Mental Health Foundation or its equivalent;

**“Minute of Variation”** means a written agreement between the Parties to amend this Contract;

**National Assistance Regulations”** means the National Assistance (Assessment of Resources) Regulations 1992;

**“Nominated Officer”** mean the individuals named in Schedule 3, appointed by the Council and the Provider to receive notifications in relation to this Contract;

“**Nursing and Midwifery Council**” means the body corporate established under the Nursing & Midwifery Order 2001;

“**Ombudsman**” means the individual appointed by Her Majesty on the nomination of the Scottish Parliament in terms of the Scottish Public Service Ombudsman Act 2002 or if care is being provided in England, the Local Government and Social Care Ombudsman;

**”Outcomes”** mean the aims and objectives for the Resident set out in the Care and Support Plan which form the basis of the Personal Plan;

***“*Participation Strategy”** means a plan or process in place which evidences that Residents, Representatives, relatives and others as appropriate, both individually and in groups, shall be actively involved in the delivery, review, planning and development of services, including the use of advocacy services where appropriate;

**“Parties”** means the Council and the Provider and “Party” shall be construed accordingly;

“**Permanent Placement**” means a Placement that is intended to be of a permanent or indefinite duration;

**“Personal Plan”** means the plan developed in accordance with Clause B.5.7 which details the Resident’s needs and preferences and sets out how they shall be met, in a way that the Resident finds acceptable;

“**Placement**” means a permanent place arranged by the Council in terms of an Individual Placement Agreement for the Resident in the Care Home;

“**Pre-Conditions**” mean the conditions within Clauses referred to in section 1(iii) of Schedule 1b;

**“Public Sector Equality Duty”** means the duty imposed on the Council as a relevant authority by virtue of Section 1 of the Equality Act 2010.

**“PVG Act”** means the Protection of Vulnerable Groups (Scotland) Act 2007 or if the care is provided in England, the Safeguarding Vulnerable Groups Act (SVGA) 2006;

**“Protecting Vulnerable Groups Scheme” (PVG Scheme)** means the scheme established under Section 44 of the Protection of Vulnerable Groups (Scotland) Act 2007 managed by Disclosure Scotland or if the care is being provided in England, the Disclosure and Barring Service;

**“Provider’s Price”** means the Provider's total price per week stated in Schedule the IPA and PO;

**“Purchase Order** means the purchase order for the referral specified in the IPA and setting the Approved Rate and other financial terms;

**“Registration”** means registration with the Care Inspectorate under the Public Services Reform (Scotland) Act 2010 or if the care is being provided in England the Care Quality Commission;

**“Regulated Work”** means as defined in section 91 PVG Act;

**“Regulated Work with Protected Adults”** means Regulated Work described in schedule 3 of the PVG Act;

**“Representative”** means in the case of a Resident who has the mental capacity to nominate one, any person nominated by the Resident to be first contacted or advised by the Provider and/or the Council regarding the Resident’s circumstances. In the case of a Resident who has incapacity as defined by the Adults with Incapacity (Scotland) Act 2000 “Representative” means the person if any, nominated by the Resident as power of Attorney prior to the onset of incapacity, or by a court order in terms of the said Act, to be first contacted or advised by the Provider and the Council regarding the Resident's circumstances or any significant change thereto, who shall, in the event of the Resident failing to nominate any such person, be any person whom the Provider and the Council agree has a relevant interest with regard to the Resident, whom failing, the Council;

“**Remittance Advice**” means the remittance advice from the Provider to the Council demonstrating the accuracy and relevance together with the requisite information required by the Council in respect of the most recent Scheduled Payment;

**“Residency Agreement”** means the document issued by the Provider to the Resident which describes the Service and sets out the terms and conditions applicable to the Resident’s Placement;

**“Resident”** means a person for whom a Placement has been agreed in terms of the Contract;

**“Resident's Contribution”** means the financial contribution per week, if any, which the Resident, after assessment by the Council in terms of the National Assistance Regulations or any other relevant rule of law, is required to make in respect of their receipt of Standard Care;

“**Respite Placement**” means a Short Term Placement arranged in accordance with the Council policies and procedures for the purposes of relieving the Residentor their usual carer(s) of their care responsibilities;

**“Schedule Payment”** “**Scheduled Payment**” means a payment made to the Provider by the Council 4 weekly in arrears in return for the Provider’s delivery of the Service and containing the Remittance Advice relating to the previous period;

“**Self Funding Contract**” means a contract between the Provider and the Council through the issue and acceptance of an Individual Placement Agreement in the form of, or as near as practicable to, Schedule 2 together with a Purchase Order under which the Council makes Free Personal and/or Nursing Care Payments to the Provider, consequent to a successful application by a resident for free personal and/or nursing care, in return for the provision of either or both personal and nursing care to that resident;

**“Scheme Record”** means the document defined in section 48 of the PVG Act;

**“Scheme Record Update**” means a short scheme record as defined in section 53 of the PVG Act;

“**Scottish Commission of Human Rights**” also known as the Scottish Human Rights Commission, means the body established by The Scottish Commission for Human Rights Act 2006, and formed in 2008 to, protect and promote human rights in terms of matters devolved to Scottish Government, having its Head Office at The Optima Building, 58 Robertson Street, Glasgow, G2 8DU, and its successor/s;

“**Scottish Social Services Council**” means that body set up under the Regulation of Care (Scotland) Act 2001 and having its Head Office at Compass House, 11 Riverside Drive, Dundee, DD1 4NY, and its successor/s or if the care is being provided in England the Health and Care Professions Council or the equivalent;

“**Self-funding Resident**” means a Resident in receipt of Care from the Provider under a Route 3 Contract, or a resident under a Self-Funding Contract outside of this Contract;

**“Service”** means the Standard Care and any Additional Care and Additional Services provided by the Provider;

**“Short Term Placement”** means a Placement for the agreed period of time specified in the Individual Placement Agreement;

**“Staff”** means any person engaged by the Provider in terms of a contract of employment between that person and the Provider for the purposes of the Care Home which shall exclude any sub-contractor or Volunteer involved in or with the Care Home;

**“Standard Care”** means the accommodation, provisions, personal care, support and/or nursing services specified within the service specification for Permanent and Short Term Placements, and provided for the Council’s Approved Rate;

**“Trial Period”** means the agreed initial period of a Permanent Placement or the initial period of a Short Term Placement that is intended to last for longer than 6 weeks, which agreed initial period in both cases shall be no less than 4 weeks and no more than 6 weeks;

**“TUPE”** means The Transfer of Undertakings (Protection of Employment) Regulations 2006;

**“Vetting Information”** means as defined in section 49 of the PVG Act;

**“Volunteer”** means any person willing to assist in the care and support provided to the Resident with the agreement of the Provider by means other than a contract of employment or of service and who does not receive any payment for the same by way of wages or otherwise except repayment of necessary outlays such as travelling expenses;

**“Working Day”** means the Council’s opening hours to the general public in force from time to time, i.e. Monday to Friday except Bank Holidays and any Public or Local Holidays.

**A.2 DURATION OF THE CONTRACT**

A.2.1 The Contract shall commence on 8th April 2013 and shall continue until the 6th April 2014 (both dates inclusive) unless terminated earlier in accordance with its terms or unless extended by mutual agreement of both Parties.

A.2.2 The Provider recognises that it is possible for this contract to remain in force until terminated in accordance with any of its terms without being utilised by the Council and therefore to be of no financial benefit to the Provider.

**A.3 SERVICE TO BE PROVIDED**

A.3.1 The Provider shall provide to the Resident the Standard Care and any Additional Care in accordance with the Care Standards and any requirements made by the Care Inspectorate and any obligations on the Provider under this Contract.

A.3.2 Subject to Clauses C.3.3 to C.3.8 the Provider may provide Additional Services to the Resident.

A.3.3 Subject to Clauses A.4.4, A.6.2, B.5.26 and C.3.8 the Provider may provide to the Resident any Extras as may be agreed between the Provider and the Resident.

**A.4 PAYMENT**

A.4.1 Subject to Clauses C.1.1 to C.2.4, in exchange for providing Standard Care the Council shall pay the Council’s Contribution and the Resident shall be liable for the Resident’s Contribution.

A.4.2 In exchange for providing Additional Care the Council shall pay the Additional Care Charge agreed in terms of Clause C.3.1.

A.4.3 Subject to Clauses C.3.3 to C.3.8 in exchange for providing Additional Services the Provider shall be entitled to charge a reasonable Additional Services Charge.

A.4.4 With the exception of reasonable charges for Extras which are made by prior agreement with the Resident and are listed in the Residency Agreement in terms of Clause A.6.2, and without prejudice to any contractual obligation the Provider may have to collect the Resident’s Contribution, the Provider shall not impose charges on the Resident or other third party for anything other than Additional Services in accordance with Clause C.3.3 and C.3.4.

A.4.5 Where the duration of the Resident’s Individual Placement Agreement covers part of a week, charges for the Service shall be calculated on a pro-rata daily basis in accordance with the terms of this Contract.

A.4.6 The Provider shall submit to the Council detailed invoices containing such information in respect of each Placement, as the Council shall require under Clause C.5. Where invoices are not required and payment is made on another basis, the information about Residents’ placements required under Clause C.5 shall still be required

**A.5 ASSESSMENT, CARE MANAGEMENT AND REVIEW**

A.5.1 Before any Service to a Resident may commence the Resident must, with the exception of Placements made in an emergency situation, have had a Care Assessment carried out and have been assessed by the Council as requiring Standard Care and if applicable Additional Care. Where the Resident has been placed in an emergency situation, the Council shall complete a Care Assessment as soon as is reasonably practicable after the Resident is admitted to the Care Home and give this to the Provider.

A.5.2 (i) The Council is responsible for assessing, or ensuring assessment of, a Resident’s needs in order to determine if they meet the Council eligibility criteria. Prior to a planned Placement, the Council shall supply a copy of the Care Assessment to the Provider.

(ii) A Resident shall be assessed as requiring nursing care when their nursing needs are such that they can no longer be met by community nursing services but require a nurse to be constantly or frequently available and also additional care Staff, over and above what would be provided in residential care. In return for the provision of nursing care to a Resident who is assessed as needing this, the Council shall pay the nursing rate specified in the IPA in line with Clause A.4.

**Ongoing Reviews**

A.5.3 The Council shall allocate a Care Manager to review and monitor the Service to a Resident and shall advise the Provider of any changes thereto.

A.5.4 (i) In the case of a planned Permanent Placement, the Care Manager shall undertake an initial review of the Resident’s needs, normally within 4-6 weeks of admission. The Council shall then conduct further reviews of the Care and Support Plan 6 months following admission and annually thereafter.

(ii) In the case of an emergency Placement, a review shall be arranged by the Council as soon as is reasonably practicable.

A.5.5 The Provider shall ensure that the reviews of the Resident’s Personal Plan take place as required by regulation 5 of the Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002 and the Care Standards and whenever possible at the same time as the Council’s reviews.

A.5.6 The Resident, their Representative, the Council, or the Provider may request a review of the Resident’s Care needs at any other time having given reasonable notice to the other parties.

A.5.7 If in the Provider’s opinion the Resident’s Care needs have changed to the extent that the Provider can no longer deliver the Care to meet the Resident’s assessed needs or if the Provider reasonably anticipates that this might be the case, the Provider shall notify the Care Manager and a formal review shall be undertaken within 4 weeks of the Council receiving such notification, except in emergency situations when this shall be undertaken as a matter of urgency.

A.5.8 Where the Council agrees that the Resident’s Care needs have changed to the extent referred to in Clause A.5.7, the Council shall confirm this in writing to the Provider. If the Council does not so agree, then the Parties shall resort to the dispute resolution procedure described in Clause A.19. If the cost of meeting an agreed change in a Resident’s Care needs would exceed the Council’s Approved Rate Clause C.3.1 shall be applicable.

**Convening of Reviews**

A.5.9 The Council shall be responsible for arranging and recording in writing the reviews referred to at Clauses A.5.4 and A.5.7 and any other reviews that require the presence of the Care Manager. The Council may, at its own discretion, delegate the responsibility for arranging and chairing any review to another party, subject to the other party’s agreement. The Council shall ensure that the delegated party shall record such reviews in writing and forward the written record of the review to the Care Manager and the Provider.

A.5.10 The Provider shall advise the Council of the named member of Staff responsible for an overview of the Service provided to the Resident.

**A.6 RESIDENCY AGREEMENTS**

A.6.1 The Provider shall issue a Residency Agreement to the Resident prior to the Placement, except in cases of an emergency Placement in which case the Residency Agreement shall be issued as soon as is reasonably practicable after the Placement commences.

A.6.2 The Residency Agreement shall set out the terms and conditions of the Service, including:

1. Aims, Objectives and Principles of the Service
2. Definitions
3. Trial Period (Permanent Placements only)
4. Accommodation
5. Care to be Provided
6. Our Obligations to You
7. Your Obligations to Us
8. Suggestions and Complaints
9. Payment of Fees
10. Additional Charges
11. Extras
12. Personal Expenses Allowance (Permanent Placements only)
13. Insurance
14. Notice and Termination Periods for the Residency Agreement
15. Future Arrangements

A.6.3 A style Residency Agreement for Permanent Placements is appended at Schedule 5 and for Short Term Placements at Schedule 6. The Residency Agreement issued by the Provider need not match that style, but its content should, and Residents must enjoy all benefits set out in these style Residency Agreements Schedule’s 4 and 5 without being subject to any more onerous obligations.

A.6.4 It is a material condition of this Contract that the Resident shall not be required or requested by the Provider to sign any agreement that conflicts with the provisions of the Contract.

A.6.5 The Provider shall issue Self-funding Residents placed under a Self Funding Contract with a Residency Agreement that clearly states the terms and conditions of their residency in terms acceptable to the Council. In the event of a breach of this Clause by the Provider, the Council shall be entitled to review the Contract with the Provider and seek to appoint appropriate independent advocacy for and on behalf of the Resident.

**A.7 TEMPORARY ABSENCE FROM THE SERVICE**

A.7.1 In the event of any unplanned absence of the Resident, the Provider shall immediately inform the Care Manager and the Resident’s Representative, where appropriate. In the event of planned absences, the Care Manager must be informed of all arrangements and be satisfied that the planning is sufficiently detailed to meet the Resident’s Care needs out with the Care Home.

1. Should a period of hospitalisation or absence for any other notified reason, exceed 6 weeks, the Council and the Provider may review the Resident's circumstances and determine whether to terminate the Resident's Placement in the Care Home or make other suitable arrangements.
2. If a Resident is absent from the Care Home for a reason other than hospitalisation, for a period of 3 weeks without intimation of their return, either the Council or the Provider may terminate the Placement forthwith unless this period is extended by mutual consent.

A.7.2 The payment provisions for any temporary period of absence of the Resident are detailed at Clause C.6.

**A.8 QUALITY OF THE SERVICE AND CONTRACT MANAGEMENT**

A.8.1 The Provider shall demonstrate the existence and implementation of internal quality assurance systems to ensure effective working practices appropriate to any standards required by the Council and the needs and wishes of the Resident.

A.8.2 Information in relation to internal quality assurance systems shall be considered by the Council and the Provider when making decisions about the future contracting position of the Council and its future planning and development with the Provider.

A.8.3 Should any procedures or other matters relating to quality assurance contained within this Contract become subject to a national performance framework issued or endorsed by the Scottish Government then such changes shall take precedence over those contained in the Contract.

A.8.4 The Council recognises that the primary regulator for care services is the Care Inspectorate and shall endeavour to avoid unnecessary duplication of provision of information by the Provider. Notwithstanding this, the Provider recognises that the Council has a duty of care to the Residents and a statutory duty to ensure best value from expenditure and shall where lawful comply with Council requests for information to enable it to meet this duty of care.

A.8.5 Care Managers have the primary responsibility for monitoring the appropriateness of Service delivery by the Provider to the Resident, in accordance with their Personal Plan.

A.8.6 The Council shall identify a Nominated Officer and notify the same to the Provider to monitor this Contract.

A.8.7 The Council shall monitor the Provider’s performance. This shall include, but may not be restricted to the use of the following documentation, which shall be supplied by the Provider as required by the Council or, with the Provider’s agreement, supplied by the Care Inspectorate:

1. Copies of all statutory notices received;
2. Care Inspectorate pre-inspection return and where requested, any supporting documentation;
3. The Provider’s self evaluation against the Care Standards;
4. Care Inspectorate inspection reports and any associated action plans;
5. Care Inspectorate Annual Return (including a Staff qualification inventory)
6. Variation to Care Inspectorate Registration;
7. Care Inspectorate Staffing notices;
8. Internal quality assurance procedures and reports;
9. External quality assurance certificates, where applicable;
10. The complaints and suggestions procedure operated by the Provider and the outcome/investigation of any complaints made. Where the Council has a statutory duty to investigate a particular complaint, the Provider must notify the Council as soon as the Provider receives the complaint;
11. Copies of all insurance policies and renewal certificates relating to the insurance cover required under this Contract, together with any other information reasonably requested by the Council relating to such insurance policies); and evidence that the premiums payable under all such insurance policies have been paid and that the insurance is in full force and effect;
12. A style copy of the Residency Agreements used by the Provider;
13. Written confirmation on a pro-forma provided by the Council indicating either the management training and qualification achieved, or that managers are in the process of undertaking management training leading to an appropriate qualification as specified by the Scottish Social Service Council;
14. A copy of the staff training and retention plan referred to in Clause A.9.30 (Staffing and Volunteers);
15. The information required under B.2.4.

A.8.8 The Council shall be invited by the Provider to attend Care Inspectorate feedback sessions.

A.8.9 A Care Manager or the Nominated Officer referred to in Clause A.8.6 above, or another to whom they have delegated that function, may visit the Care Home to monitor the terms of the Contract by prior appointment, except where there is reasonable cause for concern, when such visits may take place without notice.

A.8.10 A copy of any report prepared in relation to a visit such as referred to at A.8.9 shall be issued to the Provider. This report shall highlight any areas where, in the opinion of the Council, Contract or individual Placement requirements are not being met and identify corrective actions to be taken accordingly. Where the Provider disagrees with the corrective actions to be taken, the process as set out at Clause A.19 shall be followed.

A.8.11 Unless prohibited by statute, the Provider shall allow officers authorised by the Council access to all records held by the Provider that are relevant to the provision of the Service to the Resident. This shall include any Personal Plans and associated recordings, complaints and management records, personnel records and Resident’s financial records. Records shall be retained as required by statute, or as specified in guidance issued by the Care Inspectorate from time to time.

**A.9 STAFFING AND VOLUNTEERS**

A.9.1 The Provider hereby acknowledges that it is an offence in terms of section 35 of the PVG Act to offer Regulated Work with Protected Adults to any person who is barred from that work. Should such a person be used in the provision of the Service, this shall be treated as a material breach of this Contract for the purposes of Clause A.20.

A.9.2 The Provider shall not permit Staff to carry out the type(s) of Regulated Work required in connection with the delivery of the Service until the Provider has obtained from Disclosure Scotland:

1. Scheme Records for the type(s) of Regulated Work to be undertaken by the Staff delivering the Service; or
2. where a member of Staff evidences existing membership of the PVG Scheme for the type(s) of Regulated Work to be undertaken in delivering the Service, a Scheme Record Update; and
3. where a Scheme Record Update obtained in accordance with A.9.2 (ii) above evidences that there is new or existing Vetting Information in relation to a member of Staff, the Scheme Record of that member of Staff.

A.9.3 The Provider shall use the contents of the Scheme Record, and/or the Scheme Record Update, where applicable, as part of the process to make recruitment decisions and such suitable arrangements as are necessary for the safeguarding and protection of the interests of Residents. Where the contents of the Scheme Record show that a person has convictions, reprimands, warnings, cautions or any other relevant information, the Provider shall conduct a risk assessment and use that assessment to protect the interests of Residents, including, without prejudice to the foregoing generality, prohibiting the subject of the Scheme Record (or Scheme Record Update, as applicable) from providing the Service to Residents.

A.9.4 In the event that the Provider or any agency that it is using to recruit Staff is notified by Disclosure Scotland that a member of Staff is barred from PVG Scheme membership for the type(s) of Regulated Work undertaken, the Provider shall immediately remove that member of Staff from the provision of the Service. The Provider shall in addition notify the Council immediately of their receipt of such notification from Disclosure Scotland, or from an agency, and confirm what actions have been or shall be taken following thereon.

A.9.5 For delivery of the Service which falls outside of the scope of Regulated Work under the PVG Act, the Provider shall obtain the appropriate level of Disclosure directly from Disclosure Scotland:

1. the appropriate level of Disclosure shall be determined by reference to Part V of the Police Act 1997 (as amended) and, for the avoidance of doubt, by reference to any regulations made under that Act and Guidance issued by Disclosure Scotland;
2. the Provider shall recheck the status of their existing Staff, Volunteers and anyone else involved in the provision of the Service not less than every three years in order to ensure that their Disclosure is up-to-date;

1. to ensure compliance with the requirements of this Clause and subject to the written consent of the subject of the Disclosure, the Provider shall share the Disclosure Information with the Council on request.

