



COSLA Resource Pack on developing Intermediate Care in Care Homes

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COSLA resource pack on developing Intermediate Care in Care Homes – Introduction

This pack is intended for use where local strategic planning for future care and health services has identified a role for care homes in delivering intermediate care.

The first part of the pack offers guidance to those charged with commissioning such a service, whilst part two offers a model set of contract terms and conditions (including a model service specification for intermediate care within a care home setting) that can be adopted as is, or amended to suit local needs and circumstances. It is drafted as a contract let by a Council but can be readily adapted where NHS or a new partnership body is to be the purchaser. Part three offers a model introductory text for an invitation to tender for such a service, and some general advice on tendering factors to consider, but an early stage in any such development should be an engagement with your local procurement specialists.

We must stress the need on the part of any commissioning body to be clear what stage it is at in relation to the integration of health and care services, prior to any tender being issued, so that any commissioner (whether a council, a health board or a joint body where that has a legal identity) can be certain that arrangements are agreed and in place to ensure the availability of, and clear access to, supportive services, such as allied health professionals and GPs. If this is not in place and such services (which will not form part of the contract with the care home provider) are not available, then the contracted service on its own will simply not be able to deliver the outcomes sought.

The pack, and in particular part two's model contract terms and specification, is offered as a template for guidance which will require some local development. We understand that what is needed in each area will depend on the local commissioning plan developed by partners, as well as the historical pattern of services and resources underpinning these, and that this will lead to different types and levels of demand for intermediate care in care homes.

Indeed we anticipate some areas may choose not to commission from the care home sector as part of its suite of intermediate care services, where key objectives can be achieved otherwise. Where this is the case, any occasional placements requiring to be made to care homes with an intermediate care focus, may be made as short term spot purchase placements under the current National Care Home Contract, with or without the application of additional care fees as cases require. Clearly local commissioners will need to have confidence in any such home's ability to deliver an intermediate care focus for such a placement, within a generally longer term care environment, without either the benefit of an intermediate care focused staff team, or an environment specifically designed around the needs of intermediate care service users.

In such a circumstance of placement under the NCHC, the intermediate care focus will need to be spelt out all the more clearly within the Care and Support Plan given to the home, and reflected to the care manager's satisfaction within the Personal Plan the home then produces for the service user during their placement. Otherwise a real risk may be realized of placements failing to maximize rehabilitation and enablement potential, and of service users settling into the more dependent ambience of the home, leading to an avoidable long term placement.

Finally, it is important that legal opinion be sought by the commissioning agency to ensure that any developed proposal suits local policies, practices and legal interpretation.

COSLA resource pack on developing Intermediate Care in Care Homes – Part 1

This part one of the pack offers commissioners at council and/or local partnership level advice on factors likely to apply where it has been decided that a dedicated intermediate care service within one or more care homes is wanted. However a check and change process will need to be applied to ensure these match local circumstances. It also explains the thinking behind some key decisions in developing the model.

It is expected the delivery of intermediate care within independent sector care homes will be procured through tender, which may follow a competitive or negotiated route. The default tender process would be anticipated as an open competitive one, but with part of the requirement being that the service be readily accessible for users and families and local services, and be able to sustain links to service users' own communities, so effectively restricting the possible source of supply to local homes or to providers prepared to open a local facility. Certain requirements related to design and operational features of the accommodation could also be set. Thus if a particular local home already had facilities available that it was clear no other potential provider could have in place within the timescale required, then there may be a case to negotiate a tender without recourse to advert and competition.

The model offered is a block purchase, payment in arrears one, to be delivered within specialist dedicated accommodation, and with a staff group trained in, and focused on, an enabling approach and outcomes. It is considered this offers the best chance of success for service users, but it is also understood that in some areas the projected volume of intermediate care places required, or the local geography and demography, will make such an approach impractical.

There are always concerns from a buyer's standpoint about block purchase commitments, but it is felt that a block arrangement need not be problematic provided: i) the strategic planning process has accurately predicted demand for care home based intermediate care as part of a range of local services; ii) referrals and placements can be effectively managed to ensure successful throughput; iii) user satisfaction and service repute can be sustained to support acceptance of proposed placements.

Additionally, it is thought that the provision of a service located within a purpose designed environment and with a dedicated staff group will only be made available by the market where the required investment can be justified by a guaranteed level and duration of business. No assumptions have been made on the likely contract duration, as that will be for local determination, but the duration will affect the price, as investment will be required by most providers which may not be recoverable after the service contract has ended.

The issue of mixing intermediate care placements with other types of care home placement (including permanent placement) generated much debate, but it was clearly concluded that the ideal service would not mix placement types, as both the environment and staff approach are different. The size of any intermediate care service should be kept small enough to offer an environment that will assist users to retain a focus on returning home and to avoid the development of dependencies that would thwart this. This is a factor for local consideration, but generally if more than 12 to 15 places are required, then unless unit design is particularly inventive, you should consider commissioning more than one unit.