A.9.6 To ensure compliance with Clauses A.9.3 and A.9.5 (ii) and A.9.18(ii), the Provider shall record the fact that a risk assessment has been undertaken and shall on request from the Council disclose that record to it.

A.9.7 The Provider shall employ and ensure that at all times sufficient qualified and suitably trained and experienced Staff are available to deliver the Service. The level of Staffing shall at all times be no less than that agreed by the Care Inspectorate in a Staffing schedule attached as a condition of registration (if applicable) or to the statutory requirement contained in Regulation 15 of SSI 2011/210, namely the Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011. Where the role and duties of Staff require them to be registered with the SSSC or the Nursing and Midwifery Council, the Provider shall ensure this is in place and is maintained.

A.9.8 Subject to Clause A.9.12 the Provider may use suitably trained and experienced agency Staff only where the Provider is unexpectedly short-Staffed and consequently unable otherwise to provide the Service, but the Provider shall not use agency Staff unless the Provider has, in such circumstances used best endeavours to use their own Staff on an over-time or sessional basis.

A.9.9 Before using the services of agency Staff the Provider must either obtain a signed written statement from the agency that is supplying the Staff, which confirms that such Staff:

1. are PVG Scheme members holding a Scheme Record in respect of the type(s) of Regulated Work being undertaken in the provision of the Service and have not subsequently been barred, or;
2. have been through the appropriate Disclosure checks with Disclosure Scotland should the provision of the Service fall outside of the scope of Regulated Work in terms of the PVG Scheme.

The appropriateness of the signed written statement from an agency shall be construed in accordance with Clauses A.9.1 to A.9.6 hereof. A copy of the said statement from the agency shall be supplied to the Council on request.

A.9.10 Where nurses are employed, the Provider shall ensure that they are supported to maintain their registration as nurses and to meet the requirements of continuing professional development as set out by the Nursing and Midwifery Council in [insert title of local NHS document]. The Provider shall ensure that there are adequate recording and monitoring systems to ensure that the core competencies of nurses are maintained and that the registration requirements of the Nursing and Midwifery Council are met.

A.9.11 The Provider is not expected, to employ Staff with additional specialist nursing skills, although where Staff happen to have such skills, they may, with the agreement of the NHS specialist involved and the Provider, continue to use them. Specialist nursing services shall continue to be provided via the NHS.

A.9.12 Where the Provider reduces either the Staff-to-Resident ratio or the qualified Staff-to-Resident ratio with the agreement of the Care Inspectorate, because of a change in the dependency levels of Residents, the Council reserves the right, in consultation with the Provider to review the Council’s Approved Rate, the Additional Service Charge, Additional Care Charge and the level of Care for each Resident.

A.9.13 For the avoidance of doubt the Provider and their Staff shall not be deemed to be nor be entitled to act or hold themselves out as agents or employees of the Council.

A.9.14 In terms of the Rehabilitation of Offenders Act 1974 and the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions)(Scotland) Order 2003, the Provider shall require all prospective Staff and all prospective Volunteers to complete a statement concerning their previous convictions for offences of any description.

A.9.15 The Provider shall comply with all Scottish Government and regulatory and statutory requirements and Guidance in relation to safe recruitment including without prejudice to the foregoing generality the ‘Safer Recruitment through Better Recruitment’ and any successor guidance in relation to those working in social care and social work settings published by the Scottish Government (available from: www.scotland.gov.uk).

A.9.16 The Provider shall ensure that the requirements of any new legislation or method of checking the suitability of a member of Staff to work with Adults at Risk are adhered to.

A.9.17 The Provider shall be responsible for ensuring that any Volunteer who has access to Residents is either supervised or has an Enhanced Disclosure containing no adverse entries and is employed following the usual processes, including application and references. Decisions about unsupervised access by third parties to Residents shall be taken by the Council and Provider as part of the care planning process and, where the duties involved would require a person to undertake Regulated Work with Protected Adults the Provider shall ensure that the procedures contained within this Clause are followed.

A.9.18 The Provider shall ensure that, both applicants from out with the jurisdiction of Disclosure Scotland and applicants who have spent a significant length of time out with the jurisdiction of Disclosure Scotland provide an overseas criminal record check.

1. Such a criminal records check should come from the police or judicial authority, Government department or Home Embassy of the country or countries concerned and be an official statement confirming that the person does not have any history of or pending criminal record proceedings.
2. In the absence of such checks either being available or being of suspect reliability or where there is significant delay in obtaining such checks, the Provider shall satisfy themselves as to the suitability of the applicant/member of Staff through such measures as additional scrutiny of references, consideration of supervision measures at the commencement of employment and undertake a risk assessment in line with Clause A.9.6.

A.9.19. The Provider shall record and store information disclosed to it in connection with Disclosures and/or the PVG Scheme as detailed in the Code of Practice published by the Scottish Government under section 122 of Part V of the Police Act 1997 (as may be amended from time to time).

A.9.20 In the event of the Provider failing to comply with any of the requirements of this Clause A.9, or where any person as aforesaid has refused to complete a statement concerning their previous convictions in accordance with this Clause, or in the reasonable opinion of the Council any person is unsuitable to deliver the Service, the Council reserves the right without prejudice to its other legal remedies to require that person to be withdrawn immediately from provision of the Service.

A.9.21 The Provider shall ensure that Staff deployed under the Contract in the provision of the Services are instructed in relation to all relevant provisions of the Contract and shall ensure that Staff are familiar with the Provider’s policies and procedures via ongoing supervision and training.

A.9.22 The Provider shall ensure that it has in place, and shall exhibit to the Council’s satisfaction upon request, a policy for its Staff in relation to protected disclosures with regard to expressing concerns out with line management (whistle blowing) in accordance with the Employment Rights Act 1996, as amended.

A.9.23 The Provider hereby acknowledges that it is an offence under Section 66 of the PVG Act for it as a party having access to Disclosure Information under sections 51, 52, 53 or 54 of that Act to disclose it to any other person. Accordingly the Provider further acknowledges that it cannot disclose such Disclosure Information to the Council and that the Provider, in carrying out the risk assessment and coming to a decision under Clause A.9.6 hereof shall ensure that no Disclosure Information is disclosed in advising the Council, where appropriate, of the outcome of its action under Clause A.9.6 other than as permitted under the PVG Act.

A.9.24 The Provider shall have in place and implement all the policies and procedures required to satisfy the Care Inspectorate’s requirements in relation to the employment and management of Staff and Volunteers.

A.9.25 The Provider shall comply with any requirements under the Regulation of Care (Scotland) Act 2001 for Staff to register with the Scottish Social Services Council and comply with its Employers’ Code of Practice.

A.9.26 Notwithstanding Clause A.9.8 the Provider shall use best endeavours to minimise the use of agency Staff and shall wherever possible use only directly employed Staff of the Provider for direct Care to a Resident.

A.9.27 The Provider shall not allow Staff and Volunteers to accept gratuities or gifts of significant value from the Resident or relatives, unless these are agreed by the Council.

A.9.28 The Provider must ensure that Staff and Volunteers are covered by the Provider’s insurance policies as specified in Clause A.11.6.

A.9.29 Volunteers must be supernumerary to the Provider’s Staffing requirement and shall not be used as a substitute for Staff. The Council reserves the right (such right being exercised at its own absolute discretion) to require that any Volunteer does not participate in any or all aspects of the Care provided to the Resident.

A.9.30 The Provider shall have in place and review as appropriate a staff development strategy and an effective yearly training plan to meet the requirements of the Care Standards. Failure to do so shall result in the Council’s Approved Rate reverting retrospectively, with effect from 8th April 2013, to the Default Rate.

**A.10 CONFIDENTIALITY**

A.10.1 Subject to any contraryrule of law, the Provider shall ensure that a Resident has access on request to any records or information held by the Provider pertaining to them.

A.10.2 Other than as permitted in terms of Clause A.10.3 below and as specifically required for the purposes of performing its obligations under this Contract, the Provider shall itself regard and shall ensure that its Staff, subcontractors and Volunteers shall regard as strictly confidential and as such shall not disclose to any unauthorised person any information obtained in relation to the Council or any Resident.

A.10.3 Subject always to any contrary legislation or rule of law; or any pending civil or criminal investigation or inquiry, the Provider shall be entitled to disclose information relating to a Resident to the relatives of that Resident or other suitably interested person in respect of the Resident, where such information has already been made available to the Resident and the Resident’s consent to such disclosure has been obtained.

A.10.4 It shall be the Provider's responsibility to ensure that its Staff and Volunteers observe the principles of confidentiality referred to in Clauses A.10.2 and A.10.3 above and give an undertaking not to disclose any information which they may receive in accordance with the provisions of the Contract.

A.10.5 Subject to any requirement to disclose information in terms of its statutory duties or force of law or order from a court of competent jurisdiction, the Council shall also maintain the obligations of confidentiality in relation to Resident and the Provider contained in Clauses A.10.2 and A.10.3 above.

A.10.6 All information submitted to the Council may need to be disclosed and/or published by the Council. Without prejudice to the foregoing generality, the Council may disclose information in compliance with the Freedom of Information (Scotland) Act 2002, (the decisions of the Council in the interpretation thereof shall be final and conclusive in any dispute, difference or question arising in respect of disclosure under its terms), any other law, or, as a consequence of judicial order, or order by any court, tribunal or body with the authority to order disclosure (including the Scottish Information Commissioner).

A.10.7 The Provider hereby consents to a description of its fees, charges, services provided, occupancy levels, Care Inspectorate Grades and any other relevant management information as agreed with the Council, being held confidentially on a database by the Council, with data being shared only with commissioning partners, in order to assist with the joint commissioning of health and social care services. This information should be refreshed on a monthly basis. The Provider further consents to this information being aggregated at a national level.

**A.11** **INDEMNITY, LIABILITY AND INSURANCE**

A.11.1 Except as may otherwise be expressly stipulated in this Contract, the Council shall not be liable to the Provider or to any Resident or to any third party for any loss, cost, expense, penalty or damage incurred or suffered including but not limited to any personal injury or death or damage to property arising directly out of or in consequence of or in connection with the delivery or provision of the Service to any Resident or the operation of this Contract.

A.11.2 The Provider shall indemnify the Council against all proceedings, costs, expenses, liabilities, injury, loss or damage arising from or incurred by reason of any claim, demand or action made or raised against the Council by or on behalf of a Resident, employee of the Provider or the Council, or any third party which arises out of the breach or negligent performance or failure in performance by the Provider, its agents, sub-contractors, Volunteers and Staff, of the terms of this Contract. The Council shall act reasonably in relation to any costs, expenses or damages paid by it and shall take all reasonable steps to minimise its payments/costs/losses.

A.11.3 The Provider shall have no liability for and shall not be liable to indemnify the Council in relation to any matter which occurs as a result of the breach, negligent performance or failure in performance of the terms of this Contract on the part of the Council, its agents or employees.

A.11.4 The Provider shall be liable to the Council (including its Staff, Volunteers, officers, members and agents) for:

1. Any loss suffered by the Council as a result of any claim (including the costs of defending such claims) made by the Provider's Staff or agents or any other person against the Council for damage to or loss of property; death, illness or injury to any person which may arise out of the negligence of the Provider in the course of the provision of the Service, except insofar as and to the extent that such liability, loss, claim for damages shall be due to any act or neglect of the Council or of any officer, servant, councillor, employee, sub-contractor, agent or other representative of the Council during the course of their employment; and
2. Any loss suffered by the Council (including the costs of defending any claims) as a result of a failure on the part of the Provider to preserve from loss or damage the personal property of the Resident or any other persons arising out of the negligence of the Provider except insofar as and to the extent that such loss or damage shall be due to any act or neglect of the Council or of any officer, servant, councillor, employee, sub-contractor, agent or other representative of the Council during the course of their employment.

A.11.5 Notwithstanding any other Clause of this Contract, neither the Council, nor the Provider shall be liable to the other Party for any indirect or consequential losses suffered by the other party as a result of a breach of contract, negligence or breach of statutory duty (including the negligence or breach of statutory duty of the Council’s or the Provider’s employees), and which indirect or consequential losses include, but are not limited to, loss of profits, business interruption, financing costs(including interest), bank charges (including interest) and any costs incurred in the mitigation or the attempted mitigation of any or all such indirect or consequential losses.

A.11.6 The Provider shall take out and maintain public liability, employers liability and medical malpractice/professional indemnity insurance cover for the Care Home, building and building contents and such other insurance as the Council considers appropriate and is intimated to the Provider prior to the commencement of this Contract. The Provider shall on request provide evidence to the Council that such cover has been effected and all due premium payments have been paid. Such evidence shall be provided to the Council in a form as determined by the Council and intimated to the Provider from time to time. The insurance in respect of claims for personal injury or the death of a person under a contract of service with the Provider and arising out of or in the course of such person’s employment shall comply with the Employers Liability (Compulsory Insurance) Act 1969 declaring that cover shall be no less than £10,000,000 (TEN MILLION POUNDS STERLING). For public liability and all other claims to which this Clause applies, the insurance cover shall be not less than £5,000,000 (FIVE MILLION POUNDS STERLING) in respect of any one incident. Such insurance cover must remain in force for the period in which any claim may be raised by a Resident and/or their Representative or any third party.

A.11.7 The Council shall be liable to the Provider (including its Staff, Volunteers, officers, members and agents) for:

1. Any losses suffered by the Provider as a result of any claim (including the costs of defending such claims) made by the Council's Staff or agents or any other person against the Provider for damage to or loss of property; death or injury to any person which may arise out of the negligence of the Council in the course of the purchase of the Service, except insofar as and to the extent that such liability, loss, claim for damages shall be due to any act or neglect of the Provider or of any officer, servants, Staff, Volunteer, sub-contractor, agent or other representative of the Provider during the course of their employment;
2. Any loss or damage caused to the Provider’s property caused by the acts, omissions, negligent or wilful acts of its officers, servants, councillors, employees, sub-contractors, agents or other representative of the Council during the course of their employment, but not in any other way whatsoever.

A.11.8 Where the Provider and/or any of its Staff use their own motor vehicles for the purposes of the Service, the Provider shall ensure that passenger insurance is maintained for the duration of the Contract. The Provider shall supply the Council on request with copies of all or any of the relevant policies with confirmation that all due premium payments have been made.

**A.12 STATUTORY OBLIGATIONS AND GUIDANCE**

A.12.1 The Council and the Provider shall exercise their powers, obligations or discretions in terms of the Contract in a reasonable manner and in accordance with their statutory and regulatory obligations.

A.12.2 Throughout the duration of this Contract the Provider shall observe and comply with all statutory enactments, regulations and by-laws applicable to the Care Home, including without prejudice to the foregoing generality all health and safety standards and regulations and they shall comply with all Care Inspectorate registration conditions, requirements and Care Standards, and this Contract.

A.12.3 Should any procedures or other matters regulated by this Contract become subject to statutory provision which results in any change to the manner in which such procedures or other matters require to be dealt with then such changes shall take precedence over that contained in the Contract.

**A.13 DATA PROTECTION**

A.13.1 Where the Provider provides any personal data to the Council in connection with its duties hereunder, the Council shall use that personal data for purposes of ensuring the Provider’s compliance with the terms of this Contract. The Council may share that personal data with other regulators (including the Council’s and Provider's external auditors, H.M. Revenue & Customs and law enforcement agencies, the Care Inspectorate, the Mental Welfare Commission and the Scottish Human Rights Commission. The personal data may be checked with other Council Service departments for accuracy, to prevent or detect fraud or maximise the Council’s revenues. It may be shared where appropriate to do so with other public bodies for the same purposes. The Provider undertakes to ensure that all persons whose personal data are (or are to be) disclosed to the Council are duly notified of this fact.

A.13.2 Where the Provider processes (or shall process) personal data it hereby confirms that it shall comply in all respects with the Data Protection Act 2018 and enter into the Council’s standard Data Processing/Information Sharing Agreement.

A.13.3 The Provider acknowledges that in order for it to perform its duties hereunder, it may be necessary for the Council and the Provider to share personal data, including sensitive personal data, relating to Residents, such information being referred to hereinafter as Resident Information. In such an event, the party releasing the data shall be deemed the data controller in respect of the Resident Information for an individual Resident and the provisions of the Data Processing/Data Sharing agreement shall apply.

A.13.4 The Provider hereby warrants:-

(i) that the processing of the Resident Information shall be subject to technical and organisational security measures of a sort, which if the Provider were the data controller in respect of the Resident Information, would satisfy the Seventh Data Protection Principle;

1. that it shall ensure compliance with the measures described in Clause A.13.4.(i) above;

(iii) that it shall process the Resident Information only in accordance with instructions from the Council, the terms of this Contract, and, where applicable, any additional requirement in the IPA;

(iv) that it shall comply with all obligations imposed by the Seventh Data Protection Principle as though the Provider were the data controller in respect of the Resident Information;

(v) that it shall indemnify the Council for any breach of this Clause A.13.4.

A.13.5 In this Contract the expressions “personal data”, “data controller”, “data processor”, “processing” and “process” shall have the meanings assigned to them by the Data Protection Act 1998, and the “Seventh Data Protection Principle” shall mean the Seventh Principle set out in Part 1 of Schedule 1 to that Act. For the purpose of this Contract personal data also includes sensitive personal data as defined in section 2 of the Data Protection Act 1998.

A.13.6 Resident Information shall be used by the Provider solely to enable the Provider to provide the Service to Residents in accordance with this Contract or for specific reasons and as instructed by the Council. The Provider cannot process or use the Resident Information for any other purpose. It must not be processed or disclosed for any other purpose whatsoever save to the extent that the Provider is required to do so by common law or a statutory power or regulatory requirement, or with the express written consent of the Resident or other individual to whom the personal data in question relates. In the case of a Resident who lacks the legal capacity necessary to be able to consent to the processing of Resident Information, the right to give express consent shall rest with the Representative and in accordance with the wishes of the Resident so far as their wishes can be ascertained. The Provider shall ensure that the recipients of any personal data disclosed under this Clause are made aware of the duty of confidentiality which attaches to it.

A.13.7 The Provider shall not be required to transfer information to the Council in relation to a member of Staff, Volunteer or any other person if by processing this information it would cause the Provider to breach the terms of the Data Protection Act 1998. The Provider must supply detailed reasons to the Council in respect of a refusal to disclose said information within a reasonable timescale specified by the Council. Where the cause of the potential breach of the said Act is lack of necessary consent to disclosure of the information, the Provider undertakes to use its best endeavours to obtain the consent required to prevent the potential breach from occurring.

**A.14 FREEDOM OF INFORMATION AND PUBLIC RECORDS (SCOTLAND) ACT 2011**

A.14.1 The Provider acknowledges the Council's obligations under the Freedom of Information (Scotland) Act 2002 ("the Act") and acknowledges in particular that the Council may be required to provide information relating to this Contract or to the Provider to any person on request in order to comply with the said Act.

A.14.2 Where the Council seeks to consult the Provider in connection with a request for information made under the Act the Provider shall facilitate the Council's compliance with the Act by consulting timeously with the Council.

A.14.3 In the event that the Provider is or becomes a designated Scottish public authority by Order of the Scottish Ministers under section 5 of the 2002 Act the Provider shall comply with the said Act.

A.14.4 The Provider shall co-operate with the Council in order to ensure that the Council can meet its obligations in relation to records management under the Public Records (Scotland) Act 2011 together with any guidance issued thereon.

A.14.5 The Provider shall at all times comply with the obligations which are incumbent upon the Council as a ‘public authority’ in terms of the Public Records (Scotland) Act 2011 (the 2011 Act) and of all secondary legislation and guidance issued under the 2011 Act.

A.14.6 The Provider shall take all reasonable steps to ensure the observance of this paragraph by all its Staff, servants, employees or agents of the Provider and all subcontractors engaged by the Provider.

A.14.7 The Provider shall indemnify the Council against all losses, costs, expenses and damages and shall keep the Council indemnified against all liabilities, demands, claims, actions or proceedings incurred as a result of an alleged breach of this paragraph by the Provider.

A.14.8 The Council may monitor the Provider’s compliance with the 2011 Act at periodic intervals throughout the duration of the Contract.

A.14.9 The Council may request and the Provider shall supply demonstrable evidence as to how the Provider intends to secure compliance with the provisions of the 2011 Act.

**A.15 HUMAN RIGHTS**

A.15.1 The Provider shall, in its implementation of this Contract, comply with Section 145 of the Health and Social Care Act 2008 which requires that a Care Home, supplying care through arrangements made with a local authority under sections 12 or 13A of the Social Work (Scotland) Act 1968, is taken to be exercising a function of a public nature and therefore required to act compatibly with the European Convention of Human Rights.

**A.16 EQUALITY**

A.16.1 In providing the Services, the Provider shall comply with Equal Opportunities and the Public Sector Equality Duty and shall ensure compliance with the Council’s written policies on such matters and with all Laws, regulations and Guidance from time to time applicable in such regard.

A.16.2 The Provider shall provide such information and documentation to the Council as the Council may reasonably require from time to time for the purposes of:

1. assessing the Provider’s compliance with its obligation under Clause A.16.1 above;
2. enabling the Council to review diversity in employment data such as total staff in post, applications for posts, appointments to post, annual gender pay audits, promotions, performance reviews, training, disciplinary matters, grievances, tribunal matters and all other relevant information required for the Council to comply with its Public Sector Equality Duty;
3. enabling the Council to review data in respect of complaints and satisfaction surveys in respect of the Provider’s approach to equalities, diversity and human rights.

A.16.3 In delivering and reviewing the Services the Provider shall:

1. comply with the Council’s Public Sector Equality Duty and shall have regard to any Guidance on the Public Sector Equality Duty (including assisting in or preparing reports in order to secure the Council’s compliance with the Public Sector Equality Duty);
2. comply with reasonable requests for information or data in respect of the Council’s Public Sector Equality Duty including any occasion when the Council undertakes an equalities impact assessment;
3. compile and keep all required records in order that the Council may comply with the Public Sector Equality Duty including any occasion when the Council undertakes an equalities impact assessment.

.A.16.4 The Provider shall deliver the Services in a non-discriminatory manner that ensures fairness and equality to all Residents. The Provider recognises that the Council has a responsibility to monitor the extent to which the provision of the Services extends to groups who are at risk of social exclusion. The Provider agrees, where appropriate and practicable, to provide information to the Council in relation to employment of Staff and use of the Service by Residents by the following criteria:

* age;
* sex;
* sexual orientation;
* disability;
* religion or belief;
* race;
* marriage and civil partnership;
* pregnancy and maternity;
* gender reassignment.

A.16.5 The Provider shall not discriminate directly or indirectly, or by way of victimisation or harassment, against any person on grounds of gender reassignment, age, marriage or civil partnership, sexual orientation, disability, religion or belief, sex, pregnancy or maternity and race contrary to the Equality Act 2010.

A.16.6 The Provider shall notify the Council forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Provider under the legislation contained in the Equality Act 2010. Where any investigation is undertaken by a person or body empowered to conduct such investigation, and/or proceedings are instituted in connection with any matter relating to the Provider’s performance of the Contract being in contravention of the Equality Act 2010, the Provider shall free of charge:

1. provide any information requested in the timescale allotted;
2. attend any meetings as required and permit the Provider’s affected staff to attend;
3. promptly allow access to and investigation of any document or data deemed to be relevant;
4. allow itself and any Staff of the Provider to appear as witness in any ensuing proceedings;
5. co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.

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A.16.7Where any such investigation is conducted or proceedings are brought under the Equality Act 2010, which arise directly or indirectly out of any act or omission of the Provider, its agents or subcontractors, or the staff of the Provider, and where there is a finding against the Provider in such Investigation or proceedings, the Provider shall indemnify the Council with respect to all costs, charges and expenses arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Council may have been ordered or required to pay to a third party.

## A.16.8 In recognition of the Council’s legal obligation to tackle discrimination and promote equalities and diversity in all its functions and policies under the Equality Act 2010 the Provider may be subject to the requirement to complete a questionnaire and/or provide information to the Council’s officers on the extent and quality of the Provider’s equalities and diversity policies and practice. Poor practice in this regard may result in the Council issuing a mind to comply letter describing the nature of improvement required and associated timescales.

A.16.9 In the event that the Provider enters into any subcontract in connection with the Contract, it shall impose obligations on its subcontractors in proportionate and relevant terms substantially similar to those imposed on it pursuant to this Condition.

**A.17 ASSIGNATION, DISPOSAL, SUB-CONTRACTING AND CHANGE OF CONTROL**

A.17.1 The Provider shall not assign, dispose or otherwise transfer its interests and/or obligations under this Contract to any other person (hereinafter “assign”) without obtaining the prior consent in writing of the Council which shall not be unreasonably withheld or delayed subject to:-

1. The Provider’s compliance with the requirements of this Clause;
2. The Council’s compliance with its procedural requirements permitting assignation;
3. Compliance by the Parties with procurement law

A.17.2 Failure to meet the requirements of Clauses A.17.1 - A.17.10 including requirements to provide information within stated timescales, unless the Provider provides evidence to the Council that it was not possible using reasonable endeavours to give such notice, shall be deemed to be a breach of the Contract and the Council’s Approved Rate may be varied in accordance with the Default Rate.

A.17.3 All notices and/or any remedial action taken under the Contract and any Individual Placement Agreement prior to assignation shall remain in effect in accordance with its original terms notwithstanding the completion of any assignation or other transfer or Change of Control under this Clause.

A.17.4 Where the Provider proposes to transfer its interest, or part of its interest, in the Service to another care provider with the intention of service continuation:-

1. the Provider must give Council no less than 13 weeks’ prior written notice unless otherwise agreed; and
2. the Council may consent to the proposed assignation upon being satisfied of the proposed assignee’s suitability and subject to the necessary consents and, where applicable, certificate of Registration being granted to the proposed assignee by the Care Inspectorate.

A.17.5 In order to enable due consideration of the assignation request, the Provider shall provide the Council with such information as it may reasonably request no later than 13 weeks prior to the proposed transfer date, including:-

1. The name and address of the proposed assignee together with its relevant company/organisation details (such as its registered office and Company registration number) and details of Regulatory approvals;
2. Evidence from the proposed assignee that it can meet the service quality levels and financial and economic requirements all to the satisfaction of the Council;
3. The proposed date of transfer and details of the nature of the legal agreement between the Provider and proposed assignee;
4. Staffing proposals in particular transfer and re-appointment and/or recruitment and arrangements for transition (including the manager of the Service and TUPE proposals);
5. Policies and procedures proposed for use in the management of the Service or confirmation of the application of the existing policies to the Services;
6. Appropriate financial information relative to the proposed assignee in order that the Council may be satisfied as to the financial viability of the proposed assignee and the continued financial viability of the Service;
7. Information about Premises, to be provided in accordance with Clause A.18.4.

A.17.6 If the Council has overpaid the Provider, agreement must be reached about how any sums due shall be repaid before consent shall be granted to the assignation request. Should agreement not be reached, or where insufficient notice is given, the Council may reclaim any monies owed via any means at its disposal.

A.17.7 Once notification of a proposed assignation has been received the Council may exercise its right of Suspension in accordance with Clause A.21 (Suspension) where it has serious doubts the proposed assignee shall be able to meet the required service quality levels and financial and economic requirements and the Provider has not indicated it shall continue the Service if the assignation does not go ahead. Suspension in this case shall normally come to an end once the Provider and proposed assignee have completed an assignation agreement in accordance with the procedures laid down in this Clause.

A.17.8 Until the completion of the assignation in accordance with the procedures laid down in this Clause or until the Contract with the Provider is terminated:-

1. the proposed assignee must not provide the Service or any part of it and no payments shall be made by the Council to the proposed assignee.
2. the Provider shall continue to be responsible for the performance of and shall be liable to the Council for the acts and omissions of any party to which it may assign, transfer or otherwise dispose of any obligations under this Contract as if they were the acts or omissions of the Provider.

A.17.9 In the event that consent is not granted to the assignation or the assignation is not completed by the Provider and proposed assignee:-

1. and the Provider is unable to continue to provide the Service to the reasonable satisfaction of the Council, the Council may terminate in accordance with Clause A.20 hereof.
2. and the Provider is able to continue to provide the Service, the terms of the Contract shall continue to apply.

A.17.10 Where the Council agrees to assign the Contract, it shall confirm this in writing to the Provider.

**Appointment of Subcontractors**

A.17.11The Provider shall not appoint a subcontractor to deliver the part(s) of the Service which are classed as Regulated Work with Protected Adults or which require registration with the Scottish Social Services Council, without the prior consent in writing of the Council which shall not be unreasonably withheld subject to compliance with the requirements of Clauses A.17.11 – A.17.13.

A.17.12 The Provider shall request consent to appoint a subcontractor, by written application to the Council , no less than 28 days before the proposed start date of any such subcontract, including:

1. the name of the proposed subcontractor;
2. the part(s) of the Service to be subcontracted;
3. the terms of the proposed subcontract;
4. information pertaining to the suitability of the proposed subcontractor; and
5. where appropriate, the monitoring measures to be put in place by the Provider to ensure that the subcontractor complies with the terms of the Contract as if it was the Provider.

A.17.13The Council shall assess the proposed arrangement and whether it is appropriate to subcontract the part(s) of the Service proposed, taking into account the information submitted, any internal processes and procedures, good practice and relevant professional or regulatory advice.

A.17.14 The Council may request such additional information as required to allow it to make its assessment.

A.17.15The Council shall advise the Provider of its decision in relation to the appointment of a subcontractor no more than 14 days after the date of receipt of the application referred to in Clause A.17.12.

A.17.16 Where the Council consents to the appointment of a subcontractor, the Provider shall:-

1. be responsible for the performance of and shall be liable to the Council for the acts and omissions of its subcontractors;
2. ensure that any subcontractor appointed complies with the requirements of the Contract and any Individual Placement Agreement entered into thereunder; and
3. ensure that a provision is included in any subcontract:
   1. that requires the subcontractor to apply for the consent of the Council to further subcontract anything in the subcontract in terms no less onerous than A.17.12 – A.17.15;
   2. which requires payment to be made by the Provider to the subcontractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the subcontract requirements and provides that, for the purpose of payment alone, where the Council has made payment to the Provider and the subcontractor’s invoice includes Services in relation to which the payment has been made by the Council then, to the extent that it relates to such Services, the invoice shall be treated as valid and payment shall be made to the subcontractor without deduction.

**Change of Control**

A.17.17The Provider shall give 13 weeks’ prior written notice to the Council of a change of Control unless the Provider provides evidence to the Council that it was not possible using reasonable endeavours to give such notice.

A.17.18 Where the Provider proposes to continue the delivery of the Service following a change of Control, the Council may require it to provide such further information as it requires, which could be similar to that required for assignation in Clause A.17.5,

A.17.19 Upon receipt of notice of a change in Control in accordance with Clause A.17.17 and any further information provided in accordance with Clause A.17.18, the Contract may be terminated in accordance with Clause A.20.16.

**A.18 PREMISES INFORMATION**

A.18.1 The Provider must provide to the Council at the commencement of the Contract or, where applicable, on request during the term of the Contract, information about the legal basis on which the Provider has a right to occupy any premises from which the Service operates, including where there is a change in the legal status of the Provider as regards the premises (e.g. tenant to sub-tenant). This shall include:-

1. Where the Provider owns the premises:
   1. The Provider’s title to the premises;
   2. The name of any party holding a security over the premises and whether that party has notified the Provider of any default or breach of the terms of that security;
   3. Any proceedings ongoing or reasonably anticipated which seek the sale of the premises and/or removal of the Provider from the premises;
   4. Missives or any contract information contract providing for the transfer of ownership of the premises which have been concluded, whether or not such transfer is for value. Such notification should include details of the party to whom ownership is to transfer.
2. Where the Provider does not own the premises:
   1. The name and address of the owner of any premises from which the Service or any part thereof is provided (hereinafter “the Owner”);
   2. The nature of the legal relationship between the Owner and the Provider;
   3. The nature of the right the Provider has to occupy the premises;
   4. In case of the Provider occupying the premises by virtue of a lease or license to occupy, the duration of such lease or license and the dates of commencement and end as stated within the lease or license;
   5. Any notice served on or by the Provider under the terms of a lease or license to occupy for the premises which purports to give notice of the termination of the lease or license;
   6. Whether there are any proceedings ongoing or reasonably anticipated which seek termination of any lease or license to occupy and/or the removal of the Provider from the premises
   7. Rights of termination of occupation, including notice periods.
3. Where the premises require any urgent, serious or substantial repair or remediation works, a statement confirming this and providing details of the dilapidations requiring repair or remediation, details of the party responsible for effecting such repair and remediation and where practicable a copy of the plan, including timescales, for the execution of the repair or remediation;
4. Any notice or Order concerning the premises served on the Provider or the Owner under any statutory provision (which shall include but not be limited to Planning Enforcement Notices, Repairs Notice, Works Notice, Maintenance Order, Defective Building Notice, Dangerous Building Notice, Demolition Notice and Fire Notice);
5. A ‘Default Notice’, ‘Calling-up Notice’ or Notice of crystallisation of floating charge is served on the Provider by or on behalf of any person holding a security over the premises.
6. The premises (or any part thereof) are, or are contracted to be, advertised, marketed, included in an auction catalogue or otherwise offered for sale or lease.

A.18.2 Where it is within the knowledge of the Provider, the Provider shall notify the Council of any changes to the information in A.18.1 as soon as reasonably practicable following the making of such a decision. The notice shall state what action has been taken towards effecting such change and when such change is anticipated to happen.

A.18.3 Where the Provider does not own the premises, they must ensure there is no action or failure to act or omission by them which would jeopardise the continued occupation by them of the premises.

**Further Premises Information to be provided in the Notification of Assignation**

A.18.4 Where the Provider serves notice on the Council in accordance with Clause A.17.5 of the foregoing Contract, the Provider shall supply the following information along with such notice:

1. an update to the premises information where the proposed assignation shall result in changes to the premises Information; and
2. the following additional information:
   1. the current nature of the legal relationship between the Provider and the proposed assignee and details of any contract in place between them relating to the premises; expressly including any missives over the premises;
   2. details of any contract in place between the Provider and the proposed assignee relating to the premises and the transfer of rights connected thereto expressly including any missives over the premises;
   3. In the case of a Provider occupying the premises by virtue of a lease or license to occupy, details of any contractual right of the proposed assigned to require assignation of the lease or license to occupy in their favour;
   4. Any contractual obligation on the owner of the premises obliging them to grant the proposed assignee a lease or license to occupy.

**A.19 RESOLUTION OF DISPUTES**

A.19.1 In the event of any dispute between the Council, and the Provider either Party shall serve a notice on the other outlining the terms of the dispute and proposing a time and place for a meeting between the Parties’ representatives where the representatives shall attempt to resolve the dispute. The other Party shall respond to such a notice within 5 days of receipt. If the matter is not resolved within 14 days of notification of the dispute the matter may be referred within 7 days of the expiry of the said 14 day period by either Party to the appropriate Nominated Officers of each Party for resolution of the matter in dispute within 21 days of the said referral.

A.19.2 Should the dispute remain unresolved after the process as detailed in Clause A.19.1 above then either Party shall be entitled to serve a Mediation Notice on the other Party. If either Party refuses at any time to participate in the mediation procedure and in any event the dispute is not resolved within 30 Working Days of service of the Mediation Notice then either Party may refer the dispute to arbitration.

A.19.3 If the Parties are unable to agree upon a single independent arbiter within 14 days of the date of the decision to refer the matter to arbitration then either Party may refer the matter in dispute to an arbiter appointed by the Sheriff Principal of the Sheriffdom in which the Contract is performed whose decision on the matter and any issue relating to the expenses of such arbitration shall be final and binding on the Parties.

A.19.4 For the purpose of resolving disputes in terms of Clauses A.19.1 to A.19.3 above the Council and the Provider shall formulate operational guidelines as to the levels of officer hierarchy within the respective organisations to which disputes should be referred.

A.19.5 Clauses A.19.1 to A.19.3 are without prejudice to any rights the Parties may have under Clause A.20.

**A.20 BREACH AND TERMINATION OF CONTRACT**

**Breach Provisions**

A.20.1 Where either the Council, or the Provider considers the other to be in non-material breach of the Contract, the Party who considers the other to be in breach may notify the details of the alleged breach to the other Party who shall use their reasonable endeavours to rectify the breach within 14 days of notification of the breach, or to repudiate the allegation.

A.20.2 If the Party in breach is unable to rectify the breach to the reasonable satisfaction of the other Party within the said 14 day period the matter shall be referred to the relevant Nominated Officers of each Party, who shall use best endeavours to reach a resolution of the matter within 14 days of the said referral.

A.20.3 If the Nominated Officers fail to resolve the matter within the said 14 days, a meeting of both Parties shall be convened involving senior Staff with line management responsibility for Nominated Officers in order to reach a solution or decide on an agreed action plan and time-scales for rectification of the breach.

A.20.4 Where a solution or action plan and time-scales cannot be agreed between the Parties or, if agreed is not effected to the reasonable satisfaction of the Party not in breach within the agreed time-scales then the mediation procedure at Clause A.19.2 shall be invoked.

A.20.5 Without prejudice to the rights and remedies for material breach of the Contract otherwise available to them under the Contract (in particular Clause A.20.10) or at common law or under statute and without prejudice to the Council’s statutory obligations and powers with regard to the safety and well-being of any Resident or group of Residents, the Council and the Provider shall each have the right, such right being exercised at their absolute discretion to serve written notice on the Nominated Officer of the other Party to terminate this Contract if the other Party has committed a material breach of this Contract which is not capable of remedy, or if capable of remedy, has not been remedied to the reasonable satisfaction of the Party serving the notice within the period specified in any notice served under Clause A.20.6.

A.20.6 Where a Party has committed a material breach of Contract that is capable of remedy, the Party who is not in breach may serve a written notice on the party in breach giving that Party a fixed period in which to remedy the breach. The period given shall be determined at the sole discretion of the Party serving the notice but always subject to a minimum period of two weeks and a maximum of 13 weeks.

A.20.7 In the circumstances described at Clause A.20.9 (vii), (x) and (xi), the notice to terminate referred to in Clause A.20.5 shall be effective immediately. In all other circumstances the notice shall be effective 13 weeks after its issue date.

A.20.8 The following are material breaches of contract by the Council:

1. failing to make payment in accordance with Clause A.4 above;
2. offering any improper inducements or exerting unreasonable pressure upon potential or existing Residents or their Representatives, or others with an interest;
3. materially failing to undertake its care management duties in accordance with the terms of this Contract; and
4. the Council committing a breach of any of its obligations under this Contract which materially and adversely affects the performance of the Contract or provision of the Service or the Council committing a series of breaches of any of its obligations under the Contract the cumulative effect of which is to seriously and adversely affect the performance of the Contract or provision of the Service.

A.20.9 The following are material breaches of Contract by the Provider:

1. serious non-compliance with the provisions of the Health and Safety at Work etc. Act 1974;
2. operation of the Care Home without insurance cover as required under Clause A.11.6 above;
3. non-compliance with the requirements of the Equality Act 2010;
4. deliberate misuse of drugs and/or medicines when delivering any aspect of the Service to the Resident
5. abuse or neglect of any Resident
6. taking or attempting to take dishonest or illegal financial advantage of the Resident
7. the Provider ceasing to carry on the whole of its business; or disposing of all of its assets (other than in terms of this Contract); or becoming the subject of a voluntary arrangement under Section 1 of the Insolvency Act 1986; or being unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or having a receiver, liquidator (other than for the purposes of reconstruction or amalgamation), administrator or administrative receiver appointed over all or any material part of its undertakings, assets or income; or having a winding up order made in respect of it; or entering into administration; or a resolution for its winding-up being passed by creditors or members; or having a judicial factor appointed; or being apparently insolvent or sequestrated; or signing a trust deed for creditors; or entering into a composition with creditors; or entering into a debt arrangement scheme; or being the subject of any process or event similar or analogous to the events specified above in any jurisdiction outside Scotland; or where a separate legal entity is the subject of any process or event similar or analogous to those specified above, and where the provision of the Service by the Provider is reliant on a direct or indirect relationship between the Provider and that entity
8. offering any improper inducements or exerting unreasonable pressure upon any person to encourage them or persons whom they represent to go into the Care Home
9. being convicted of an offence under the provisions of Part 5 of the Public Services Reform (Scotland) Act 2010
10. committing any offence under the Bribery Act 2010;
11. giving any undisclosed or illicit fee or reward to any elected member or officer of the Council in order to secure an unfair gain or advantage;
12. failing to supply information required by the Council as set out in Clause A.8.7 and A.8.11;
13. failing to comply with the assignation process as set out in Clauses A.17.1 - A.17.10;
14. the issue by the Care Inspectorate of an improvement notice;
15. imposing charges on the Resident that are not permitted by the Contract; and
16. the Provider committing a breach of any of its obligations under this Contract which materially and adversely affects the performance of the Contract or provision of the Service or the Provider committing a series of breaches of any of its obligations under this Contract the cumulative effect of which is to materially and adversely affect the performance of the Contract or provision of the Service.

A.20.10 Without prejudice to other rights and remedies the Council may have for material breach of the Contract available to them under the Contract or at common law or under statute:

1. if the Provider is found to be imposing charges on the Resident that are not permitted by the Contract, the Council reserves the right to adjust the Council’s Approved Rate to the Default Rate.
2. if the Provider is found by the Council to be in material breach as described at Clauses B.2.3, B.4.4 or section B.8, the Council reserves the right to adjust the Council’s Approved Rate to the Default Rate, reflecting the reduced service quality.
3. if the Provider is in persistent or material breach of its Registration requirements or Registration conditions as evidenced by the Care Inspectorate, including failing either to produce or to adhere to an action plan required by the Care Inspectorate, the Council reserves the right to adjust the Council’s Approved Rate to the Default Rate, reflecting the reduced service quality.
4. if the Care Inspectorate gives notice to the Provider of a proposal to cancel the Registration or if the Care Inspectorate has made Summary Application to the Sheriff for an Order cancelling the Registration then the Council may, but shall not be bound, to terminate this Contract and the Council may, but shall not be bound, to terminate any Resident’s Placement in the Care Home without notice, irrespective as to whether or not the Provider has made representations to the Care Inspectorate about the cancellation or the period for making such representations has elapsed or the Summary Application to the Sheriff is being opposed.