There is an assumption that a commissioned service will provide a 24/7 nurse presence to meet needs and to offer confidence to users, families, and referring professionals, in both step-up and step-down scenarios, but that apart from that, all specialist inputs will be delivered by local NHS or council personnel visiting the home. Full negotiation and agreement on this will be needed with NHS partners prior to establishing the service. The care required from the care home must be able to offer support to service users that aligns with such other professional inputs, and that provides 24/7 staff presence and support as required, plus hotel type services.

Despite the above, optional wording within the model contract allow for a service where the home will not offer nursing staff. It is for local decision which model is taken forward, taking consideration of partner NHS resources, local homes' capacities, and the experience and continuity sought for service users.

Under any model however, given the aim is for as many users to return home as possible, it is important that community based services from both health and care sectors, some of which may need to have continuing inputs beyond the intermediate care placement, are engaged with users and are committed to the provision of support throughout the placement to the care home. This will also provide a more seamless journey for a set of service users whose progress would be hampered by avoidable changes to who is involved with their care & support delivery. The precise nature of these links will depend on what your local integration arrangements are.

The model contract and specification does not make any assumption on staff levels (which is the major price determinant) but offers commissioners optional clauses to deal with this (at paragraph A.9.1). The first leaves it to providers to set out in their tender how they would staff their unit to deliver the outcomes and standards required by the contract and specification. This would likely lead to a wider range of tenders and prices, and would leave it to commissioners to separate these on the basis of the extent to which they delivered on the prescribed quality factors, with price following as an associated but secondary weighted factor. The second optional A.9.1 allows commissioners to specify the staffing level they want in the unit, but thereby limits providers on devising their own models and methods for delivery. To the extent that quality across bids may become less differentiated as a result, the price becomes more of a determinant in the tender appraisal. Costs may be contained by providers offering intermediate care within a discrete unit that forms part of a larger service such as a mainstream care home, where on-call or back-up staff might be drawn in as required and so safely permit lower regular staffing levels and sharing of key staff across services on a single site.

Generally a full breakdown of the price for the service should be sought, to facilitate comparison and selection of tenders, offering an opportunity to identify where and why bids may differ, and what the quality impact is of such differences, but it will need to be made clear at point of tender how these factors will be scored and weighted in the award process. It is recommended that the price for any additional staff input to users with particularly intense identified needs at the point of assessment and referral, also be set by the provider at the tender stage, expressed as an hourly rate per additional staff member as required. This additional hourly rate, which should be requested with a break-down of how it has been reached, should be limited to employment and supervision costs, as all other overheads are already recovered through the standard price for a place.

The model proposed allows for 24/7 access which is mainly to permit placements via a step-up process. This would require GPs and their out of hours services to be able to make referrals either directly or via social work out of hours systems depending on local partnership arrangements. If such a step-up service is genuinely to avoid unnecessary admissions to hospital, then GPs and their associates need to have confidence that the intermediate care service offers a safe and available alternative to hospital without the full medical support that a hospital placement offers (or that such an intermediate care placement is required by particular needs despite availability of any local 24/7 homecare service). The other principal situation where a step-up intermediate care placement may be more appropriate than a short term or respite placement into a mainstream care home, is where the need for a move away from home relates to additional and expected temporary care & support factors that relate to the service user, and not to their carers or other existing support systems.

Clear admission criteria, as well as referral and discharge processes, agreed and understood by partner agencies and staff, will be essential to the success of any commissioned intermediate care service, but are not covered within the model contract as these are issues for the placing agency and partners to sort out before referrals are made to the home offering the service. It is simply the placement process and mutual obligations for contract parties that are set out at paragraph A.5.

Whatever the admission criteria and referral & discharge processes, how these interface with other services and professional disciplines will need to be developed in detail locally prior to the start of any commissioned service, and ideally before tender, as the importance of multi-disciplinary liaison with care home staff, and keeping a constant focus on a return home for the service user, cannot be overemphasized.

Finally, it is considered that any placement to intermediate care in a care home is an interim stage of service, being offered to allow a more comprehensive assessment with a farther horizon than the limited period of intermediate care. Accordingly it is not expected that the obligation on councils to offer the range of options anticipated as part of the Self Directed Support legislation will apply, and nor will the Directions on Choice of Accommodation by service users apply as they do for permanent moves to care homes.

COSLA resource pack on developing Intermediate Care in Care Homes – Part 2

This part 2 offers a model set of contractual terms & conditions and service specification, for use, following adaptation as necessary for local circumstances, as part of a tendering process to establish Intermediate Care in care homes.

It takes as its source the 2012/13 National Care Home Contract, amended to the extent that the procurement and purchasing model is expected to differ for the development of Intermediate Care, and also to match the service model. Thus some paragraphs have been deleted altogether where they would simply not apply.

This has the advantage that care home providers and councils should be familiar with, and practised in operating under, the general structure and the core terms and conditions of the NCHC that can be retained to apply to Intermediate Care procured via tender locally.

It remains set out as a single contract document incorporating the terms & conditions, service specification, financial arrangements, price, and associated appendices, which it is considered parties to contracts generally find helpful to have set out in one easily referenced document, as opposed to spread across several electronic missives. Either these will require amendment for use in a wholly electronic process of invitation to tender and acceptance, or the invitation to tender will require to make clear that the final contract will only be formed by the mutual signing of such a single document.