A.20.11 The Council shall advise the Care Inspectorate of any material or persistent breach of Contract by the Provider.

A.20.12 Nothing in this Clause A.20 shall limit the nature and extent of acts considered by a court of law or otherwise to be material breaches of this Contract. No granting of time or period of notice under this Clause A.20 shall be deemed to be a waiver of any right the Party granting time or giving notice may have against the other Party in respect of the other Party’s material breach of this Contract.

A.20.13 Where the Contract is terminated, each Individual Placement Agreement made by the Council shall also terminate. Notice to terminate the Contract shall be taken as Notice to terminate each Individual Placement made under the Contract. Where the Provider intends to continue to operate the Care Home after the termination of the Service under this Contract and Residents placed under this Contract wish to remain in the Care Home, the Council shall, taking account of Residents’ rights to choose as well as the Council duties to protect vulnerable adults, consider whether it is in the Residents’ interests to do so and may negotiate new contractual arrangements with the Provider to enable specific Residents to remain in the Care Home.

A.20.14 The provisions of the Confidentiality, Data Protection, Freedom of Information, Indemnity and Insurance Clauses shall survive the termination of this contract by any means.

**Non Breach Provisions**

A.20.15 The Provider shall give the Council 13 weeks’ written notice, unless the Provider provides evidence to the Council that it was not possible using reasonable endeavours to give such notice, of its intention to:

1. close the Care Home;
2. sell the Care Home;
3. substantially reconfigure the Service;
4. significantly change the facilities or amenities of the Care Home; or
5. move the Service to a different location
6. continue Service delivery following a change of control.

A.20.16 In the event that notice is served under Clause A.20.15, the Council may but shall not be bound to terminate the Contract at the end of the notice period.

A.20.17Where the Care Home or any part thereof is leased by the Provider and the lease is terminated this Contract shall be terminated upon the same date as the lease, except if the Council and the Provider otherwise agree. The Provider shall be obliged to give the Council at least 13 weeks’ written notice of the proposed date of termination of the lease unless the Provider provides evidence to the Council that it was not possible using reasonable endeavours to give such notice.

A.20.18 In the event of closure of the Care Home, the Council and Provider shall co-operate to implement the Provider’s contingency plan as required under the document produced by the Care Inspectorate entitled “Financial Viability Guidance” as updated from time to time in terms of section 53(6) of the Public Services Reform (Scotland) Act 2010.

A.20.19 This Contract shall be terminated by the loss or destruction of the Care Home or by the enforced vacation arising from statutory action by the Departments of Environmental Health or Building Control of the relevant Council unless otherwise agreed in writing by the Council. In the event the Council does not so agree, the Contract shall be terminated under this Clause on the date of the said loss or destruction or vacation of the Care Home.

**General Provisions**

A.20.20 During any period of notice referred to in Clause A.20, the Provider and the Council shall co-operate with each other to ensure that Residents’ Care requirements continue to be met; and they shall fully co-operate and consult with Residents and their Representatives in making suitable alternative Care arrangements for Residents.

A.20.21 Neither Party shall be entitled to withhold performance of their obligations under the Contract during any period of notice required under Clause A.20.

A.20.22 The termination of this Contract howsoever arising is without prejudice to the rights, duties and liabilities of either Party accrued prior to termination (subject as otherwise expressly provided in this Contract). Those rights shall include the right of the Council or the Provider as the case may be to claim damages against the other Party arising out of that Party’s material breach of the Contract. The Clauses of this Contract which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

**A.21 SUSPENSION**

A.21.1 Notwithstanding Clause A.2.2 and that both parties recognize that the Council is under no obligation to make any Placements under this Contract, the Council may contractually suspend any future Placements to the Service where:-

1. it considers that a breach or series of breaches of the Contract by the Provider creates an immediate or serious risk of harm to Residents;
2. notice of assignation, disposal, subcontracting or change of Control has been given and the Council has serious concerns about the viability of the arrangement, or where a Provider has failed to provide notice of the same, or where the Council has given notice of termination as set out in Clause A.20,or where the Council has concerns about an aspect of the Providers business continuity arrangements which the Council reasonably considers to threaten the continuity of the Service to residents;
3. the Care Home has received a score of 2 or less in the themed area of ‘Quality of Care and Support’ in its most recent Care Inspectorate grading, or a score of 2 or less in another themed area where that shall clearly impact on the quality of Care or likely continuity of the Service;
4. the Care Inspectorate has placed a Suspension of Admissions on the Care Home;
5. the Council considers that a situation as described at paragraph A.23.11 applies.

A.21.2 Once a decision has been taken to exercise its right of suspension as per Clause A.21.1, the Council shall notify;

1. the Provider in writing of the reason for the suspension and the date at which the suspension shall take effect; and
2. the Care Inspectorate and any other public bodies considered to have an interest.

A.21.3 During the period of any suspension the Provider must continue to co-operate with and comply with any requirements of the Council in order to resolve the suspension and to ensure the needs of Residents continue to be met.

**Consequences of Suspension**

A.21.4 During any period of suspension:

1. the Council shall use reasonable endeavours to ensure that no further Residents are referred to the Service and the Provider shall cease to accept new referrals of Residents from the Council or Approved Persons;
2. the Provider shall notify the Council of the names of other residents placed by other councils or public agencies and provide the contact details for the appropriate care manager(s);
3. the Council shall work together with the Provider to ensure that there is no interruption in the Service to existing Residents and to address the issues that led to suspension and the Provider shall co-operate fully with the Council;
4. The Council may organise additional Care Assessments for existing Residents within short timescales and shall endeavour to agree with the Provider a mechanism or timetable for doing this to ensure that they are able to participate fully;
5. The Council shall keep the Provider informed of its assessment of what progress the Provider has made in addressing the issues that led to suspension and the likely duration of the suspension.

**A.22 BUSINESS CONTINUITY AND CONTINGENCY**

A.22.1 The Provider shall develop, implement, maintain and hold responsibility for processes and procedures in relation to business continuity. The Provider shall maintain a business continuity plan which takes account of the supports reasonably expected to be available from statutory authorities including but not limited to, the civil and emergency planning provisions within the Local Authority area. The Provider shall provide a copy to the Council on request. The Provider shall notify the Council as soon as reasonably practicable of the activation of said plan.

A.22.2 Where either Party becomes aware of anything which may lead to a serious risk to the health or safety of Residents, or to the continuity of the Service, they shall alert the other Party.

A.22.3 The Council and Provider shall then meet to discuss any issues raised by A.22.2 and agree any actions that are required to mitigate the risks, which may include support to the Provider from the Council under their own business continuity plan

**A.23 ADULTS AT RISK**

A.23.1 The Parties agree to adhere to local procedures in relation to Adults at Risk and to work in accordance with any interagency guidelines that are in place from time to time. The Provider shall immediately notify the Council where appropriate of allegations or evidence of abuse in accordance with Clause B.10.1.

A.23.2 The Provider shall ensure that information on its policies and procedures for the protection of Adults at Risk is made available to the Council, Staff, Volunteers, the Resident and their Representative and that all Staff and Volunteers are trained in these policies and procedures.

A.23.3 Without prejudice to the generality of A.23.2, the Provider shall have a policy and procedure for reporting details of any allegation of financial, physical, sexual or any other form of abuse of a Resident. The Provider shall immediately inform the Care Manager of any such reports. The disclosure of such reports shall not be regarded as a breach of Clause A.10 (Resident Confidentiality).

A.23.4 The Provider shall have in place, implement and regularly review policies and procedures designed to prevent abuse and for responding to actual or suspected abuse, neglect or exploitation.

A.23.5 The Provider shall produce written guidelines which shall be followed by all Staff and Volunteers in identifying, investigating and reporting (both internally and to other external agencies who have legal duties to protect Adults at Risk) abuse or suspected abuse of Adults at Risk in the care of the Provider, which guidelines shall include guidance on:

1. identifying vulnerable adults who are at risk of abuse, neglect, harm or exploitation; or who are being or are suspected of being abused, neglected harmed or exploited; or who have been or are suspected of having been abused, neglected, harmed or exploited;
2. recognising risk from different sources in different situations and recognising abusive behaviour by other Residents, colleagues, and family members;
3. the duty of Staff to report suspected abuse, neglect, harm or exploitation;
4. the duty of the manager of the Care Home to investigate such reports and communicate information to external agencies who have legal duties to protect Adults at Risk, including informing the Council of the abuse or suspected abuse;
5. inter-agency information sharing and clarity on confidentiality and disclosure of information in such circumstances;
6. the procedures for reporting abuse or suspected abuse both internally and to other external agencies who have legal duties to protect Adults at Risk;
7. protection for whistle blowers;
8. working within best practice as specified by this Contract;
9. child protection, where appropriate.

A.23.6 Staff and Volunteers shall be obliged to adhere to the above mentioned guidelines, which shall emphasise that all those who express concern shall be treated seriously and shall receive a positive response from management at all levels.

A.23.7 These guidelines shall take account of any inter-agency policies operational in the Council’s area that relate to the protection of Adults at Risk.

A.23.8 The Provider shall ensure that prompt action is taken in response to individual complaints from or concerns of Staff, Volunteers, the Resident and/or their Representative. Any such action shall follow the timescales identified within the Complaints Procedure.

A.23.9 The Provider shall have in place and implement procedures to prevent Staff gaining any personal benefit when working with vulnerable people.

A.23.10 The Provider shall ensure that where there has been abuse, an action plan including risk assessment in relation to victim care/support and dealing with perpetrators is incorporated into the Personal Plan. The Provider shall use appropriate independent services including advocacy, counselling or Victim Support. The action plan shall be constantly monitored.

A.23.11 Without prejudice to other rights and remedies the Council may have for material breach of the Contract available to them under the Contract or at common law or under statute, the Council, having statutory lead responsibility under the Adult Support and Protection (Scotland) Act 2007 to protect Adults at Risk reserves the right, in consultation with the Provider and other statutory bodies, to choose not to make Placements where there are concerns about the safety and welfare of Adults at Risk and such a decision shall be communicated to the Provider.

**A.24 NOTICES**

A.24.1 Any notice in writing required to be given by the Council to the Provider in terms of the Contract, whether delivered by hand or Recorded Delivery (in which case receipt shall be deemed to have occurred 2 Working Days after posting) or other information, instructions or communication given to the Provider at the address specified herein, shall be deemed to have been received by the Provider.

A.24.2 Any notice in writing required to be given by the Provider to the Council in terms of the Contract whether delivered by hand or by Recorded Delivery,(in which case receipt shall be deemed to have occurred 2 Working Days after posting) or other information, instruction or communication given to the Care Manager or any other person nominated from time to time by the Council, being the duly authorised representative for all purposes connected with the Contract, shall be deemed to have been received by the Council.

A.24.3 Any change to the Council or the Provider’s Nominated Officer shall be communicated to the other party as soon as possible.

**A.25 FORCE MAJEURE**

A.25.1 If any Party to this Contract is prevented or delayed in the performance of any of its obligations under this Contract by Force Majeure, and if such Party gives written notice to the other Party specifying the matters constituting Force Majeure together with such evidence as it reasonably can give and specifying the period for which it is estimated that such prevention or delay shall continue then the Party in question shall be excused from the performance or the practical performance as the case may be, of such obligations in terms of this Contract which are so affected as from the date on which it became unable to perform them and subject to Clause A.25.2 for so long as the cause of prevention or delay shall continue.

A.25.2 If the period during which any party is delayed in or prevented from the performance of its obligations hereunder by reason of Force Majeure exceeds 8 weeks the party may serve on the other 4 weeks’ notice of termination of the Contract and Clause A.20.20 shall apply to the said period of notice.

A.25.3 The Parties agree to use their best efforts to ensure that during any period when Force Majeure circumstances exist, the Care needs of the Resident are accommodated to the fullest extent practicable.

A.25.4 Where Force Majeure means the Provider cannot maintain availability of the Service, the obligation on the Council to make payment under the terms of the contract shall be suspended to the extent the Service is not available

**A.26 PREVENTION OF COLLUSION AND CORRUPT OR ILLEGAL PRACTICES**

A.26.1 The Council shall be entitled to terminate the Contract with immediate effect and to recover from the Provider the amount of any loss resulting from such termination if, either:

1. the Provider or its representative or associate or affiliated companies or subsidiary or related companies (whether with or without the knowledge of the Provider) shall have employed any corrupt or illegal practices either in the obtaining or the carrying out of the Contract; or
2. the Provider has given or agreed to give, to any member, employee or representative of the Council, any gift or consideration of any kind as an inducement or reward for doing any act in relation to the obtaining or carrying out of the Contract or the Care of the Resident.

**A.27 VARIATIONS AND COURT’S POWER TO MODIFY THE CONTRACT**

A.27.1 The terms of the Contract shall not be amended or varied in any way other than by a formally executed Minute of Variation entered into by the Parties.

A.27.2 If any court of competent jurisdiction holds any provision of this Contract invalid, illegal or unenforceable for any reason the remaining provisions shall continue in full force and effect (notwithstanding such invalidity, illegality or unenforceability) and the court shall have the power to modify the Contract if this is required to ensure that the parties can so enforce the remaining provisions.

**A.28 WAIVER OF REMEDIES**

A.28.1No forbearance, delay or indulgence by either Party enforcing the provisions of this Contract shall prejudice or restrict the rights of that Party, nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy conferred upon or reserved right for either Party in this Contract is exclusive of any other right, power or remedy available for that party and each such right, power or remedy shall be cumulative.

**A.29 ENTIRE AGREEMENT**

A.29.1 The Contract shall constitute the entire Contract between the Council and the Provider with respect to the provision of the Service and supersedes all prior oral or written agreements, understandings or undertakings between the Council and the Provider relative to the Service. By signature hereof the Provider agrees that any continuing placements made prior to the commencement of this Contract shall, from the commencement date of this Contract, become Placements under this Contract without prejudice to any rights, duties and liabilities that have arisen under any previous contracts prior to that date.

**A.30 LAW OF SCOTLAND**

A.30.1 The construction, validity, performance and all other matters arising out of and in connection with the Contract shall be governed by the Law of Scotland.

**Section B – Service Specification for Permanent and Short-Term Placements**

**B.1 INTRODUCTION**

B.1.1 The Provider must follow the Contract requirements and evidence this to the Council.

B.1.2 The Parties to this Contract understand that public policy in Scotland is that older adults shall be supported to remain in their own homes where possible and practicable. Some individuals though, shall require levels of supervision or forms of active intervention that make this model impractical to deliver or to resource. In such circumstances, whether for a short term or on an open ended basis, care requires to be delivered in a clustered, linked, or communal living model, which for some shall most suitably be provided in a Care Home.

B.1.3 The purpose of this Contract is to ensure that where the Council has determined a person’s assessed needs shall be best met within a Care Home setting, the approach, facilities, and Services that shall be available there to help achieve the higher level outcomes, described at Section B.2 (Outcomes), for those placed into such a setting, are already set out in an agreed form, along with the contractual and financial relationship between the Parties involved in specific Placements.

## B.1.4 The more specific Outcomes for each Resident shall be set out by their Care & Support Plan and Personal Plan. These shall be elicited from conversations with the Resident and/or their Representative on which outcomes are of particular importance to them and how they might best be achieved. It is this process of negotiation and planning that shall allow the delivery of genuinely personalised services within any setting, including a communal one such as a Care Home, providing prior agreements on the nature of that physical and care environment have been clearly set out.

## B.1.5 The purpose of the Council making Placements of Residents is principally focussed on these Outcomes (higher level outcomes set out hereunder and specific outcomes for each Resident set out in their Care & Support Plan and Personal Plan). However it is recognised that certain core inputs and interventions are required to avoid negative outcomes for Residents. Where these are considered likely to apply to all prospective Residents, they shall remain set out as inputs within this specification.

## B.1.6 It is a key requirement on the Council and the Provider to ensure that insofar as reasonably practicable in the legal and environmental context of a Care Home, Residents shall enjoy the same rights and reasonable expectations of everyday life as they would in their own home, for example in relation to access to health and other public services.

## B.1.7 This Service specification is for Permanent Placements which are intended to sustain Residents for the foreseeable future, until such time as the Placement Ends/Placement comes to conclusion/ or IPA terminated, although the capacity of every Resident to enjoy improved outcomes from alternative services, practicably deliverable, whether of a reduced, increased, or simply different nature, should be considered at every review and at any other salient time. It also applies to Short Term Placements made for a set duration including for respite purposes. It shall also apply to specialist services such as those separately established to provide services to those with advanced care needs arising from dementia or to provide intermediate care services.

## B.1.8 This Service specification addresses the delivery of accommodation, equipment, provisions, personal care, support & supervision, and nursing services where required, for the purpose of delivering the higher level outcomes set out hereunder and individually set Outcomes within each Resident’s Care & Support Plan and Personal Plan.

## B.1.9 This Service Specification shall be pursuant to Residents both over 65, and adults under 65 who shall have needs and identified Outcomes best pursued in a Care Home setting under this Contract. The determining factor is the suitability of the Service to deliver the Outcomes sought for any Resident and the impact of their Placement on other Residents, and not their age.

**B.2 OUTCOMES**

B.2.1 The Parties are agreed that positive Outcomes for Residents from the Service they receive in the Care Home are the most important factor in the provision of the Service. Whilst the Service requires to be tailored to suit each individual Resident within the context of a group setting and service, this shall be achieved at the individual level through the processes of care planning and management by the Council, and the formulation and implementation of an agreed Personal Plan for each Resident by the Provider. These plans are best devised on the basis of conversations about certain common higher level outcomes, which themselves require to be delivered in the provision of the Service in relation to every Resident and these are set out below. The Service shall provide facilities and interventions that demonstrably promote Residents:

1. to feel and to be safe and secure;
2. to see people and engage socially;
3. to have things to do that they enjoy;
4. to inhabit a pleasant environment;
5. to experience everyday life as they wish;
6. to stay as well as they can;
7. to feel part of a community;

and which are delivered in ways which clearly encourage Residents to feel that they are:

1. treated as an individual;
2. valued and respected;
3. listened to;
4. party to decisions about their care and support;
5. supported to live well and to plan for a good end of life;
6. able to have family and friends involved as they wish;
7. able to trust Provider’s staff and to rely on them to respond appropriately;
8. afforded privacy.

## B.2.2 The Provider shall deliver these facilities and interventions in ways which are likely to generate a positive impact for Residents related to:

1. skills to support themselves in everyday living tasks;
2. their confidence and morale;
3. mobility;
4. improved health and appropriate management of symptoms;
5. feeling settled within the Care Home.

B.2.3 The Provider is required to maintain as part of recording for each Resident, an account of how the delivery of the Service to each Resident has taken, and shall take, into account the achievement of these high level outcomes and also the more specific detailed Outcomes within each Resident’s Personal Plan which shall underpin achievement of the high level outcomes. These shall be examined by the Council as part of both Care Planning and the monitoring referred to in section A.8 (Quality of Service & Contract Management), and failure of records to demonstrate the pursuit of these outcomes by the Provider shall be considered a quality shortcoming and material breach that shall permit the Council to amend the payment to the Default Rate as set out at section A.20 (Breach and termination of Contract).

## B.2.4 The Provider shall maintain statistical information in an agreed format that demonstrates at an aggregated level the pathways of Residents through the Service and the views of Residents on the Service. These shall detail: numbers of Residents admitted to hospital, including cause, frequency, time, and duration, and identifying emergency admissions and multiple admissions; visits to Accident & Emergency units including reason and day/time; death rates across Residents and available information on causes of death; numbers of Residents moving to other Care Homes or to other forms of accommodation; Residents returning home; numbers and nature of significant events notifiable under the terms of section B.10 below. These records shall be made available to the Council for monitoring purposes.

**B.3 SCOPE**

B.3.1 The Service is not age-defined but intended to meet assessed needs which the Council judges it is impractical or inefficient to deliver within peoples’ homes or in other forms of available housing. It is understood that the majority of people who shall meet such criteria shall be drawn from the older population in our communities. Often the defining feature of such needs shall be the need for constant or near constant staff availability, or interventions too frequent or of a nature that cannot practicably be delivered in a domestic setting using available resources.

B.3.2 In addition to the Residents specified in B.3.1, the Service to be provided under this Contract is also intended for people where a learning disability or mental health condition (other than dementia), or physical disability not related to general frailty, is the primary factor leading to the need for residential care. However where the Council and the Provider consider that a Placement of such a person would be to that person’s benefit and would be appropriate for existing Residents, then this may be agreed, providing such a Placement is also acceptable to the Care Inspectorate.

B.3.3 It is recognised and agreed by the Council and the Provider that many Residents shall have a level of dementia which impacts upon both their functioning and decision making ability. This may require interventions under the relevant legislation. Notwithstanding these factors, the provision of the Service shall aim to provide the same Outcomes for those Residents with dementia as to Residents without.

**B.4 SERVICE STANDARDS**

B.4.1The Service the Provider delivers must for all Residents and at all times adhere to the Care Standards, to relevant legislation, and to best practice guidelines as issued from time to time by the Scottish Government, or COSLA (if the care is being provided in England the Quality Care Commission), or by non departmental public bodies, including amongst others the Care Inspectorate, Scottish Social Services Council, Mental Welfare Commission, NHS, and the Scottish Human Rights Commission.

B.4.2 Evidence of this requirement being met needs to be maintained by the Provider within records available for individual Residents to the relevant Care Manager and Nominated Officer involved in monitoring performance of Service delivery under this Contract.

B.4.3 Service delivered to people with dementia shall adhere to the Standards of Care for Dementia in Scotland and to the practice principles set out in the Promoting Excellence Skills Framework, both published by the Scottish Government.

B.4.4 Notwithstanding the published view of the Care Inspectorate on the Provider’s performance in adhering to the Care Standards, failure to attain and evidence adherence to the service standards as described above to the reasonable satisfaction of the Council shall constitute a material breach of contract by the Provider to be managed under the terms set out at Clause A.20 (Breach and Termination of Contract).

**B.5 SERVICE DESCRIPTION**

B.5.1 The provision of Care for Residents by the Provider shall meet all assessed needs of the Resident as identified in the Care Assessment, and any revision of this by the Council in relation to accommodation, equipment, meals, activities (which shall include outings where these are identified as a required part of Care provision within the Care Plan or subsequently agreed by Parties as part of the Personal Plan), enablement, support & supervision, personal care, and nursing services where a nursing Placement is purchased for a Resident. It shall be delivered in a manner that meets the requirements of the Personal Plan and the various requirements on the Provider under this Contract.

B.5.2 Parties understand that any part of this Contract may be varied, as set out at Clause A.27.1 above (Variations etc), where Parties are in mutual agreement, and such variation may apply to all Residents, or to particular Residents only, as specified by the variation. It is incumbent on each Party to ensure the person they are agreeing a proposed variation with is authorised to do so for the other Party, failing which the variation shall not be valid.

B.5.3 The provision of equipment to support Care delivery by the Provider shall be in accord with the Protocol for the Provision of Equipment in Care Homes published by COSLA or if the care is being provided for in England, the equivalent industry standard. Generally the furnishings, decor, and equipment used for any Resident should be as close to what would be expected in a domestic setting, differing only as required to meet the provision of Care to the Resident.

B.5.4 Notwithstanding B.5.1 above, the Council and the Provider agree that some Residents or proposed Residents may have a level of need for care or supervision which is out with the range of the normal levels of need amongst residents in Care Homes. Where the Council and the Provider agree that this is the case they shall seek to agree a level of Additional Care, as defined at Clause A.1.8 (Definitions) herein, for the Resident in question, and in accordance with the provisions of Clauses A.4.2 (Payment), A.5.1, A.5.8 (Assessment, Care Management & Reviews), C.3.1 and C.3.2 (Additional Charges) herein.

B.5.5 It is acknowledged that for Residents on a Permanent Placement, the Care Home is effectively their home, and achievement of key outcomes set out above in Section B.2 (Outcomes) requires them to feel comfortable about their environment and changes to it. For this reason, other types of Care service including Short Term Placements should only be provided alongside Permanent Placements where Parties are agreed that this shall not cause any significant negative impact on Residents’ quality of life and where the registration requirements of the Care Inspectorate allow.

B.5.6 The Care Assessment and Care and Support Plan shall be the key instruments in determining the level of Care a Resident requires on admission to the Care Home. Thereafter, the Resident’s Review and Personal Plan shall determine how that Care is to be provided for the Resident.

B.5.7 The Provider shall produce with the Resident and the Resident’s Representative, a Personal Plan in time for the initial review as specified in Clause A.5.4(i) (Assessment, Care Management and Review). The Personal Plan shall be in accordance with the provisions of Regulation 5 of the Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002. This shall detail at a day to day operational level, how the care needs identified in the Care Assessment shall actually be met and how the Outcomes for the Resident identified in their Care & Support Plan shall be pursued. An essential factor in delivering desired outcomes is maintaining Residents’ capacities to do as much as they can for themselves or with the minimum Staff interventions practicable, and the Personal Plan must demonstrate how such an enabling focus shall be assured. A copy of the Personal Plan shall be given to the Resident and provided to the Council on request within 3 Working Days of its production and the Provider shall take into account any recommendations made by the Council in relation to the Personal Plan. Personal Plans shall be kept up to date and made available to Care Managers prior to all reviews and where there have been any significant changes in the Resident’s needs.

B.5.8 The operation of a Service that meets the requirements on Providers set out at the Outcomes and Standards sections above, requires Providers to ensure that,

1. The Resident and their Representative are consulted on all significant proposals, which affect the life or comfort of the Resident, and their views shall be taken into account,
2. The Provider has a Participation Strategy in line with Care Inspectorate’s expectations and that includes Residents, relatives, and Resident’s Representatives, and where appropriate including the use of advocacy, that offers the Resident a range of opportunities to give their views, make comments, and offer ideas, both individually and in groups, about the Service provided.
3. The Provider adheres to any local protocols that have been agreed between the Council and Care Home Providers or amongst the Council, Care Home Providers and other parties unless such protocols conflict with the terms of this Contract.
4. Methods of communication must take sufficient account of any individual Resident’s communication difficulties to allow their participation to be as meaningful to them as practicable. Where practicable, Residents should have a named member of Staff responsible for an overview of the Care for the Resident.

B.5.9 Staff must be properly trained to assist or enable the Resident wherever and whenever necessary in all aspects of their Care. This should be done in a manner that shall promote the pursuit and achievement of agreed Outcomes for the Resident. Where applicable, Staff shall be expected to have, or be working towards, the appropriate qualifications for each functional role undertaken within the Care Home and in accordance with current SSSC requirements.

B.5.10 The Provider shall protect the Resident using observation and assistance rather than restraint and confinement, except where the Care & Support Plan and Personal Plan identify that restraint and confinement are necessary. The nature and extent of this shall be agreed as part of the review process detailed in Clause A.5 (Assessment, Care Management and Review). If the use of restraint and confinement is necessary in order to safeguard any Resident or other person then this must be recorded immediately in the records pertaining to the Resident on whom the restraint or confinement was used. Where the use of restraint and confinement are not in that Resident’s Care & Support Plan and Personal Plan but for unforeseen reasons they have to be used, the Provider shall notify the Council and that Resident’s Representative in writing as soon as practicable thereafter, and shall also inform other agencies as required by the circumstances and regulatory or legislative regimes, and the Resident’s Care & Support Plan shall be reviewed.

B.5.11 The Provider shall support and encourage the Resident with regard to their personal hygiene skills including assisting the Resident to manage their continence.

B.5.12 The Resident shall be accommodated in a single occupancy room unless a double occupancy room is specifically requested by the Resident and agreed by the Council. Under no circumstance shall a Resident be accommodated in a room with more than one other person.

B.5.13 The Provider shall be alert to a Resident’s state of health, including mental health, and shall seek to ensure good practice around health assessments and appointments being arranged for the Resident, including dental, sight, hearing, and podiatry checks, and others as required. The Provider shall assist Residents to maintain ongoing contact with health, social care, and housing services where this is required to support the pursuit of their Outcomes. Where there are difficulties in achieving this, the Provider shall alert the Care Manager and the Resident’s GP to these concerns. Any emergence or change to the incidence or pattern of falls shall be recorded and notified to the Care Manager and to the Resident’s GP.

B.5.14 Meals shall be varied and nutritious and take into consideration the Resident’s food preferences, special dietary needs, cultural factors, and professional advice on best practice in respect of nutrition. The Provider shall maintain a regular record of each Resident’s weight, subject to the Resident’s consent, where this is identified as a care requirement in the Resident’s Care & Support Plan or Personal Plan.

B.5.15 The Resident shall have access to facilities to make beverages in their own room or another designated area except where compliance would be likely to cause danger to or be adverse to the interests and wellbeing of any Resident or other person in the Care Home.

B.5.16 The Provider shall ensure that the Resident has access to a sufficient provision of light refreshments at all times.

B.5.17 Wherever practical, times for meals and light refreshments shall be at the Resident’s choice and shall reflect the Resident’s nutritional requirements.

B.5.18 Each Resident shall provide their own clothing. The Provider shall assist the Resident or their Representative to determine what is an adequate supply of clothing to meet the Resident’s needs and shall assist the Resident to shop if this is required. The Provider shall alert the Care Manager to any difficulties in this regard.

B.5.19 The Provider shall provide sufficient bed linen, bedding, hand and bath towels to meet the Resident’s needs and reasonable preferences. Laundry items supplied by the Provider shall be changed regularly and not less than once per week, except in the case of soiled items which shall be changed immediately they come to the attention of any person providing the Service to the Resident, or where for infection control or other reasons a Resident requires more regular changes.

B.5.20 The Provider shall carry out all personal laundry, except dry cleaning, for the Resident and ensure that personal laundry is identified and returned to the Resident to ensure that the Resident has sufficient clean and appropriate day and nightwear of their own to meet their immediate needs. Where the Resident or their Representative agrees, personal clothing may be discretely marked or labelled by the Provider in a manner agreeable to the Resident or their Representative that is not visible when worn, to assist identification after laundry.

B.5.21 In the event of loss or damage of a Resident’s personal clothing due to the fault of the Provider, the Provider shall be obliged to recompense the Resident for the cost of replacing such clothing. For the avoidance of doubt this excludes fair wear and tear. Flannels, sponges, toiletries and similar items shall be supplied and be for the sole personal use of each Resident and must not be shared amongst Residents. These may be marked discreetly to identify the relevant Resident, if necessary and as practical. A range of toiletries must be supplied by the Provider to meet Resident’s needs.

B.5.22 The Provider shall ensure that it has adequate transport arrangements including Staff to fulfil its obligations under this Contract. Any of its vehicles used in connection with the Service, or Staff’s own vehicles used in connection with the Service, must be suitable, appropriate and fit for purpose and be insured in accordance with Clause A.11.8 (Indemnity, Liability and Insurance).

B.5.23 Where a Resident qualifies for transport from the NHS to attend for a clinical appointment/ treatment the Provider shall, where practicable, ensure this is arranged. For the avoidance of doubt, the cost of providing transport for the Resident to and from scheduled medical appointments, as well as emergency admissions to hospital are not covered in the Council’s Approved Rate and are not therefore the responsibility of the Provider where they are being paid that rate.

B.5.24 The Provider shall issue a detailed receipt, with a copy held in Provider’s records, for any valuables, cash or documents held on behalf of a Resident, to that Resident or their Representative, whom failing, their Care Manager, and retain the valuables, cash or documents in a secure lock fast place.

B.5.25 Where it is necessary for a Resident to be moved from their room in the Care Home, the Provider shall seek and obtain the consent of the Resident or their Representative and the Council in advance, save in the event of an emergency in which case the Provider shall notify the Council, as soon as possible, that such a move has taken place. Following the emergency, which necessitated the removal, the Resident shall be returned to their former room if they so request and if appropriate.

B.5.26 The Provider shall be entitled to offer Extras, and these must be specified and priced in the Residency Agreement. Examples of Extras are given in Clause 11 of Schedule 4 and Clause 5 (Residency Agreements). For the avoidance of doubt, under no circumstances shall the Council be liable to pay for such Extras provided to a Resident.

**B.6 CREATION OF PLACEMENTS**

B.6.1 Following the pre-admission assessment referred to at Clauses A.5.1 and A.5.2 (Assessment, Care Management and Review), the Council shall issue an Individual Placement Agreement confirming the Placement and the relevant financial terms. The Individual Placement Agreement shall confirm that the terms and conditions of this Contract apply to the Placement.

B.6.2 Where a Placement has been made in an emergency, or otherwise where the above procedure has not been followed, the Parties shall formalise the Placement through the issue and acceptance of an Individual Placement Agreement within 7 days.

B.6.3 Where a prospective Resident is eligible for free personal and/or nursing care, and wishes to be placed in the Care Home, and the Provider agrees to accept such a Placement, the Council shall issue an Individual Placement Letter in the style of Schedule 2 (Individual Placement Agreement).

B.6.4 A Trial Period may be extended by agreement of the Council and the Provider. The Care Manager shall advise the Resident of the extent of the Trial Period or any agreed extension of it.

B.6.5 Notwithstanding the terms of B.6.1 above and any other Clauses in this Contract which require the Council to issue an Individual Placement Agreement to the Provider in a form as near as practicable to Schedule 2 (Individual Placement Agreement), the Council shall be deemed to have complied with their obligations under those Clauses if it issues a letter or other document of whatever description which contains the following information:

1. the names of the Council and the Provider’s Nominated Officers, and the name of the Resident;
2. the name and address of the Care Home;
3. if applicable, the fact that Additional Services are to be provided to the Resident by the Provider;
4. the cost (whether weekly or monthly) of the Care and Additional Services;
5. the respective liabilities of the Council, the Resident and, if applicable, any third party, for the costs of the Care and,
6. if applicable, the Additional Services.

**B.7 ENDING OF PLACEMENTS**

B.7.1 Where the Resident fails to start a Placement, the Council shall ensure payment of the Council’s Approved Rate for a period of 7 days, less the number of day’s notice up to a maximum of 7, given by the Council or the Resident to the Provider of the fact that a Placement is no longer required, or for the full period of the planned Placement if this is shorter.

B.7.2 Where the Resident leaves the Care Home during the Trial Period, or during a Short Term Placement, the Council shall confirm this to the Provider in writing and where the Council is reasonably satisfied that the departure was not attributable to a lack of Care, neglect or other fault on the part of the Provider or persons acting on their behalf, the Council shall ensure payment of the Council’s Approved Rate for a period of 7 days after the date of the Resident’s departure, less the number of day’s notice up to a maximum of 7, given by the Council or by the Resident to the Provider of the fact that the Resident intended to depart.

B.7.3 During the Trial Period, or a Short Term Placement, either Party, after due consultation with the other, shall be entitled to give a minimum of 7 days written notice of their wish to terminate the Resident’s Placement.

B.7.4 The Provider shall, after a review has taken place involving the Care Manager, the Resident and/or their Representative and/or other appropriate professionals, be entitled to terminate a Resident’s Permanent Placement in the Care Home upon giving to the Council 4 weeks’ notice in writing, or less where the Parties agree, where the Resident persistently behaves in a manner which causes a serious risk to the welfare, or is detrimental to the peaceful enjoyment, of other Residents, or poses a serious risk to the safety of Staff or visitors to the Care Home, or where the Resident is in persistent or material breach of their Residency Agreement, or where the mental and/or physical condition of the Resident deteriorates to the extent that the Provider can no longer provide the Service required for the Resident.

B.7.5 The Council shall, after a review has taken place involving the Care Manager, Resident and/or their Representative and/or other appropriate professionals, be entitled to terminate a Resident’s Permanent Placement in the Care Home upon giving to the Provider 2 weeks’ notice in writing, or less where the Parties agree, where the Resident persistently behaves in a manner which causes a serious risk to the welfare, or is detrimental to the peaceful enjoyment, of other Residents, or poses a serious risk to the safety of Staff or visitors to the Care Home, or where the mental and/or physical condition of the Resident deteriorates to the extent that the Provider can no longer provide the Service required for the Resident, or where the assessment of the Resident’s need has changed and they no longer meet the Council eligibility criteria for the Service.

B.7.6 The Council may terminate a Placement by giving not less than 2 weeks’ notice where the Resident or their Representative has secured an alternative placement.

B.7.7 The Resident may terminate a Placement for any reason by giving not less than 2 weeks’ notice to either Party, who must notify the other Party of this as soon as practicable (but in any event not later than 1 Working Day after the receipt of such notice) In such circumstances the Council shall ensure payment of the Council’s Approved Rate for a period of 14 days, less the number of day’s notice up to a maximum of 14, given by the Council or the Resident to the Provider of the fact that a Placement is no longer required.

B.7.8 The Council and the Provider shall co-operate to ensure that the Resident’s needs are met during any period of notice to terminate a Placement.

B.7.9 The other provisions of this section B.7 are subject to the express qualification that the Council shall in no event be liable to make payment for any period of notice where the place vacated by a Resident is occupied by another person, or where such payment would cover a period beyond any specified end date for the Placement.

B.7.10 When either Party gives notice to terminate a Placement, they shall advise the other Party of the reasons for their decision to do so. If it is not reasonably practicable to provide the reasons for terminating the Placement with the notice to terminate, those reasons shall be provided as soon as practicable thereafter.

B.7.11 If at the time of termination, the Resident’s finances are managed by the Provider under Part 4 of the Adults with Incapacity (Scotland) Act 2000, then on termination of the Resident’s Placement, the Provider shall provide the statements and reports required under the Adults with Incapacity Code of Practice for Managers of Authorised Establishments under Part 4 of the Adults with Incapacity (Scotland) Act 2000.

B.7.12 If the Resident dies, the Placement shall terminate 3 complete days after the date of death (the date of the Resident’s death being day zero) unless the death occurs within three complete days of the planned end of a Placement, in which case the Placement shall end on the date agreed in the Individual Placement Agreement.

B.7.13 In the event of the death of a Resident, the Providershall inform the Resident'sRepresentativeand the Council immediately and provide written confirmation within 3 days thereafter. Where the Council asks the Provider for details relating to the death of a Resident the Provider shall comply with this request within 3 days of the death where practicable, failing which as soon as reasonably practicable thereafter.

B.7.14 The Provider shall make all reasonable efforts (with the involvement of the Resident’sRepresentative) during the 3 day period following the date of death to remove the Resident's personal effects from the Resident’sroom within the Care Home and arrange for the same to be put in a place of safekeeping. In the absence of a Resident’s Representative, the Council shall provide assistance to the Provider to remove the Resident’s personal effects from the Care Home. Notwithstanding the actual number of days said personal effects remain in the Care Home the Council shall not be liable for any payment in excess of the said 3 days.

B.7.15 If the Residenthas no Representative who can arrange the Resident’s funeral, the Providershall make the necessary practical arrangements, following consultation with the organisation/person responsible for payment of the costs, which in the absence of another shall be the Council under its statutory duty, unless local arrangements are in place for this purpose. For the avoidance of doubt the Provider is not obliged to meet the financial costs of funerals.

**B.8 BROCHURE AND INTRODUCTORY PACK**

B.8.1 In order to reinforce the Care Standards; provide transparency in charges, and allow Self-funding Residents to make an informed choice over contractual arrangements that are available to them, the Provider shall provide all residents and their families with a single brochure or Introductory Pack, which shall set out all the Provider’s current standard weekly charges for residents (except Additional Care Charges) and the period/financial year to which these apply.

B.8.2 Where a Care Home makes Additional Service Charges the brochure or Introductory Pack shall set out what the charge is for and to which Additional Services it applies; and the brochure shall state that the Additional Service Charge has been agreed by the Council. In addition, the brochure shall clarify how a Resident may terminate an Additional Service Charge (e.g. by moving to less expensive accommodation within the Care Home).

B.8.3 The brochure shall make clear who is responsible for paying the Additional Service Charge and it shall set out the consequences to a Resident if an Additional Service Charge is not paid.

Where the Care Home accepts Self-funding Residents Self Funding in receipt of the Free Personal and/or Nursing Care Payment the Provider shall ensure that the brochure or the Introductory Pack shall indicate whether or not the Care Home shall continue to deliver the Service to the Self-funding Residents on the basis that they may come under the National Care Home Contract if and when they become eligible for further Local Authority funding in terms of the National Assistance Regulations; and the brochure or the Introductory Pack shall state how the charges shall change should such Self-funding Residents exercise this option.

B.8.5 Where there is a range of Additional Service Charges, this shall be indicated clearly in the brochure and the charges shall be comprehensively listed on one sheet of paper elsewhere in the Introductory Pack in such a way that prospective Residents are enabled to compare charges easily.

B.8.6 The brochure shall include information on:

1. the type of accommodation available in the Care Home, e.g. single rooms, shared rooms; size of room and the like;
2. the range of Extras that are available; the fact that Extras are optional and that they can be purchased on a one-off basis as and when required; and
3. prices for the various types of accommodation and the Extras referred to respectively in paragraphs B.8.6(i) and (ii) above.

B.8.7

**B.9 COMPLAINTS AND SUGGESTIONS**

B.9.1 The Provider and the Council shall inform the Resident and their Representative of how to make a complaint or suggestion either through the Provider’s system or that of the Council, or both, and the other agencies to whom such complaint or suggestion can be made, in particular the Care Inspectorate, the Ombudsman, and the Mental Welfare Commission, the Scottish Social Services Council or the Nursing and Midwifery Council where the complaint relates to an individual registered with them. The Residency Agreement shall detail the Provider’s Complaints Procedure and the Provider shall assist the Resident with following this as necessary, including making available the required materials in media accessible by the Resident. Such assistance may, if appropriate, include arranging independent advocacy or support from an independent agency. The Provider shall make it clear to Residents that Residents can pursue a complaint through whichever route or routes they choose.

B.9.2 Where the subject matter of any complaint received by the Provider falls within the auspices of The Adult Support and Protection Act (2007) the Provider shall immediately notify the Council of the allegations or evidence of abuse or harm in accordance with Clause A.23 (Adults at Risk) of this Contract.