In developing this amended model contract terms & conditions and specification, certain assumptions & choices have been made which it is important we detail at the outset, and these are as follows:

- The provider(s) will be selected through a tendering process and the price will be set by the successful tender(s).
(No assumptions made on whether the tender process will be open, restricted or negotiated)
- The duration of the contract will be set locally as will any options for extension which need to be specified at point of tender.
- Inputs required for all allied health professional services, as well as community based nursing services, that would visit people in their own homes, will be provided by local NHS and/or Council services visiting the Home. (However there are also option clauses included should the wish be for the care home to supply nursing services directly)
- The option is left open to commissioners (via an either/or Paragraph choice at A.9.1) either to specify a required ratio of staffing at the tender stage, or to invite tenders to set out the level of staff they would provide and how these would be deployed to deliver the required outcomes set out in the Specification
- Payment will be in arrears on a block basis for availability of service spaces and not set by actual uptake.
- The service will be free to the user, or where a charge applies, the provider will not be involved in its collection.
- The period of Intermediate Care forms part of a continuing assessment process to determine a person's longer term capacities and needs. Thus the options to be offered under SDS need not apply at the stage of arranging a period of Intermediate Care, and nor do the Directions on Choice of Accommodation.
- The contract created will be bi-partite between any successful tenderer and the procuring body, which is expected to be a local authority, or a partnership body where this has its own legal identity.

- Only single en-suite rooms will be commissioned.

RESIDENTIAL INTERMEDIATE CARE CONTRACT

between

XXXX COUNCIL

and

[NAME OF PROVIDER]

[NAME OF CARE HOME]

[LOCAL CONTRACT REFERENCE NUMBER]

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This is a Contract between **NAME OF COUNCIL**, a Local Authority constituted in terms of the Local Government etc (Scotland) Act 1994 having their principal office at **ADDRESS** (hereinafter referred to as "the Council") and their statutory successors and assignees whomsoever, and (**INSERT PROVIDER NAME, STATUS, REGISTERED ADDRESS AND Co. NUMBER IF APPLICABLE**) (hereinafter referred to as "the Provider").

Following a tendering procedure, 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 that the Council, as Local Authority wishes to secure under the terms of section 12 of the Social Work (Scotland) Act 1968.

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

Section A – Terms & Conditions

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 Paragraph, Section or Appendix shall be construed respectively as a reference to a Paragraph, Section or Appendix 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.
- 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.
- A.1.7 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 Service User's Interim Care Assessment that it is agreed by Parties will be provided by the Provider and that will require more resources than the Provider would normally need to apply for a Service User assessed as requiring Standard Care;

"Additional Care Charge" means the agreed cost for Additional Care, that is referred to in the Individual Placement Agreement;

“Adults at Risk” means as defined within Section 3(1) of the Adult Support and Protection (Scotland) Act 2007 as adults who;

- are unable to safeguard their own well-being, property, rights or other interests;
- are at risk of harm; 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 Person(s)” means any employee holding a specified position within a specified organisation, where both the organisation and position have been identified by the Council in writing to the Provider, until such notification is rescinded in writing by the Council to the Provider

“Care” means Standard Care and any Additional Care that the Council has assessed the Service User as requiring during the period of the Placement;

“Care Home” means the establishment which provides accommodation together with *(delete if nursing is not included in the contract)* 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 Service Users may be admitted, and may include any alternative accommodation approved of 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 Service Users;

“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.

“Care Manager” means any person appointed by the Council from time to time to assess, oversee and review the Care provided to the Service User by the Provider;

“Care and Support Plan” means the document produced by the Council that sets out the level and nature of Care and target Outcomes identified by the Council as required by and requested for the Service User based on the Interim Care Assessment, and informed by the views of other care, health and housing professionals involved with the Service User, and which also sets out their contribution to the Service User’s care during the Placement ;

“Care Standards” mean the National Care Standards for Care Homes for Older People, published by the Scottish Ministers under the Regulation of Care (Scotland) Act 2001 that describe what the Service User 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”);

“Contract” means 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 currently at Verity House, 19 Haymarket Yards, Edinburgh, EH12 5BH;

“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.

“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.

“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;

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

“Equality and Human Rights Commission” means the body set up by the Equality Act 2006 having its principal Scottish office currently 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 Service User is not obliged to accept but which the Provider may supply to the Service User if the Service User so agrees for a payment by the Service User that is not included in either the Price or any Additional Care Charge;

“Financial Year” means the period from the 1st April to the following 31st March, both dates inclusive;

“Individual Placement Agreement” or “IPA” means the letter issued by the Council to the Provider in the style of Appendix 2, confirming the Placement under the Contract;

“Interim Care Assessment” means the assessment of the care & support needs of the Service User for the duration of the Placement as arranged and approved by the Council;

“Intermediate Care” means (within this Contract) a service providing time limited interventions for people who, on the basis of an Interim Care Assessment, are deemed to need some degree of rehabilitation, enablement and recovery, with the aim of preventing unnecessary admission to hospital, facilitating early hospital discharge, or preventing premature admission to residential care;

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

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

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

“Nominated Officer” mean the individuals named in Appendix 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;