B.9.3 The Resident shall also have access to the complaints procedure operated by the Council, which shall be formulated to follow the Scottish Public Sector Ombudsman’s Statement of Complaints Handling Principles approved by the Scottish Parliament in January 2011, and Guidance on Model Complaints Handling Procedures published by the Scottish Public Services Ombudsman in February 2011, and as revised thereafter, insofar as that guidance can be practically applied to the Service.

B.9.4 The Provider shall co-operate with any investigation resulting from a complaint within the terms of section 5B of the Social Work (Scotland) Act 1968. The Provider shall provide access to its records, to the Nominated Officer or other duly authorised officers of the Council in the investigation of such a complaint. The Provider shall implement any corrective actions required within the timescales identified by the Council. Where the Provider disagrees with the corrective actions to be taken, the process as set out at Clause A.19 (Resolution of Disputes) shall be followed.

B.9.5 The Provider shall maintain a complaints register which shall be available at all reasonable times to the Council, and a summary of which in a format agreed by the Parties shall be sent to the Council no less than annually and more often if required under the Council's contract management procedures. Providers shall maintain alongside the complaints register, information on lessons learnt from the investigation of complaints, which shall also be available at all reasonable times to the Council.

B.9.6 In order to support and extend a culture of improvement and development, Providers should actively encourage feedback from Residents and their Representatives, and assist this by sharing with them information about their feedback and complaints processes.

**B.10 NOTIFICATION OF SIGNIFICANT EVENTS**

B.10.1 The Provider shall immediately inform the Care Manager (or where they are not available, the Care Manager’s line manager, within one Working Day)and the Resident’sRepresentativeof any of the following:

1. any significant incident, including allegations or evidence of abuse or harm relating to the Resident or the Care of the Resident;
2. maladministration of the Resident’s funds or property, or serious loss or damage to the Resident’s property;
3. significant changes in the Resident’s needs or circumstances;
4. any permanent change in the named member of Staff responsible for an overview of the Care of the Resident;
5. formal complaints in respect of any aspect of the Resident’s Care, subject to the consent of the Resident and/or their Representative;
6. unplanned absence of the Resident from the Care Home;
7. the Resident’s attendance at an Accident & Emergency facility or admission to or return from hospital as an in-patient, including identification of whether that admission was as an emergency;
8. maladministration of medicines including neglect to administer and refusal of Resident to comply with administration;
9. death of the Resident.

B.10.2 Where verbal notification is given by the Provider of any of the circumstances required immediately above the Provider shall also submit a written report on those circumstances to the Council within 3 Working Days of the circumstances occurring.

B.10.3 In the event of a significant incident or accident occurring to a Resident with a mental disorder as defined in the Mental Health (Care & Treatment) (Scotland) Act 2003, the Provider shall also immediately inform the Mental Welfare Commission.

**Section C – Finance**

**C.1 FINANCIAL ASSESSMENT OF THE RESIDENT**

C.1.1 Before a Resident’s Placement begins or as soon as possible after that the Council shall carry out a financial assessment in terms of the National Assistance Regulationsor any other relevant rule of law for the purposes of determining the level of:

1. the Resident’s Contribution per week, if any; and
2. the Council's Contribution per week.

The Council’s Contribution and the Resident’s Contribution shall together amount to the Council’s Approved Rate.

C.1.2 Where the Council has not been able to complete a financial assessment of the Resident’s financial resources, the Council shall inform the Provider and Resident of an interim Resident’s Contribution to be charged from the date of admission to the Care Home until the date that the financial assessment is completed.

C.1.3 Not used.

C.1.4 Where the Provider collects the Resident’s Contribution, the Council shall endeavour to advise the Provider in writing of the amount of the Resident’s Contribution within 4 weeks from either the date of commencement of the Placement or the date of any change in the Resident’s financial circumstances.

C.1.5 For Short Term Placements the Resident’s Contribution as specified in the Individual Placement Agreement shall be fixed for the duration of the Placement.

C.1.6 Where the Resident and/or their Representative wish to contract for Additional Services, the Council shall assess their ability to do so in accordance with Scottish Executive guidance on Topping Up of Care Home Fees (currently Community Care Circular CCD6/2002).

C.1.7 The Provider shall alert Self-funding Residents whether they are entitled to come under the National Care Home Contract if and when they become eligible for further public funding in terms of the National Assistance Regulations; and the Provider shall facilitate this if the Resident so wishes.

**C.2 COLLECTION OF RESIDENT’S CONTRIBUTION**

C.2.1 The Provider shall be responsible and shall fully co-operate with collecting the Resident’s Contribution except where the Resident, after discussion with the Care Manager, exercises their right to pay the Council directly [or the Council has agreed other arrangements]. The relevant collection arrangements shall be detailed in the Individual Placement Agreement.

C.2.2 The Provider shall timeously invoice the Resident or with the Resident’s consent their Representative for the Resident’s Contribution which shall be payable up to 4 weeks in advance unless the Resident states that they are unable to comply, in which case the Provider shall agree to allow payment in arrears. Where the Resident’s Contribution is not paid timeously by the Resident, the Provider shall make every effort (verbally and in writing) to secure payment of the Resident’s Contribution. Any benefits element of the Resident’s Contribution shall not be collected before any payment is made by the DWP.

C.2.3 The Provider shall advise the Council (via the Resident’s Care Manager) if the Resident has not paid the Resident’s Contribution for 8 continuous weeks or is 8 weeks*,* in arrears including where the Resident is not in receipt of the appropriate level of benefits. The Provider shall also be responsible for informing in writing both the DWP and the Council immediately where the Provider has reason to believe that the Resident’s benefits, administered by the DWP appointee, are being used inappropriately. Where verbal notification is given then the Provider shall confirm in writing within 3 days.

C.2.4 Where the procedure at Clause C.2.3 above has been followed, the Council shall pay the arrears of Resident’s Contribution to the Provider. A failure by the Provider to give such notice, or failure to take action in accordance with Clauses C.2.2 and C.2.3 above, may in the Council’s discretion be deemed to be a waiver of the Provider’s right to recover from the Council, any sums in excess of 8 weeksarrears of the Resident’s Contribution, as at the date the Council is advised the Resident has fallen into arrears. Where payment of the Resident’s Contribution is persistently in arrears the Council and the Provider shall agree to the transfer of this collection to the Council.

**C.3 ADDITIONAL CHARGES**

C.3.1 The Council shall pay an Additional Care Charge in exceptional circumstances where the Resident has been assessed by the Council as requiring Additional Care and the Council has both agreed and approved the cost of the said Additional Care unless the Council has sourced an alternative provider to deliver the Additional Care. The duration, associated payment and review arrangements relating to the Additional Care Charge shall be recorded on the Individual Placement Agreement.

C.3.2 Where the Council and the Provider cannot agree an Additional Care Charge in the circumstances set out in Clause C.3.1 for an existing Resident then either Party may invoke termination Clauses B.7.4 or B.7.5

C.3.3 The Council shall agree to the Provider making a reasonable Additional Service Charge if the Council is satisfied that the facilities, goods and services to which the Charge relate are significantly and demonstrably higher than those expected by the Care Standards or other Clauses of this Contract.

C.3.4 Where an Additional Service Charge has been agreed then unless Clause C.3.6 applies, it shall be met by either or both of the following:

1. the Resident
2. another third party (or set of third parties)

C.3.5 Unless Clause C.3.6 applies the Provider shall be responsible for collecting the Additional Service Charge from the third party whomsoever has agreed to pay it. The relevant financial arrangements shall be detailed in the Individual Placement Agreement.

C.3.6 Where the Council has placed a Resident in a Care Home of its choice and not because the Resident or his Representative have requested it, the Council shall be responsible for paying the Additional Service Charge. The Council shall advise the Provider in writing if such circumstances arise.

C.3.7 The Provider shall advise the Council (via the Resident’s Care Manager) if the Additional Service Charge has not been paid by the Resident or another third party for 4 continuous weeks, or is 4 weeks in arrears and shall arrange for a review of that Resident’s Placement to take place as soon as is practicable. The Care Manager, the Resident, their Representative and, if applicable, the person(s) responsible for payment of the Additional Service Charge shall be invited to the review as soon as is practicable. The purpose of the review shall be to determine whether the Additional Services can continue to be funded by the Resident or a third party and if not, for the Council to arrange an alternative Placement. The Provider shall assist the Council in the implementation of these arrangements.

C.3.8 For the avoidance of doubt, charges for Extras do not form part of the Additional Service Charge.

**C.4 PRICE CHANGES**

C.4.1 The Provider shall not be entitled to increase the Provider’s Price during the term of the Contract.

C.4.2.2 The Pre-Conditions are documented in Schedule 1b (if any) together with the consequences of failing to meet these. This shall monitored by using the information referred to in A.8.7. Once these Pre-Conditions have been achieved, the Provider shall maintain them for the duration of the Contract.

**C.5 INVOICING/SCHEDULED PAYMENTS FOR PLACEMENTS**

C.5.1 The Scheduled Payment for each Placement shall be paid by the Council to the Provider 4 weekly in arrears, the first of such Scheduled Payment’s to be made on the date of [ ] in return for the Remittance Advice which the Provider shall submit to the Council no later than 5 days following any Scheduled Payment. The Provider shall not charge and the Council shall not pay any sums over and above the Scheduled Payment.

C.5.2 The Provider shall ensure that the Remittance Advice contains such requisite information showing the sums paid are due and correct and accurately reflect the Service delivered to the Placement. In addition the Provider shall ensure that the Remittance Advice demonstrates to the Council’s satisfaction that any sums due on the next Scheduled Payment date are also in fact due, accurate and supported by appropriate level of detail to demonstrate the Placement has received the Service. The Council shall be entitled to withhold any Scheduled Payment in the event of a failure to return a Remittance Advice or in the event that the Council is not satisfied with a returned Remittance Advice or should the Council require more information for verification purposes.

C.5.2 The Council shall pay the Provider within 28 days following receipt of an Invoice, the sums due in payment of a Service delivered to a Respite Placement. The Council shall not pay any invoice for any sums not previously agreed with the Council. The Provider shall submit to the Council the relevant information to show the Service received by the relevant Respite Placement as the Council requires together with the information specified in Clause C.5.4 below.

C.5.2 The Provider shall submit properly detailed invoices, arising in relation to any invoice period during the Financial Year.

C.5.3 The Provider shall ensure that all invoices submitted to the Council contain the following information:

* + 1. Full details of the company submitting the invoice
    2. Are on headed paper
    3. Include the address of the home where the respite took place
    4. An invoice number
    5. The date of admission and date of discharge of the Respite Placement
    6. Are based on the number of nights the resident was present at the home

C.5.4 Should the Provider fail to submit accurate invoices, or fail to submit invoices with the requisite information set out in C.5.3, or should the Provider only submit partially accurate and requisite information, in such an event, the Council shall be entitled to withhold payment in whole or in part and determine whether to make a Payment in respect of the Residents for whom information has been correctly submitted at its discretion.

C.5.5 Not Used.

C.5.6 Not Used.

C.5.7 The Council shall pay all sums due by the Council to the Provider under this Contract that are properly invoiced no later than 21 days or as per local arrangements after receipt of the relevant invoice (provided it is accompanied by the relevant information set out in C.5.3 above) by the Council at [*Insert Address of Office to receive invoices*]*.*  Any change to this address shall also be notified to the Provider by the Council.

C.5.8 The Provider’s Price is exclusive of Value Added Tax (VAT). If the supply is standard rated for VAT purposes, then the Council shall pay VAT on that part of the Provider’s Price for which the Council has a liability under this Contract.

**C.6 PAYMENT FOR TEMPORARY ABSENCE**

C.6.1 Subject to C.6.2 below, in the event that the Resident is hospitalised, then the Council shall continue to pay the Council’s Contribution and the Resident shall continue to be liable for the Resident’s Contribution for the period of the hospitalisation or 6 weeks, whichever is shorter.

C.6.2 The Council shall cease to be liable for Free Personal and /or Nursing Care Payments after the 14th continuous day of the Resident’s absence from the Care Home for any reason, including the Resident’s hospitalisation.

C.6.3 In the event that the Resident is otherwise absent from the Care Home then the Council shall continue to pay the Council’s Contribution and the Resident shall continue to be liable for the Resident’s Contribution for a period of [3 weeks, subject to local variation]

C.6.4 The Provider and the Council may agree an extension of the periods referred to in Clauses C.6.1 and C.6.3 above. This extension shall not be effective without the written authorisation of the Council. In any extended period the Council shall pay [80%] of the Council’s Contribution until the Resident returns to the Care Home or their Placement in the Care Home is terminated. For the avoidance of doubt, the Council shall continue to pay [80%] of the Council's Contribution throughout any period of notice required prior to termination. However, the Council shall in no event be liable to pay the Council’s Contribution (in whole or in part) for any period where the place formerly occupied by a Resident who is hospitalised or otherwise absent is occupied by another Resident.

C.6.5 The Resident shall pay the Resident’s Contribution throughout any period of hospitalisation or other absence unless or until their Placement in the Care Home is terminated. Should there be any reduction in the Resident’s entitlement to monies from the DWP or any statutory or voluntary body due to the Resident’s hospitalisation or other absence, then the same such reduction shall be made to the Resident’s Contribution and the Resident shall pay this reduced amount until the Resident returns to the Care Home or their Placement in the Care Home is terminated.

**C.7 PAYMENT ON DEATH OF RESIDENT**

C.7.1 Except where C.7.2 applies, in the event of the Resident’s death the Council’s Contribution shall be paid for 3 complete days after the date of death (the date of the Resident’s death being day zero) or up to such a date as may be agreed between the Council and the Provider. The Resident’s Contribution shall be due for 3 complete days after the date of death (the date of the Resident’s death being day zero), but for the avoidance of doubt the Council shall not be liable for this.

C.7.2 Where the Resident’s death occurs within three days of the end of a Short Term Placement, the Council’s Contribution shall be paid until the date the Placement was due to end in terms of the Individual Placement Agreement.

**C.8 FREE PERSONAL AND NURSING CARE PAYMENTS**

C.8.1 If any legislative provision concerning Free Personal and Nursing Care Payments comes into force during the term of the Contract and that provision conflicts with any provision of the Contract then the conflicting legislative provision shall take precedence over the contractual provision.

**C.9 SUPPORTING FINANCIAL DOCUMENTATION**

C.9.1 From time to time the Provider shall be expected to demonstrate to the Council the ongoing financial viability of the Service and also in situations where the Service is deficient to demonstrate that any expenditure the Provider claims to be incurring on, for example Staff and food are being reasonably incurred. The Provider shall provide either:

1. For Companies, the Audited accounts of the company, certified by their accountants, if so requested. These accounts must comprise a profit and loss account and a balance sheet. In the case of limited companies their most recent audited accounts must be submitted but for those companies which qualify under Sections 477 to 481 of the Companies Act 2006, this shall be a copy of their most recent abbreviated accounts submitted to the Registrar of Companies;
2. [For partnerships, sole traders and unincorporated associations the required information must be submitted in the format shown in Schedule 7 [insert local arrangements] and be certified by the Provider's Accountant. As an alternative it shall be acceptable for the Provider to submit a copy of their most recent audited accounts];
3. In the case of a Provider recently commencing business and consequently unable to submit financial information as above the Council reserves the right to seek appropriate financial and/or credit references and a business plan.

C.9.2 The Provider agrees to supply the Council with any financial information requested by the Care Inspectorate under the Regulation of Care Services (Requirements as to Care Services)(Scotland) Regulations 2002, unless the Council has agreed that the Provider may provide alternative information, in which case the information required shall be set out in Schedule 7.

**C.10 MANAGEMENT OF RESIDENT’S FINANCES**

C.10.1 The Provider shall be obliged, where appropriate or as required, to manage the finances of the Resident within the Care Home in accordance with Part 4 of the Adults with Incapacity (Scotland) Act 2000 ("the 2000 Act") and the Code of Practice for Managers of Authorised Establishments. Where the Provider has given notice to the Care Inspectorate to the effect that Part 4 of the 2000 Act shall not apply to the Provider, then the Provider shall at the same time notify the Council as such.

C.10.2 The Council shall give the Provider any relevant information it holds on how a Resident's finances are to be managed. The arrangements for managing the Resident’s finances shall be included in the review process as detailed in Clause A.5.3. Between reviews, the Provider shall report any concerns about the management of the Resident’s finances to the Council.

C.10.3 Where the Provider is appointee for the Resident, they shall maintain complete, accurate and up-to-date records of all income and expenditure including the collection and payment of fees and any Additional Service Charges and Extras. The Resident or their Representative shall be supported to examine and understand such records and such records shall be immediately available to the Resident or their Representative or the Council acting on their behalf. The Provider must be able to account for the balance of finances of any Resident at any time.

C.10.4 Should the Provider be managing the finances of the Resident under Part 4 of the 2000 Act or as DWP appointee or simply holding the Resident’s personal allowance on their behalf, the Provider shall:-

1. hold sufficient cash to meet incidental expenses for any two week period and allow the Resident easy and flexible access to their funds;
2. hold the Resident’s personal funds over £500 in their own interest bearing accounts separate from those of other Residents and from those of the Provider;
3. not combine the personal allowances of the Residents to purchase items to be used communally;
4. use the Resident's personal allowance or any savings the Provider manages on behalf of the Resident to provide extra benefits to the Resident that are personal to the Resident;
5. provide guidance to Staff on expenditure of the Resident's personal allowance, particularly for a Resident with mental incapacity;
6. ensure that the way monies must be spent on behalf of the Resident is recorded in the Resident’s Care Plan;
7. notify the Council in writing where the Resident is in receipt of free personal and/or nursing care and the Provider becomes aware that their capital has reduced to close to the statutory capital limit;
8. consult the Care Manager regarding any significant items of expenditure out of the President’s personal funds not agreed in the Care Plan;
9. confirm the arrangements for management of the Resident’s finances in writing to the Resident and/or their Representative and the Care Manager.

C.10.5 The Provider shall not use any part of the Resident’s personal allowance to pay for their Care or any Additional Service Charges due by the Resident to the Provider.

**This is the Schedule 1 referred to in the foregoing Standard Residential Care Home Contract between the Provider and the Council.**

**Schedule 1a**

**ADDITIONAL SERVICES**

**Schedule 1b**

**PRE-CONDITIONS**

**This is Schedule 2 referred to in the foregoing Standard Residential Care Home Contract (ELC-19-2131) between the Provider and the Council and sets out the approach to incentivising quality and which the agreed fee rates which shall be paid where the Provider meets the quality standards detailed hereunder.**

**Schedule 2**

Adult Services  
Randall House  
Macmerry Business Park  
Macmerry EH33 1RW  
T: 01875 824 309  
www.eastlothian.gov.uk/elhscp

<Insert Council Address>



|  |
| --- |
| **Schedule 2 of the Standard Residential Care Home Contract** |

**INDIVIDUAL PLACEMENT AGREEMENT (IPA)**

|  |
| --- |
| This IPA is made under the Standard Residential Care Home Contract between the Provider and Purchaser named below.  The Individual Support Terms for Residents under the Standard Residential Care Home Contract are incorporated into the IPA, as far as applicable and are subject to variation under the specific terms of this IPA.  The Support Plan and/or any other information relevant to the delivery of Services for the Supported Person supplied to the Provider by the Purchaser shall also form part of the Individual Placement Agreement.  If for any reason, the Provider is unwilling to accept the Placement on the terms set out within the IPA, the Provider shall notify the Council of this immediately. Full terms and conditions relating to the contract are available at [www.eastlothian.gov.uk/carehomecontract](http://www.eastlothian.gov.uk/carehomecontract) |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **SECTION 1 – PARTIES TO THE IPA** | | | | | |
| * 1. **The Purchaser** | | | | **1.2 The Provider** | |
| Name of Purchasing Council |  | | | Provider Name |  |
| Contact address |  | | | Contact address |  |
|  | | | | | |
| **SECTION 2 –SUPPORT ARRANGEMENT DETAILS** | | | | | |
| Name of Supported Person: | |  | | | |
| Date of Birth: | |  | MOSAIC number : | |  |
| Start date of IPA: | |  | End date: *(or “ongoing” if the placement is to be permanent)* | |  |
| 1. Core Price per week | | £ | | | |
| 1. Residents Contribution per week | | £ | | | |
| 1. Net Placement Cost   ***(a minus b)*** | | £ | | | |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **SECTION 3 – ADDITIONAL SERVICES FORM** | | | | |
| **ADDITIONAL SERVICES**  Please detail any agreed Additional Services and one-off requirements, including the unit used for the price, that are to be provided, the purpose, and specify the weekly Additional Services Price. | | | | |
| **Details of Additional Service**  Hours Purpose | | **Start Date** | **End Date** | **Additional Services Price (per week)** |
|  |  |  |  | £ |
|  |  |  |  | £ |
|  |  |  |  | £ |
| 1. **Total Weekly Additional Services Cost** | | | | £ |
| **Total Weekly Cost**  ***(c + d)*** | | | | £ |

|  |
| --- |
| **SECTION 4 – RESIDENTS PERSONAL ALLOWANCE** |

|  |  |
| --- | --- |
| The resident shall retain the following amount for their personal allowance, including any savings disregard: | £ |

**This is the Schedule 3 referred to in the foregoing Standard Residential Care Home Contract between the Provider and the Council .**

**Schedule 3**

**NOMINATED OFFICERS**

The undernoted person/staff are those whom the Provider and the Council nominate to be the appropriate contact points, unless otherwise notified in writing by either Party to the other, for matters relating to the Care provided in the Care Home or finance/administrative matters or contractual matters. A Resident’s care management issues should be addressed to the Resident’s nominated Care Manager, as informed through the Individual Placement Agreement

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Provider’s Nominated Officers** | | | **Council’s Nominated Officers** | |
| **Care (A)** | **Finance/Administration (B)** | **Contractual Matters (C)** | **Finance/Administration (A)** | **Contractual Matters (B)** |
| Name: …............................... | Name: …............................... | Name: …............................... | Name: …............................... | Name: …............................... |
| Designation: .......................... | Designation: .......................... | Designation: .......................... | Designation: .......................... | Designation: .......................... |
| Address: ............................… | Address: ............................… | Address: ............................… | Address: ............................… | Address: ............................… |
| ..............……………...........… | ..............……………...........… | ..............……………...........… | ..............……………...........… | ..............……………...........… |
| ………….............................… | ………….............................… | ………….............................… | ………….............................… | ………….............................… |
| Telephone No: ...................... | Telephone No: ...................... | Telephone No: ...................... | Telephone No: ...................... | Telephone No: ...................... |
| Fax No: ………………………. | Fax No: ………………………. | Fax No: ………………………. | Fax No: ………………………. | Fax No: ………………………. |
| E-mail address:  ………………………………… | E-mail address:  ………………………………… | E-mail address:  ………………………………… | E-mail address:  ………………………………… | E-mail address:  ………………………………… |

**This is the Schedule 4 referred to in the foregoing Standard Residential Care Home Contract between the Provider and the Council.**

**Schedule 4**

**DECLARATION OF FINANCIAL VIABILITY**

I declare that I have been trading for a minimum of 24 months and I can supply, with 1 weeks’ notice, audited annual accounts for that period.