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

“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;

“Outcomes” mean the aims and objectives for the Service User 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 Service Users, Representatives, relatives and others as appropriate, both individually and in groups, will 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;

“Personal Plan” means the plan developed in accordance with paragraph B.5.8 which details the Service User’s needs and preferences and sets out how they shall be met, in a way that the Service User finds acceptable;

“Placement” means the place arranged by the Council in terms of an Individual Placement Agreement for the Service User in the Care Home;

“Price” means the Provider's total price per place per week stated in Appendix 1 for the provision of Standard Care;

“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

“PVG Act” means the Protection of Vulnerable Groups (Scotland) Act 2007;

“Registration” means registration with the Care Inspectorate under the Public Services Reform (Scotland) Act 2010;

“Regulated Work” means as defined in section 91 of the 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 Service User who has the mental capacity to nominate one, any person nominated by the Service User to be first contacted or advised by the Provider and/or the Council regarding the Service User’s circumstances. In the case of a Service User who has incapacity as defined by the Adults with Incapacity (Scotland) Act 2000 “Representative” means the person if any, nominated by the Service User 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 Service User’s circumstances or any significant change thereto, who shall, in the event of the Service User failing to nominate any such person, be any person whom the Provider and the Council agree has a relevant interest with regard to the Service User, whom failing, the Council;

“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” or **“SSSC”** 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;

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

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

“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; rehabilitation, enablement and recovery; personal care; support; *and nursing services; (retain or delete as per local commissioning decision re nursing services)* specified within the service specification and as set out in the Provider’s tender at Appendix 6, and provided for the Price;

“SVQ II” means the Scottish Vocational Qualification Level 2 in Care or Direct Care or Health & Social Care;

“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 Service User 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 *(insert required date)* and will continue until *(insert required date)* unless terminated earlier or extended in accordance with its terms.

A.3 SERVICE TO BE PROVIDED

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

A.3.2 Subject to Paragraphs A.4.3, A.6.2, and B.5.27 the Provider may provide to the Service User any Extras as may be agreed between the Provider and the Service User.

A.4 PAYMENT

A.4.1 Subject to Section C, in exchange for making *(insert the number of places being sought by the tender)* contracted places available, and providing Standard Care in accordance with the terms of this Contract, the Council shall pay the Provider in arrears the Price for each contracted place available, regardless of occupancy, save where Paragraph A.9.30, A.21.10 or A.22.4 applies.

A.4.2 In exchange for providing Additional Care the Council shall pay the Additional Care Charge agreed in terms of Paragraph C.1.1.

A.4.3 With the exception of reasonable charges for Extras which are made by prior agreement with the Service User and are listed in the Occupancy Agreement in terms of Paragraph A.6.2, the Provider shall not impose charges on the Service User or other third party for anything.

A.5 ASSESSMENT, CARE MANAGEMENT AND REVIEW

A.5.1 Before any Service to a Service User may commence, the Service User must, with the exception of Placements made in an emergency situation, have had an Interim Care Assessment carried out and a Care & Support Plan prepared, and in any case have been assessed by the Council or an Agreed Person as requiring the Service. Where the Service User has been placed in an emergency situation, the Council shall ensure a Interim Care Assessment and a Care & Support Plan is provided within 3 Working Days after the Service User is admitted to the Care Home, and that information vital to ensure safe Care provision is available from the outset.

A.5.2 The Council is responsible for ensuring an assessment of a Service User's needs is done in order to determine if they meet the Council's eligibility criteria. Prior to a planned Placement, the Council shall supply a copy of the Interim Care Assessment and the Care & Support Plan to the Provider.

Ongoing Reviews

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

A.5.4 (i) In the case of a planned Placement, the Care Manager shall undertake a review of the Service

User's progress and needs, within 2 weeks of admission. The Council will then conduct further reviews of the Care and Support Plan on a regular basis until the Placement ends

- (ii) In the case of an emergency Placement, a multi-disciplinary review will be arranged by the Council as soon as is reasonably practicable, and in any case within 2 weeks.

A.5.5 The Provider shall ensure that the reviews of the Service User'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 Service User, their Representative, the Council, or the Provider may request a review of the Service User'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 Service User's care needs have changed to the extent that the Provider can no longer deliver the Care to meet the Service User'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 2 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 Service User's care needs have changed to the extent referred to at Paragraph 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 Paragraph A.20. If the cost of meeting an agreed change in a Service User's care needs would exceed the Price Paragraph C.1.1 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 Paragraphs 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 Service User.

A.6 OCCUPANCY AGREEMENTS

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

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

1. Aims, Objectives and Principles of the Service
2. Definitions
3. Accommodation

4. Care to be Provided
5. The Provider's Obligations to the Service User
6. The Service User's Obligations to the Provider
7. Suggestions and Complaints
8. Extras
9. Insurance
10. Notice and Termination Periods for the Occupancy Agreement

A.6.3 A style Occupancy Agreement is appended at Appendix 5. The Occupancy Agreement issued by the Provider must follow this style, and Service Users must enjoy all benefits set out in the style without being subject to any more onerous obligations.