Or (where the company has not been trading for 24 months and East Lothian Council agrees) I declare that I can provide a parent company guarantee (East Lothian Council will supply a template parent company guarantee).

I declare that for the most recent 2 years of accounts that:

1. The audit opinion is unqualified
2. The accounts are prepared on an ongoing going concern basis
3. The profit and loss account shows a net profit
4. The balance sheet is positive i.e. total assets exceed total liabilities
5. The net assets are positive i.e. current assets exceed current liabilities

I declare that I know of no reason why I would cease trading for financial related reasons over the period of this contract.

I declare that should thereby any indication that the care home’s financial viability is called into question then I will advise the Council of this within 1 week of this coming to my attention.

**This is the Schedule 5 referred to in the foregoing Standard Residential Care Home Contract between the Provider and the Council**

**Schedule 5**

**RESIDENCY AGREEMENT PROFORMA FOR PERMANENT CARE PLACEMENTS**

RESIDENCY AGREEMENT

**between**

**………………………………….(Resident)**

**and**

**…………..……………………...(Provider)**

**for the provision of care and accommodation at**

**…………..…………………..(Care Home) in**

**Room ………………………….**

This is the Written Agreement required by National Care Standards that sets out the terms and conditions of residency between the Resident and the Provider and links to the Provider’s contract with <insert Council name>.

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9. Payment of Fees

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Schedule 1 - Current list of Extras and their prices

**1. Aims, Objectives and Principles of the Service**

We, the Provider shall meet all of your needs as assessed by <insert name of Council > in your Care Assessment in relation to accommodation, equipment, meals, activities, support & supervision, personal care, including, where applicable, nursing care.

The Service that you receive shall be flexible and designed to meet your needs and achieve the outcomes as specified in your Care & Support Plan and detailed in your Personal Plan. We shall aim to ensure these outcomes identified as important and relevant to you at the time of placement and set out at subsequent reviews are met. We shall employ sufficient qualified and suitably trained and experienced Staff, and ensure they are available to deliver the Service at all times.

A key aim of providing the Service is to maintain your abilities as far as possible, and to avoid creating further dependencies, whilst at the same time ensuring your safety, security, comfort, and enjoyment of life within our Care Home.

The Service that you receive shall comply with the relevant Care Standards, with relevant legislation, and with best practice guidelines relating to the provision of residential and nursing care, and shall promote the principles behind the Care Standards, which include dignity, privacy, choice, safety, realising potential, equality and diversity. A copy of the Care Standards shall be available on request from either your Care Manager or the Care Home. Upon request, we shall be pleased to make available copy(ies) of Inspection Reports issued by the Care Inspectorate in respect of our Care Home.

We shall follow the requirements set out in this Residency Agreement and the National Care Home Contract. A copy of the Care Home Contract may be obtained from your Care Manager.

You and your Representative shall be consulted on all significant proposals, which affect your life or comfort, and your views shall be taken into account.

You and your Representative shall be offered a range of opportunities to give your views, make comments, and offer ideas, both individually and in groups, about the Service provided.

**2. Definitions**

“**Care Assessment**” means the community care assessment of your needs which is arranged and approved by the Council.

“**Care Inspectorate**” means Social Care & Social Work Improvement Scotland, a national body which regulates care services and having its Head Office at Compass House, 11 Riverside Drive, Dundee and its local office at [Local Care Inspectorate address and telephone number].

“[**Care Manager**]” means the person chosen by <insert name of Council > to assess, oversee and review the care provided to you by us.

“**Care Standards**” means the National Care Standards for Care Homes for Older People which describe what you can expect to receive from us.

“**Individual Placement Agreement”** means the letter and/or other document(s) issued by <insert name of Council > to the Care Home and copied to yourself, confirming your placement and its details.

“**Personal Plan**” means the plan developed between us which details your needs, target outcomes, and preferences, and sets out how these shall be met in a way that you find acceptable.

**3. Trial Period**

3.1 The first [four/six weeks] of your stay shall be regarded as a Trial Period to ensure that the Care Home is suitable for you. This period may be extended by agreement between you, us and <insert name of Council > to allow <insert name of Council > further consideration of your care needs.

**4. Accommodation**

4.1 Your room shall be a single / double / en-suite / [delete as appropriate] furnished room which we shall maintain in good decorative order and which shall include a lockable facility. Should you wish, we shall provide a lock and key for your room. You shall only be offered a shared room where this is your request.

4.2 No tenancy of any kind is intended to be created in respect of the occupancy of your room. You shall only be requested to move from your appointed room if it is absolutely necessary, and only with your consent and consent of <insert name of Council > in advance, except in the event of an emergency. Following the emergency, which necessitated the move, you shall be returned to your former room if you so request and if appropriate.

4.3 You are welcome to bring personal possessions and furnishings into the Care Home to personalise your room, provided that other Residents or Staff are not inconvenienced or put at risk. We shall give you a written inventory of your possessions and furnishings upon your admission to the Care Home, and we shall keep a copy for our records and shall update it as appropriate.

It must be noted that electrical items are subject to testing in order to ensure safety and we cannot allow unsafe appliances to be used within the Care Home. You are responsible for having equipment safety tested prior to admission and we shall require evidence that this has been satisfactorily carried out. We shall be responsible for subsequent safety testing, but repair and replacement of equipment belonging to you remains your own responsibility.

Any furnishings and furniture that you wish to bring into the Care Home must comply with fire safety requirements. We reserve the right to refuse to allow any item to be brought into the home where we consider it to be a fire risk or other hazard.

4.4 We shall provide light and heat and shall explain to you how you may control the temperature and lighting level in your room.

4.5 We shall ensure that your room is in good decorative order. If you choose to have your own room decorated to reflect your own taste you shall meet any additional costs incurred.

4.6 We shall ensure a high standard of cleanliness in your room and throughout the Care Home which shall also be kept free of offensive odours.

4.7 We shall provide you with bed linen, towels, flannels, sponges, toiletries and similar items for your own use to meet your needs, together with a laundry service for your machine washable personal clothing. Bed linen shall be changed weekly and as necessary. Personal laundry should be discretely marked or labelled to enable us to identify it as yours after laundry and ensure its return. If you require assistance labelling or marking clothes we shall be pleased to help. As the machines are industrial, clothing may wear out quicker than in a domestic situation. Please note that we are not responsible for supplying you with personal clothing.

4.8 Within the Care Home you shall have unrestricted access to:

List (e.g. your own room, specified communal areas, gardens, etc.) \*

\* amend as necessary

4.9 We shall provide you with a choice of menu for breakfast, lunch and evening meal which shall accommodate your dietary needs and, as far as practicable, your personal preferences. Snacks and drinks are available throughout the day and night.

4.10 Either   
  
There is a policy of no smoking throughout the Care Home.

or

You cannot smoke in your bedroom but you may smoke in the designated smoking areas in the Care Home [*insert locations*].

4.11 Either   
  
We have a policy that no alcohol may be consumed in the Care Home.

or

You are free to consume alcohol if you wish. If we have concerns about the effects on you, your medication and /or other Residents or members of Staff, we shall review this together in your Personal Plan.

**5. Care to be provided**

5.1 We shall provide you with personal care in accordance with your assessed needs and Care & Support Plan as supplied to us by your Care Manager, a copy of which shall be given to you by your Care Manager. We shall develop this with you into a more detailed Personal Plan during your Trial Period in the Care Home. We shall then review this with you as required, and at least every 6 months.

5.2 Your Care Manager shall arrange a formal review of your placement at the end of your Trial Period and shall inform you and/or your Representative of subsequent review arrangements.

5.3 Where your care needs change significantly we shall request a review with your Care Manager.

5.4 Either   
  
We offer nursing care, and shall provide this to you where this has been agreed in your Care Plan.

or

Whilst we do not offer nursing care ourselves, we shall make arrangements with the National Health Service (NHS) Community Nursing Service on your behalf.

5.5 We shall choose a named member of our Staff to be your key worker who shall be responsible for overseeing your day to day care, and to discuss with you your care needs on an ongoing basis and how the service can best help to meet your identified outcomes.

5.6 You may still use the services of your own general practitioner (GP), if the GP so agrees, or we shall assist you to transfer to a local GP. If you register privately with a GP the supply of drugs and medications shall also be private and any charges arising shall be made accordingly.

5.7 We shall enlist the support of the NHS as necessary for routine health checks and also to enable you to remain in the Care Home in the event of illness, should you so wish, unless your GP recommends alternative arrangements.

5.8 The administration of your medicines shall be discussed and agreed with you, and shall be recorded in your Personal Plan.

5.9 There shall be a choice of social and recreational activities if you wish to participate. You shall be consulted in the planning of these activities.

**6. Our Obligations To You**

We agree:

6.1 to ensure that the Care Home complies with the conditions of registration and maintain at the Care Home at all times the standard of care required by Care Inspectorate and <insert name of Council >.

6.2 to participate in an assessment of your needs in conjunction with <insert name of Council > and to ensure the development and delivery of a Personal Plan that details how care shall be delivered to you and how the outcomes identified as important for you shall be pursued.

6.3 to allow you as much personal freedom as possible and only to restrict your movements for your personal safety or the safety of others or to the extent agreed in advance with you and <insert name of Council >.

6.4 to contact your Representative and Care Manager in the event that you are involved in an accident or incident, as well as any other authorities who require to be notified.

6.5 to provide on request safekeeping for your personal effects required to be brought into the Care Home up to such limit of value as we may from time to time determine. Further details shall be made available upon request.

6.6 to share information related to your care with your care manager on request and otherwise to treat all information relating to you as confidential and we shall ensure that you and/or your Representative have access to your Personal Plan and any other information relevant to you.

6.7 to assist you where possible to maintain a lifestyle of your choice.

6.8 to recognize, support and assist you in maintaining links with your local community provided this does not interfere with the freedom of the other Residents in the Care Home.

6.9 to ensure you can make and receive telephone calls in private and have access to the internet and to television channels available without subscription, either in a common area using equipment provided by the Care Home or in your own room using equipment you have supplied yourself

6.10 to welcome your visitors to the Care Home without prior notice, at all reasonable times, provided their visits do not inconvenience other Residents.

6.11 to support you if you decide to refuse to see visitors and if requested we shall advise visitors of your decision.

6.12 to ensure Care Home Staff are not permitted to become an Executor in respect of your Shall.

6.13 to ensure Care Home Staff are not allowed to receive hospitality and acceptance of gifts (including gifts of money) from you or your family, unless this has been previously agreed with us and the <insert name of Council >.

6.14 to work with you (and/or your representative) to ensure a smooth transition should you choose or require to move out of the Care Home.

**7. Your Obligations To Us**

You agree:

7.1 to inform us of any medication that you administer yourself, and allow us to monitor this.

7.2 that you have a responsibility for the safety of the Care Home which you share with others, therefore safety regulations must be observed.

You are asked to observe:

i) Fire drills and inspections are carried out at regular intervals and your co-operation is essential.

ii) We have clear guidelines on smoking, alcohol and drugs which are issued for the protection of all Residents and Staff.

7.3 to inform us any time that you leave the Care Home, whether unaccompanied or with visitors, and also to give us an approximate time of return. We shall not be responsible for you once you are outside the Care Home unless you are accompanied by a member of our Staff.

7.4 that should you wish to install a telephone, and/or related services e.g. broadband, in your room, you shall be responsible for meeting the costs of installation, rental and call charges.

7.5 Either  
  
that should you wish to bring a domestic pet into the Care Home and you have been assessed as able to care for the pet without significant support, you may do so with our agreement and the agreement of the other Residents. You shall be responsible for the care of the pet together with any costs including food and veterinary bills.

or  
  
that you shall not bring a domestic pet into the Care Home. This does not preclude visitors bringing their pets with them during a visit with our agreement and the agreement of the other Residents.

7.6 to leave the Care Home permanently on termination of this Agreement.

**8. Suggestions and Complaints**

8.1 You are welcome to make comments or suggestions at any time in respect of the service you receive from us, and we shall respond to this in writing within 14 days at the latest acknowledging this and setting out our response and the reasons for our response.

8.2 Should you wish to receive independent assistance or advice we shall help you to contact your Care Manager or other relevant advocate.

8.3 Should you be dissatisfied with any aspect of our service, you have the right to complain to us using our complaints procedure, a copy of which is attached to this Agreement and further copies of which are available at any time from any of our staff. You may also complain directly to, the Care Inspectorate (who may be contacted at *<insert address of local Care Inspectorate office>*) and/or <insert name of Council > (who may be contacted at <insert address of Council) office>), or, if your complaint is about a member of staff who is registered with them, to the Scottish Social Services Council, (who may be contacted at *<insert address of* SSSC). We would encourage you to talk to us in the first instance. Your key worker or Care Home manager shall be pleased to discuss with you or your Representative, any concerns that you may have. If we are unable to resolve the issue to your satisfaction, and you wish to refer your complaint to the Care Inspectorate or <insert name of Council >, we shall assist you to do this, but it is your right to use any of these complaint routes at any point, or any combination at the same time.

**9. Payment of Fees**

9.1 The weekly fee is detailed in the Individual Placement Agreement issued to you by <insert name of Council>. This sets out the amount of the contribution you are required to pay as determined by a financial assessment by <insert name of Council >.

9.2 Any changes in your contribution, which may include the annual uprating of Department for Work & Pensions benefits and/or any changes to your financial circumstances or to the cost of your placement, shall be notified to you by <insert name of Council >.

Either

9.3 Where we collect your contribution, [insert either a) or b)]

a) Payment shall be in arrears although we may invoice you in advance. If the timing of your Department for Works and Pensions benefits payments prevents you from being able to meet the arrangements as set out in 9.4 below, we shall be pleased to arrange an alternative plan with you and your Care Manager.

b) Payment shall be [*to a maximum of 4 weeks*] in advance. If the timing of your Department for Works and Pensions benefits payments prevents you from being able to meet the arrangements as set out in 9.4 below, we shall be pleased to arrange an alternative plan with you and your Care Manager.

Or

9.3 Where <insert name of Council > collects your contribution, your Care Manager shall advise you of the <insert name of Council > collection arrangements.

9.4 Payment arrangements are as follows:

*<insert payment arrangements>*

9.5 Where we collect your contribution and you fail to pay an invoice within 14 days from the due date or 14 days from the date of the invoice (whichever is the later), then we shall inform <insert name of Council > who shall seek to recover the debt on our behalf.

9.6 *Either*   
  
If you are admitted to hospital we shall keep your room for six weeks. Subject to agreement between the <insert name of Council > and ourselves, this period may be extended if necessary. You shall be required to continue to pay your contribution throughout your hospital stay.

*Or*  
  
If you are admitted to hospital and you are in receipt of Free Personal and/or Nursing Care payments, you shall be entitled to continue to receive this for the first 14 days, after which you shall be required to pay the full weekly fee thereafter. Upon your discharge from hospital your entitlement to Free Personal and/or Nursing Care shall normally be reinstated by <insert name of Council >.

9.7 If you terminate your placement at the Care Home without giving the required notice as detailed in Section 14, your fees shall be charged at the normal weekly rate for the unexpired notice period.

9.8 In the event of your death, your fees shall be chargeable for a further three days (or less if your room is reoccupied within this three day period) after which this Agreement shall terminate. Under normal circumstances we shall ask that your room be cleared within three days. However if this is not possible, we can make arrangements to clear your room and store items at the Care Home for seven days. If there has been any overpayment or we have been holding money on your behalf this shall be refunded to your Estate.

**10. Additional Charges**

Additional Service Charges

10.1 Either  
  
There is no Additional Service Charge over and above the Council’s Approved Rate for the cost of your Care and Accommodation. If you wish to purchase Extras, details are set out in Section 11.

Or

10.1 There is an Additional Service Charge of [*insert amount*] over and above the Council’s Approved Rate for the Service you have chosen. This Additional Service Charge covers the following additional facilities, goods and services which have been agreed with the <insert name of Council >:

*List facilities, goods and services in accordance with Schedule 1 of National Care Home Contract.*

If you wish to purchase Extras, details are set out in Section 11.

10.2 TheAdditional Service Charge is payable by a third party, or by yourself, where you have sufficient savings or income (excluding your personal allowance) to pay.

Either

10.3 Where we collect your contribution towards your fees payment arrangements for the Additional Service Charge shall be the same as those for your Contribution towards fees.

or

10.3 Where the (<insert name of Council > collects your contribution towards your fees the Additional Service Charge must be paid directly to us. Payment arrangements are as follows:

*<insert payment arrangements>*

10.4 Where you consider that we are not providing the agreed Additional Services we shall be pleased to discuss your concerns. You have the right to use our suggestions and complaints procedures as detailed in Section 8 of this Agreement.

10.5 If you have chosen to pay an Additional Service Charge and these payments have not been paid by you or your Representative for 4 continuous weeks or are 4 weeks in arrears, we shall arrange for a review of your Placement to take place as soon as is practicable after which we may require you to move to less expensive accommodation within the Care Home. If there is no such accommodation available, you may be required to move to another Care Home. Should this be necessary, we shall fully cooperate with you, <insert name of Council > and/or your Representative to ensure that suitable alternative accommodation is secured.

10.6 We have agreed with the <insert name of Council > that the Price for your Care and Accommodation which includes the Additional Service Charge shall remain fixed until <Insert date >.

Additional Care Charges [If Applicable]

* 1. The <insert name of Council > has agreed we shall provide you with extra care consisting of:

*<insert detailed additional inputs / arrangements>* to meet your needs which are above the normal level expected for this type of Care Home.

10.8 Review arrangements: these additional care needs shall be reviewed in line with Section 5.1 and more frequently if necessary.

**11. Extras**

11.1 We can arrange the following extra goods or services in addition to those covered by the Price for your Care and Accommodation. You shall be responsible for the payment of these goods or services and we shall advise you of their cost beforehand. The current price of such extras is detailed in Schedule 1

Insert list of extras {Examples of which may include:

* Hairdressing
* Aromatherapy Massage
* Newspapers
* Shopping Trolley
* Dry cleaning
* Mobile Clothing Shop
* Private telephone line rental and calls

In the absence of free provision by the NHS, the following may also be provided, but shall be charged in addition to the price for your Care and accommodation.

* Chiropody
* Opticians
* Dentistry
* Physiotherapy
* Transportation and Staff escorts to and from medical appointments}

11.2 We shall issue you with full, detailed separate invoices in arrears in respect of any extra goods or services that you request us to arrange or provide. *<insert invoicing and payment arrangements>*

**12. Personal Expenses Allowance**

12.1 Should we become your appointee we shall maintain records of income and expenditure involving the collection and payment of your fees and any additional charges. We shall support you and/or your Representative in the examination and understanding of such records, which we shall make available upon request.

12.2 Where we manage your finances, whether we act as appointee for receipt of your Department for Work and Pensions benefits or simply, where we manage your personal allowance on your behalf, we shall:-

i) hold sufficient cash to meet incidental expenses for a two week period and allow you easy and flexible access to your funds;

ii) hold your personal funds over £500 in your own interest bearing account [insert amount if lower than £500];

12.3 We shall not use any part of your personal allowance to pay towards any part of the cost of your care.

**13. Insurance**

13.1 Whilst we have insurance covering all aspects of the provision of the service, this does not extend to your personal property *[exceeding the value of £XXX]*. We shall make good any loss or damage to your property which is the result of our negligence, but you may wish to make your own arrangements to insure all personal property which you bring into the Care Home. Further details of our insurance covers shall be made available upon request.