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

A.7 TEMPORARY ABSENCE FROM THE SERVICE

A.7.1 In the event of any unplanned absence of the Service User, the Provider shall immediately inform the Care Manager and the Service User'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 Service User's Care needs outwith the Care Home.

- (i) Should a period of hospitalisation or absence for any other notified reason occur, the Council may review the Service User's circumstances and determine whether to terminate the Service User's Placement in the Care Home or make other suitable arrangements.
- (ii) If a Service User is absent from the Care Home for a reason other than hospitalisation, for a period of 24 hours without intimation of their return, the Council may terminate the Placement forthwith unless this period is extended by mutual consent.

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 Service User.

A.8.2 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 shall take precedence over those contained in the Contract.

A.8.3 The Council recognises that the primary regulator for care services is the Care Inspectorate and, where lawful, shall avoid the duplication of provision of information by the Provider. Notwithstanding this, the Provider recognises that the Council has a duty of care to the Service Users, 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 these duties.

A.8.4 Care Managers have the primary responsibility for monitoring the appropriateness of Service delivery by the Provider to the Service User, in accordance with their Personal Plan. This should be an active and ongoing process as required to promote the particular Outcomes for each Service User.

A.8.5 The Council shall identify a Nominated Officer at Appendix 3 to monitor the terms of this Contract

A.8.6 The Council shall monitor the Contract 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 where it is held by them:

- (i) Copies of all statutory notices received;
- (ii) Care Inspectorate pre-inspection return and where requested, any supporting documentation;
- (iii) The Provider's self evaluation against the Care Standards;
- (iv) Care Inspectorate inspection reports, any associated action plans, and details of complaints investigated by the Care Inspectorate and their outcomes ;
- (v) Care Inspectorate Annual Return
- (vi) Variation to Care Inspectorate Registration;
- (vii) Care Inspectorate Staffing notices;
- (viii) Internal quality assurance procedures and reports;
- (ix) External quality assurance certificates, where applicable;
- (x) 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;
- (xi) 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;
- (xii) A style copy of the Occupancy Agreement used by the Provider;
- (xiii) Written confirmation of 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;
- (xiv) A copy of the staff training and retention plan referred to in Paragraph A.9.30 (Staffing and Volunteers);
- (xv) A completed Staff Qualification Audit;
- (xvi) The information required under Paragraphs B.2.6 and B.2.7

A.8.7 The Council shall be invited by the Provider to attend Care Inspectorate feedback sessions.

A.8.8 An officer of the Council 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.8.9 A copy of any report prepared in relation to the visit shall be issued to the Provider. This report shall highlight any areas where, in the opinion of the Council, Contract or Individual Placement Agreement 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 Paragraph A.20 shall be followed.
- A.8.10 Unless prohibited by statute, the Provider will 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 Service User. This shall include any Personal Plans and associated recordings, complaints and management records, personnel records and Service User'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

either

- A.9.1 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. The number and qualification levels of staffing shall also at all times be no less than that specified by the Provider at the time of submitting its tender for delivery of this Service. Where the role and duties of Staff require them to be registered with the SSSC, the Provider will ensure this is in place and is maintained.

or

- A.9.1 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. The Service User to qualified care Staff ratio shall be no higher than *[insert locally required ratio of X:1]* between the hours of *[insert as required locally]* and no higher than *[insert locally required ratio of X:1]* between the hours of *[insert as required locally]*. Where the role and duties of Staff require them to be registered with the SSSC, the Provider will ensure this is in place and is maintained.
- A.9.2 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 will be treated as a material breach of this Contract for the purposes of Paragraph A.21.
- A.9.3 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:
- (i) Scheme Records for the type(s) of Regulated Work to be undertaken by the Staff delivering the Service; or
 - (ii) where the 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

- (iii) where a Scheme Record Update obtained in accordance with A.9.3 (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.9.4 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 Service Users. 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 Service Users, 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 Service Users.

A.9.5 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 will be taken following thereon.

A.9.6 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:

- (i) 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;
- (ii) 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;
- (iii) to ensure compliance with the requirements of this Paragraph and subject to the written consent of the subject of the Disclosure, the Provider will share the Disclosure Information with the Council on request.

A.9.7 To ensure compliance with Paragraphs A.9.4 and A.9.6 (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.9.8 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:

- (i) 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;

- (ii) 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 Paragraphs A.9.2 to A.9.7 hereof. A copy of the said statement from the agency shall be supplied to the Council on request.

- A.9.10 Where nurses are required and employed to deliver the Service, 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. 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, subject to maintaining the registration requirements noted at paragraph A.9.10 above, and with the agreement of any NHS specialist involved with the Service User, and of the Provider, continue to use them. Specialist nursing services and allied health professional inputs will continue to be provided via the NHS.
- A.9.12 Where the Provider obtains agreement from the Care Inspectorate to reduce either the Staff to Service User ratio or the qualified Staff to Service User ratio, they must advise the Council immediately, and where this change will result in the number and qualification levels of staffing falling below that specified by the Provider or required of the Provider at the time of submitting its tender for delivery of this Service, they will obtain agreement from the Council prior to implementing any such change and will agree with the Council a suitable reduction to the Price and/or any Additional Care charges before implementing any such staffing changes.
- 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 will 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 will be responsible for ensuring that any Volunteer who has access to Service Users 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 Service Users will 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 Paragraph are followed.

- A.9.18 The Provider shall ensure that, both applicants from outwith the jurisdiction of Disclosure Scotland and applicants who have spent a significant length of time outwith the jurisdiction of Disclosure Scotland provide an overseas criminal record check.
- (i) 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.
 - (ii) 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 Paragraph A.9.7.
- A.9.19. The Provider will 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 Paragraph A.9, or where any person as aforesaid has refused to complete a statement concerning their previous convictions in accordance with this Paragraph, 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 will ensure that Staff deployed under the Contract in the provision of the Services are instructed in relation to all relevant provisions of the Contract will ensure that Staff are familiar with the Provider's policies and procedures via ongoing supervision and training.
- A.9.22 The Provider will ensure that it has in place, and will exhibit to Council's satisfaction upon request, a policy for its Staff in relation to protected disclosures with regard to expressing concerns outwith 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 Paragraph A.9.7 hereof shall ensure that no Disclosure Information is disclosed in advising the Council, where appropriate, of the outcome of its action under Paragraph A.9.9 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 Paragraph A.9.7 and 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 Service User.
- A.9.27 The Provider shall not allow Staff and Volunteers to accept gratuities or gifts of significant value from the Service User 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 Paragraph 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 Service User.
- A.9.30 The Provider shall have in place and review as appropriate an achievable staff training and retention plan. Failure to do so will result in the Price being reduced by 5% until such time as the failure is rectified.

A.10 CONFIDENTIALITY

- A.10.1 Subject to any contrary rule of law the Provider shall ensure that a Service User 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 Paragraph 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 Service User.
- 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 Service User to the relatives of that Service User or other suitably interested person in respect of the Service User, where such information has already been made available to the Service User and the Service User'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 Paragraphs 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 Service Users and the Provider contained in Paragraphs 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.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 Service User 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 Service User 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 Service User, 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:
- (i) 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 or 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
 - (ii) 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 Service User 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 Paragraph 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 Paragraph 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 Service User 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:

- (i) 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 or 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;
- (ii) 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 suitable vehicle and passenger insurance is maintained. 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 will 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 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 will process) personal data it hereby confirms that it has (or will acquire) a valid notification with the Information Commissioner as defined by section 6 of the Data Protection Act 1998 covering its processing of personal data, including in that notification the disclosure of personal data to the Council. This requirement shall not apply if the Provider is, by virtue of the Data Protection (Notification and Notification Fees) Regulations 2000, exempt from the requirement to notify.

A.13.3 The Provider acknowledges that in order for it to perform its duties hereunder, it may be necessary for the Council to disclose to the Provider personal data, including sensitive personal data, relating to Service Users, such information being referred to as Service User information. The Council is the data controller in respect of the Service User information.

A.13.4 The Provider hereby warrants:-

- (i) that the processing of the Service User information will be subject to technical and organisational security measures of a sort, which if the Provider were the data controller in respect of the Service User information, would satisfy the Seventh Data Protection Principle;
- (ii) that it will take reasonable steps to ensure compliance with the measures described in Paragraph A.13.4.(i) above;
- (iii) that it will process the Service User information only in accordance with instructions from the Council and the terms of this Contract; and

- (iv) that it will comply with all obligations imposed by the Seventh Data Protection Principle as though the Provider were the data controller in respect of the Service User information.

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.

A.13.6 Service User information shall be used by the Provider purely to enable the Provider to provide the Service to Service Users in accordance with this Contract and as requested by the Council, and for no 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 law or with the express consent of the Service User or other individual to whom the personal data in question relates. In the case of a Service User who lacks the mental capacity necessary to consent to the processing in question, this shall instead mean with the express consent of a person entitled in law, to make decisions relating to the personal welfare of the Service User but only to the extent that such processing will be of benefit to the Service User, (and the benefit cannot otherwise be realised), and the processing is in accordance with the wishes of the Service User so far as these can be ascertained. The Provider shall ensure that the recipients of any personal data disclosed under this Paragraph are made aware of the duty of confidentiality which attaches to it.

A.13.7 The Provider shall not be required to pass information to the Council in relation to a member of Staff, Volunteer or any other person if the same would cause the Provider to breach the terms of the Data Protection Act 1998. The Provider must supply detailed reasons in terms of the said Act in support of such an assertion within a reasonable timescale specified by the Council. Where the cause of the potential breach of the said Act is lack of 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

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 will 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.15 PUBLIC RECORDS (SCOTLAND) ACT 2011

- A.15.1 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.15.2 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.15.3 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.15.4 The Council may monitor the Provider's compliance with the 2011 Act at periodic intervals throughout the duration of the Contract.
- A.15.5 The Council may request and the Provider will supply demonstrable evidence as to how the Provider intends to secure compliance with the provisions of the 2011 Act.