13.2 We shall not be held liable for any items of personal possessions and furnishings not notified to us for inclusion on the inventory.

**14. Notice and Termination Periods for this Agreement**

14.1 Throughout the duration of your initial Trial Period in the Care Home:-

We shall after consultation with <insert name of Council >, be entitled to give a minimum of 7 days’ written notice of our intention to terminate your placement in the Care Home.

You or your Representative may terminate your placement in the Care Home by giving not less than 7 days’ notice. If you leave before the end of this period of notice you are still liable to pay us your basic contribution for the full 7 days’ notice period. After your departure, you shall not be required to pay for any day within the remainder of your notice period where your room has been occupied by another Resident.

14.2 After your Trial Period you and/or your Representative may terminate this Agreement for any reason by giving not less than 14 days written notice to both the <insert name of Council > and to us. If you leave before the end of this period of notice you are still liable to pay us your contribution for the full 14 days notice period. After your departure, you shall not be required to pay for any day within the remainder of your notice period where your room has been occupied by another Resident.

14.3 We cannot tell you to leave the Care Home without a review being held first, involving you/your Representative, your Care Manager and any other relevant professional involved in your Care. The reasons for the review shall be fully discussed together with possible solutions before any final decision is made on your continued stay within the Care Home.

14.4 After a review has taken place and where we and <insert name of Council > agree, we shall be entitled to terminate this Agreement upon giving you and the <insert name of Council > 4 weeks’ notice in writing, or less where both we and the <insert name of Council > agree that:

i) your physical and/or mental condition deteriorates to the extent that we can no longer provide the service required to meet your assessed needs.

ii) your behaviour is persistently such that it causes a serious risk to the welfare or is detrimental to the peaceful enjoyment of other Residents or poses a serious risk to the safety of Staff or visitors to the Care Home.

iii) you have persistently or seriously broken this Agreement.

14.5 In the event that we are to sell the Care Home as a going concern to another care provider, we shall give you not less than 4 weeks’ written notice.

14.6 In the event that we are to close the Care Home, or make changes to our services to the extent that we are no longer be able to keep your placement in the Care Home we may terminate this Agreement by giving not less than 13 weeks written notice to you and <insert name of Council >. We shall fully cooperate with you, <insert name of Council > and/or your Representative to ensure that suitable alternative accommodation is secured.

14.7 During any notice period of this Agreement we shall co-operate with the <insert name of Council > to ensure that your needs are met throughout.

14.8 In the event of your death, this Agreement shall terminate automatically three days after the date of your death.

**15. Arrangements Following Death of a Resident**

15.1 We shall respect your cultural, spiritual and religious wishes related to death and these shall be recorded in your Personal Plan.

15.2 In the event of your death any items of jewellery, cash, bank books and insurance documents, which have been held in the Care Home for safekeeping, shall be forwarded to your next of kin, Executor of your Shall or legal representative.

15.3 In the event of your death any fees outstanding to <insert name of Council > or Care Home shall be charged to your Estate.

15.4 If you have not made a Shall and have no known next of kin or legal representative we shall forward your personal items to the office of the Procurator Fiscal, who shall attempt to trace your relations.

15.5 If you do not have anyone who can arrange your funeral, we shall make the necessary arrangements in consultation with the person responsible for the payment of the costs.

**This is Schedule 6 referred to in the foregoing Standard Residential Care Hone Contract between the Provider and the Council**

**Schedule 6**

**RESIDENCY AGREEMENT PROFORMA FOR RESPITE/SHORT TERM CARE PLACEMENTS**

**RESIDENCY AGREEMENT**

**between**

**………………………………….(Resident)**

**and**

**…………..……………………...(Provider)**

**for the provision of care and accommodation at**

**…………..…………………..(Care Home) in**

**Room ………………………….**

This is the Written Agreement required by National Care Standards that sets out the terms and conditions of residency between the Resident and the Provider and links to the Provider’s contract with <insert Council’s name>.

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12. Notice and Termination Periods for this Agreement

13. Arrangements Following Death of a Resident

Schedule 1 - Current list of Extras and their prices

**1. Aims, Objectives and Principles of the Service**

We, the Provider shall meet all of your needs as assessed by <insert name of Council > in your Care Assessment in relation to accommodation, equipment, meals, activities, support & supervision, personal care, including, where applicable, nursing care.

The Service that you receive shall be flexible and designed to meet your needs and achieve the outcomes as specified in your Care & Support Plan and detailed in your Personal Plan. We shall aim to ensure these outcomes identified as important and relevant to you at the time of placement are met. We shall employ sufficient qualified and suitably trained and experienced Staff, and ensure they are available to deliver the Service at all times.

A key aim of providing the Service is to maintain your abilities as far as possible, and to avoid creating further dependencies, whilst at the same time ensuring your safety, security, comfort, and enjoyment of life within our Care Home.

The Service that you receive shall comply with the relevant Care Standards, with relevant legislation, and with best practice guidelines relating to the provision of residential and nursing care, and shall promote the principles behind the Care Standards, which include dignity, privacy, choice, safety, realising potential, equality and diversity. A copy of the Care Standards shall be available on request from either your Care Manager or the Care Home. Upon request, we shall be pleased to make available copy(ies) of Inspection Reports issued by the Care Inspectorate in respect of our Care Home.

We shall follow the requirements set out in this Residency Agreement and the National Care Home Contract. A copy of the Care Home Contract may be obtained from your Care Manager.

You and your Representative shall be consulted on all significant proposals, which affect your experience in the Care Home, and your views shall be taken into account.

You and your Representative shall be offered a range of opportunities to give your views, make comments, and offer ideas, both individually and in groups, about the Service provided.

**2. Definitions**

“**Care Assessment**” means the community care assessment of your needs which is arranged and approved by the Council.

“**Care Inspectorate**” means Social Care & Social Work Improvement Scotland, a national body which regulates care services and having its Head Office at Compass House, 11 Riverside Drive, Dundee and its local office at [Local Care Inspectorate Address and Telephone Number].

“[**Care Manager**]” means the person chosen by <insert name of Council > to assess, oversee and review the care provided to you by us.

“**Care Standards**” means the National Care Standards for Care Homes for Older People which describe what you can expect to receive from us.

“**Individual Placement Agreement”** means the letter and/or other document(s) issued by <insert name of Council >to the Care Home and copied to yourself, confirming your placement and its details.

“**Personal Plan**” means the plan developed between us which details your needs, target outcomes, and preferences, and sets out how these shall be met in a way that you find acceptable.

**3. Accommodation**

3.1 Your room shall be a single / double / en-suite / [delete as appropriate] furnished room which we shall maintain in good decorative order and which shall include a lockable facility. Should you wish, we shall provide a lock and key for your room. You shall only be offered a shared room where this is your request.

3.2 No tenancy of any kind is intended to be created in respect of the occupancy of your room. You shall only be requested to move from your appointed room if it is absolutely necessary, and only with your consent and consent of the <insert name of Council > in advance, except in the event of an emergency. Following the emergency, which necessitated the move, you shall be returned to your former room if you so request and if appropriate.

3.3 You are welcome to bring personal possessions and furnishings into the Care Home to personalise your room, provided that other Residents or Staff are not inconvenienced or put at risk. We shall give you a written inventory of your possessions and furnishings upon your admission to the Care Home, and we shall keep a copy for our records and shall update it as appropriate.

It must be noted that electrical items are subject to testing in order to ensure safety and we cannot allow unsafe appliances to be used within the Care Home. You are responsible for having equipment safety tested prior to admission and we shall require evidence that this has been satisfactorily carried out. We shall be responsible for subsequent safety testing, but repair and replacement of equipment belonging to you remains your own responsibility.

Any furnishings and furniture that you wish to bring into the Care Home must comply with fire safety requirements. We reserve the right to refuse to allow any item to be brought into the Care Home where we consider it to be a fire risk or other hazard.

3.4 We shall provide light and heat and shall explain to you how you may control the temperature and lighting level in your room.

3.5 We shall ensure that your room is in good decorative order.

3.6 We shall ensure a high standard of cleanliness in your room and throughout the Care Home which shall also be kept free of offensive odours.

3.7 We shall provide you with bed linen, towels, flannels, sponges, toiletries and similar items for your own use to meet your needs, together with a laundry service for your machine washable personal clothing. Bed linen shall be changed weekly and as necessary. Personal laundry should be discretely marked or labelled to enable us to identify it as yours after laundry and ensure its return. If you require assistance labelling or marking clothes we shall be pleased to help. As the machines are industrial, clothing may wear out quicker than in a domestic situation. Please note that we are not responsible for supplying you with personal clothing.

3.8 Within the Care Home you shall have unrestricted access to:

List (e.g. your own room, specified communal areas, gardens, etc.) \*

\* amend as necessary

3.9 We shall provide you with a choice of menu for breakfast, lunch and evening meal which shall accommodate your dietary needs and, as far as practicable, your personal preferences. Snacks and drinks are available throughout the day and night.

3.10 Either   
  
There is a policy of no smoking throughout the Care Home.

or

You cannot smoke in your bedroom but you may smoke in the designated smoking areas in the Care Home [*insert locations*].

3.11 Either   
  
We have a policy that no alcohol may be consumed in the Care Home.

or

You are free to consume alcohol if you wish. If we have concerns about the effects on you, your medication and /or other Residents or members of Staff, we shall review this together in your Personal Plan.

**4. Care to be provided**

4.1 We shall provide you with personal care in accordance with your assessed needs and Care & Support Plan as supplied to us by your Care Manager, a copy of which shall be given to you by your Care Manager. We shall develop this with you into a more detailed Personal Plan for your stay in the Care Home.

4.2 Where your care needs change significantly we shall request a review with your Care Manager.

4.3 Either   
  
We offer nursing care, and shall provide this to you where this has been agreed in your Care Plan.

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Whilst we do not offer nursing care ourselves, we shall make arrangements with the National Health Service (NHS) Community Nursing Service on your behalf.

4.4 We shall choose a named member of our Staff to be your key worker who shall be responsible for overseeing your day to day care, and to discuss with you your care needs on an ongoing basis and how the service can best help to meet your identified outcomes.

4.5 You may still use the services of your own general practitioner (GP), if the GP so agree or we shall assist you to transfer to a local GP for the duration of your stay. If you register privately with a GP the supply of drugs and medications shall also be private and any charges arising shall be made accordingly.

4.6 We shall enlist the support of the NHS as necessary for routine health checks and also to enable you to remain in the Care Home in the event of illness, should you so wish, unless your GP recommends alternative arrangements.

4.7 The administration of your medicines shall be discussed and agreed with you, and shall be recorded in your Personal Plan.

4.8 There shall be a choice of social and recreational activities if you wish to participate. You shall be consulted in the planning of these activities.

**5. Our Obligations To You**

We agree:

5.1 to ensure that the Care Home complies with the conditions of registration and maintain at the Care Home at all times the standard of care required by Care Inspectorate and <insert name of Council >.

5.2 to participate in an assessment of your needs in conjunction with the <insert name of Council > and to ensure the development and delivery of a Personal Plan that details how care shall be delivered to you and how the outcomes identified as important for you shall be pursued.

5.3 to allow you as much personal freedom as possible and only to restrict your movements for your personal safety or the safety of others or to the extent agreed in advance with you and the <insert name of Council >.

5.4 to contact your Representative and Care Manager in the event that you are involved in an accident or incident as well as any other authorities who require to be notified.

5.6 to provide on request safekeeping for your personal effects required to be brought into the Care Home up to such limit of value as we may from time to time determine. Further details shall be made available upon request.

5.6 to share information related to your care with your care manager on request and otherwise to treat all information relating to you as confidential and we shall ensure that you and/or your Representative have access to your Personal Plan and any other information relevant to you.

5.7 to assist you, where possible, to maintain a lifestyle of your choice.

5.8 to recognize, support and assist you in maintaining links with your local community provided this does not interfere with the freedom of the other Residents in the Care Home.

5.9 to ensure you can make and receive telephone calls in private and have access to the internet and to television channels available without subscription, either in a common area using equipment provided by the Care Home or in your own room using equipment you have supplied yourself

5.10 to welcome your visitors to the Care Home without prior notice, at all reasonable times, provided their visits do not inconvenience other Residents.

5.11 to support you if you decide to refuse to see visitors and if requested we shall advise visitors of your decision.

5.12 to ensure Care Home Staff are not permitted to become an Executor in respect of your Shall.

5.13 to ensure Care Home Staff are not allowed to receive hospitality and acceptance of gifts (including gifts of money) from you or your family, unless this has been previously agreed with us and the <insert name of Council >.

5.14 to work with you (and/or your representative) to ensure a smooth transition between your own home and the Care Home

**6. Your Obligations To Us**

You agree:

6.1 to inform us of any medication that you administer yourself, and allow us to monitor this.

6.2 that you have a responsibility for the safety of the Care Home which you share with others, therefore safety regulations must be observed.

You are asked to observe:

i) Fire drills and inspections are carried out at regular intervals and your co-operation is essential.

ii) We have clear guidelines on smoking, alcohol and drugs which are issued for the protection of all Residents and Staff.

6.3 to inform us any time that you leave the Care Home, whether unaccompanied or with visitors, and also to give us an approximate time of return. We shall not be responsible for you once you are outside the Care Home unless you are accompanied by a member of our Staff.

6.4 that should you wish to install a telephone, and/or related services e.g. broadband, in your room, you shall be responsible for meeting the costs of installation, rental and call charges.

6.5 Either  
  
that should you wish to bring a domestic pet into the Care Home and you have been assessed as able to care for the pet without significant support, you may do so with our agreement and the agreement of the other Residents. You shall be responsible for the care of the pet together with any costs including food and veterinary bills.

or  
  
that you shall not bring a domestic pet into the Care Home. This does not preclude visitors bringing their pets with them during a visit with our agreement and the agreement of the other Residents.

6.6 to leave the Care Home permanently on termination of this Agreement.

**7. Suggestions and Complaints**

7.1 You are welcome to make comments or suggestions at any time in respect of the service you receive from us, and we shall respond to this in writing within 14 days at the latest acknowledging this and setting out our response and the reasons for our response.

7.2 Should you wish to receive independent assistance or advice we shall help you to contact your Care Manager or other relevant advocate.

7.3 Should you be dissatisfied with any aspect of our service, you have the right to complain to us using our complaints procedure, a copy of which is attached to this Agreement and further copies of which are available at any time from any of our staff. You may also complain directly to, the Care Inspectorate (who may be contacted at *<insert address of local Care Inspectorate office>*) and/or the <insert name of Council > (who may be contacted at <insert address of (name of Council) officer>), or, if your complaint is about a member of staff who is registered with them, to the Scottish Social Services Council, (who may be contacted at *<insert address of* SSSC). We would encourage you to talk to us in the first instance. Your key worker or Care Home manager shall be pleased to discuss with you or your Representative, any concerns that you may have. If we are unable to resolve the issue to your satisfaction and you wish to refer your complaint to the Care Inspectorate or <insert name of Council >, we shall assist you to do this, but it is your right to use any of these complaint routes at any point, or any combination at the same time.

**8. Payment of Fees**

8.1 The weekly fee is detailed in the Individual Placement Agreement issued to you by <insert name of Council >. This sets out the amount of any contribution you are required to pay as determined by a financial assessment by the <insert name of Council >.

Either

8.2 Where we collect your contribution, [insert either a) or b)]

a) Payment shall be in arrears although we may invoice you in advance. If the timing of your Department for Works and Pensions benefits payments prevents you from being able to meet the arrangements as set out in 8.4 below, we shall be pleased to arrange an alternative plan with you and your Care Manager.

b) Payment shall be [*to a maximum of 4 weeks*] in advance. If the timing of your Department for Works and Pensions benefits payments prevents you from being able to meet the arrangements as set out in 8.4 below, we shall be pleased to arrange an alternative plan with you and your Care Manager.

Or

8.2 Where the <insert name of Council > collects your contribution, your Care Manager shall advise you of <insert name of Council >collection arrangements.

8.3 Payment arrangements are as follows:

*<insert payment arrangements>*

8.4 Where we collect your contribution and you fail to pay an invoice within 14 days from the due date or 14 days from the date of the invoice (whichever is the later), then we shall inform <insert name of Council > who shall seek to recover the debt on our behalf.

8.5 In the event of your death, your fees shall be chargeable for a further three days (or less if your room is reoccupied within this three day period) after which this Agreement shall terminate. Under normal circumstances we shall ask that your room be cleared within three days. However if this is not possible, we can make arrangements to clear your room and store items at the Care Home for seven days. If there has been any overpayment or we have been holding money on your behalf this shall be refunded to your Estate.

**9. Additional Charges**

Additional Service Charges

9.1 Either  
  
There is no Additional Service Charge over and above the Council’s Approved Rate for the cost of your Care and Accommodation. If you wish to purchase Extras, details are set out in Section 10.

Or

9.1 There is an Additional Service Charge of [*insert amount*] over and above the Council’s Approved Rate for the Service you have chosen. This Additional Service Charge covers the following additional facilities, goods and services which have been agreed with the <insert name of Council >:

*List facilities, goods and services in accordance with Schedule 1 of National Care Home Contract.*

If you wish to purchase Extras, details are set out in Section 10.

9.2 TheAdditional Service Charge is payable by a third party, or by yourself, where you have sufficient savings or income to pay.

Either

9.3 Where we collect your contribution towards your fees payment arrangements for the Additional Service Charge shall be the same as those for your Contribution towards fees.

or

9.3 Where the <insert name of Council > collects your contribution towards your fees the Additional Service Charge must be paid directly to us. Payment arrangements are as follows:

*<insert payment arrangements>*

9.4 Where you consider that we are not providing the agreed Additional Services we shall be pleased to discuss your concerns. You have the right to use our suggestions and complaints procedures as detailed in Section 7 of this Agreement.

9.5 If you have chosen to pay an Additional Service Charge and these payments have not been paid by you or your Representative for 4 continuous weeks or are 4 weeks in arrears, we shall arrange for a review of your placement to take place as soon as is practicable after which we may require you to move to less expensive accommodation within the Care Home. If there is no such accommodation available, you may be required to move to another Care Home. Should this be necessary, we shall fully cooperate with you, the <insert name of Council > and/or your Representative to ensure that suitable alternative accommodation is secured.

9.6 We have agreed with the <insert name of Council >that the Price for your Care and Accommodation which includes the Additional Service Charge shall remain fixed until the end of your placement.

Additional Care Charges [If Applicable]

9.7 The <insert name of Council >has agreed we shall provide you with extra care consisting of:

*<insert detailed additional inputs / arrangements>* to meet your needs which are above the normal level expected for this type of Care Home.

**10. Extras**

10.1 We can arrange the following extra goods or services in addition to those covered by the Price for your Care and Accommodation. You shall be responsible for the payment of these goods or services and we shall advise you of their cost beforehand. The current price of such extras is detailed in Schedule 1

Insert list of extras {Examples of which may include:

* Hairdressing
* Aromatherapy Massage
* Newspapers
* Shopping Trolley
* Dry cleaning
* Mobile Clothing Shop
* Private telephone line rental and calls

In the absence of free provision by the NHS, the following may also be provided, but shall be charged in addition to the Price for your Care and Accommodation.

* Chiropody
* Opticians
* Dentistry
* Physiotherapy
* Transportation and Staff escorts to and from medical appointments}

10.2 We shall issue you with full, detailed separate invoices in arrears in respect of any extra goods or services that you request us to arrange or provide.

*<insert invoicing and payment arrangements>*

**11. Insurance**

11.1 Whilst we have insurance covering all aspects of the provision of the service, this does not extend to your personal property *[exceeding the value of £XXX]*. We shall make good any loss or damage to your property which is the result of our negligence, but you may wish to make your own arrangements to insure all personal property which you bring into the Care Home. Further details of our insurance covers shall be made available upon request.

11.2 We shall not be held liable for any items of personal possessions and furnishings not notified to us for inclusion on the inventory.

**12. Notice and Termination Periods for this Agreement**

12.1 This Agreement shall terminate automatically at the end of this respite/short term placement as detailed in the Individual Placement Agreement unless we, you and the <insert name of Council >agree to vary the duration.

12.2 In the event of your death, this Agreement shall terminate automatically three days after the date of your death.

**13. Arrangements Following Death of a Resident**

13.1 We shall respect your cultural, spiritual and religious wishes related to death and these shall be recorded in your Personal Plan.

13.2 In the event of your death any items of jewellery, cash, bank books and insurance documents, which have been held in the Care Home for safekeeping, shall be forwarded to your next of kin, Executor of your Shall or legal representative.

13.3 In the event of your death any fees outstanding to <insert name of Council >or Care Home shall be charged to your Estate.

13.4 If you have not made a Shall and have no known next of kin, or legal representative we shall forward your personal items to the office of the Procurator Fiscal, who shall attempt to trace your relations.

13.5 If you do not have anyone who can arrange your funeral, we shall make the necessary arrangements in consultation with the person responsible for the payment of the costs.

**This is the Schedule 7 referred to in the foregoing Standard Residential Care Home Contract between the Provider and the Council.**

**Schedule 7**

**AUDITED ACCOUNTS**