A.16 HUMAN RIGHTS

- A.16.1 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.17 EQUALITY

- A.17.1 The Provider hereby confirms that to the best of their knowledge and belief they have complied with the Equality Act 2010 (the "Act") and hereby agrees to continue to comply with this Act in a manner which is proportionate and relevant to the nature of the contract.
- A.17.2 The Provider agrees to provide the Service in a non discriminatory manner and shall promote equality and work towards the Service reflecting best practice as identified in the codes of practice issued by the Equality and Human Rights Commission.
- A.17.3 The Provider recognises that the Council has a responsibility to monitor the extent to which the provision of the Service extends to socially excluded groups. In recognition of this, the Provider agrees, where appropriate and practicable, to work towards providing monitoring information to the Council in relation to employment and service provision by the following categories:
- (i) age;
 - (ii) disability;
 - (iii) gender reassignment;
 - (iv) marriage and civil partnership;
 - (v) pregnancy and maternity;
 - (vi) race
 - (vii) religion or belief;
 - (viii) sex;

- (ix) sexual orientation

A.17.4 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, and civil partnership, sexual orientation, disability, religion or belief, sex, pregnancy or maternity and race contrary to the Act.

A.17.5 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

A.17.6 In recognition of the Council's legal obligation to tackle discrimination and promote equalities and diversity in all its functions and policies, under the Act 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. Good practice in this regard will be recognised by the Council, however, poor practice may result in the Council issuing a mind to comply letter describing the nature of improvement required and the associated timescales. If the Provider fails to improve practice in this regard the Council may take further action, up to and including the termination of the Contract.

A.18 ASSIGNATION, DISPOSAL, SUB-CONTRACTING AND CHANGE OF CONTROL

A.18.1 The Provider will not assign, dispose or otherwise transfer its interests and/or obligations under this Contract to any other person (hereinafter "assign") without first obtaining the prior consent in writing of the Council which shall not be unreasonably withheld or delayed subject to:-

- (i) The Provider's compliance with the requirements of this Paragraph.
- (ii) The Council's compliance with its procedural requirements permitting assignation;
- (iii) Compliance by the Parties with procurement law

A.18.2 Failure to meet the requirements of Paragraphs A.18.1 - A.18.9 including requirements to provide information within stated timescales, will be deemed to be a breach of the Contract and the Council reserves the right to reduce the Price by 10% until such failure is remedied, and may suspend further Placements and payment for places left unoccupied as a result.

A.18.3 All notices and/or any remedial action taken under the Contract and any IPA prior to assignation will remain in effect in accordance with its original terms notwithstanding the completion of any assignation or other transfer or Change of Control under this Paragraph.

A.18.4 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:-

- (i) the Provider must give Council no less than 13 weeks' prior written notice unless otherwise agreed; and
- (ii) 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.18.5 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:-

- (i) 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;
- (ii) Evidence that the proposed assignee can meet the Service Quality Levels and financial and economic requirements satisfied by the Provider;
- (iii) The proposed date of transfer and details of the nature of the legal agreement between the Provider and proposed assignee;
- (iv) Staffing proposals in particular transfer and re-appointment and/or recruitment and arrangements for transition (including the manager of the Service);
- (v) Policies and procedures proposed for use in the management of the Service or confirmation of the application of the existing policies to the Services;
- (vi) 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;
- (vii) Information about Premises, to be provided in accordance with Paragraph A.19.3.

A.18.6 If the Council has overpaid the Provider, agreement must be reached about how any sums due shall be repaid before consent will 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.18.7 Until the completion of the assignation in accordance with the procedures laid down in this Paragraph or until the Contract with the Provider is terminated:-

- (i) the proposed assignee must not provide the Service or any part of it and no payments will be made by the Council or any other Purchaser to the proposed assignee.
- (ii) 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.18.8 In the event that consent is not granted to the assignation or the assignation is not completed by the Provider and proposed assignee:-

- (i) 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 Paragraph A.21 hereof.

- (ii) and the Provider is able to continue to provide the Service the terms of the Contract will continue to apply.

A.18.9 Where the Council agrees to assign the Contract, it will confirm this in writing.

Appointment of Subcontractors

A.18.10 The Provider will 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 Paragraphs A.18.11 and A.18.13.

A.18.11 The Provider will 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:

- (i) the name of the proposed subcontractor;
- (ii) the part(s) of the Service to be subcontracted;
- (iii) the terms of the proposed subcontract;
- (iv) information pertaining to the suitability of the proposed subcontractor; and
- (v) 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.18.12 The Council will 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.18.13 The Council may request such additional information as required to allow it to make its assessment.

A.18.14 The Council will 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 Paragraph A.18.11.

A.18.15 Where the Council consents to the appointment of a subcontractor, the Provider will:-

- (i) be responsible for the performance of and shall be liable to the Council for the acts and omissions of its subcontractors;
- (ii) ensure that any subcontractor appointed complies with the requirements of the Contract and any IPA entered into thereunder; and
- (iii) ensure that a provision is included in any subcontract :
 - a. 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.18.10 – A.18.15;

- b. which requires payment to be made 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.18.16 The Provider shall give 13 weeks' prior written notice to the Council of a change of Control.

A.18.17 Where the Provider proposes a change in its Control with the intention of Service continuation, the Council may require it to provide such further information as it requires, which could be similar to that required for assignment in Paragraph A.18.5, to determine whether or not the Contract should continue.

A.18.18 Upon receipt of notice of a change in Control in accordance with Paragraph A.18.16, the Contract may be terminated in accordance with Paragraph A.21.

A.19 PREMISES INFORMATION

A.19.1 The Provider must provide to the Council 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 will include:-

- (i) Where the Provider owns the premises:
 - a. The Provider's title to the premises;
 - b. 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;
 - c. Any proceedings ongoing or reasonably anticipated which seek the sale of the premises and/or removal of the Provider from the premises;
 - d. Missives or any contract information contract providing for the transfer of ownership of the Premises 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
- (ii) Where the Provider does not own the premises:
 - a. The name and address of the owner of any Premises from which the Service or any part thereof is provided (hereinafter "the Owner");
 - b. The nature of the legal relationship between the Owner and the Provider;

- c. The nature of the right the Provider has to occupy the premises ;
 - d. 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;
 - e. 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;
 - f. 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
 - g. Rights of termination of occupation, including notice periods.
- (iii) 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;
 - (iv) 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);
 - (v) 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.
 - (vi) 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.19.2 Where it is within the knowledge of the Provider, the Provider shall notify the Council of any changes to the information in A.19.1 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.

Further Premises Information to be Provided in the Notification of Assignment

A.19.3 Where the Provider services notice on the Council in accordance with Paragraph A.18.4 of the foregoing Contract, the Provider shall supply the following information along with such notice:

- (i) an update to the Premises information where the proposed assignment will result in changes to the Premises Information; and
- (ii) the following additional information:
 - a. 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;

- b. 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;
- c. 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;
- d. Any contractual obligation on the owner of the premises obliging them to grant the proposed assignee a lease or license to occupy.

A.20 RESOLUTION OF DISPUTES

- A.20.1 In the event of any dispute between the Council and the Provider, either Party may 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.20.2 Should the dispute remain unresolved after the process as detailed in Paragraph A.20.1 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.20.3 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, and the decision of that arbiter on the matter and any issue relating to the expenses of such arbitration shall be final and binding on the Parties.
- A.20.4 For the purpose of resolving disputes in terms of Paragraphs A.20.1 to A.20.3 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.20.5 Paragraphs A.20.1 to A.20.3 are without prejudice to any rights the Parties may have under Paragraph A.21.

A.21 BREACH AND TERMINATION OF CONTRACT

Breach Provisions

- A.21.1 Where either Party 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.21.2 If the Party held to be in breach is unable to rectify or disprove the alleged 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.21.3 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.21.4 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 Paragraph A.20.2 shall be invoked.
- A.21.5 Without prejudice to the rights and remedies for material breach of the Contract otherwise available to them under the Contract (in particular Paragraph A.21.10) 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 Service User or group of Service Users, 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 Paragraph A.21.6.
- A.21.6 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.21.7 In the circumstances described at Paragraph A.21.9 (vii), (x) and (xi), the notice to terminate referred to at Paragraph A.21.5 shall be effective immediately. In all other circumstances the notice shall be a minimum period of two weeks and a maximum of 13 weeks save where continuing operation of the Service during such period of notice would carry a risk to the Party serving notice, or to Service Users, which is unacceptable to the Party serving notice.
- A.21.8 The following are material breaches of contract by the Council:
- (i) failing to make payment in accordance with Paragraph A.4 above;
 - (ii) offering any improper inducements or exerting unreasonable pressure upon potential or existing Service Users or their Representatives, or others with an interest;
 - (iii) materially failing to undertake its Care Management duties in accordance with the terms of this Contract;
 - (iv) 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.21.9 The following are material breaches of Contract by the Provider:

- (i) serious non-compliance with the provisions of the Health and Safety at Work etc. Act 1974;
- (ii) operation of the Care Home without insurance cover as required under Paragraph A.11.6 above;
- (iii) non-compliance with the requirements of the Equality Act 2010;
- (iv) deliberate misuse of drugs and/or medicines when delivering any aspect of the Service to the Service User
- (v) abuse or neglect of any Service User
- (vi) taking or attempting to take dishonest or illegal financial advantage of a Service User
- (vii) 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;
- (viii) 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
- (ix) being convicted of an offence under the provisions of Part 5 of the Public Services Reform (Scotland) Act 2010
- (x) committing any offence under the Bribery Act 2010;
- (xi) 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;
- (xii) failing to supply information required by the Council as set out in Paragraph A.8.6 and A.8.10;
- (xiii) failing to comply with the assignment process as set out in Paragraphs A.18.1 - A.18.9;
- (xiv) the issue by the Care Inspectorate of an improvement notice;
- (xv) imposing charges on the Service User that are not permitted by the Contract; and
- (xvi) 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.21.10 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:

- (i) if the Provider is found to be imposing charges on the Service User that are not permitted by the Contract, the Council reserves the right to reduce the Price by 5% plus by the amounts of improper charges involved until the breach is remedied.
- (ii) if the Provider is found by the Council to be in material breach as described at Paragraphs B.2.6, or B.4.5 of the service specification at Section B below, the Council reserves the right to reduce the Price by 10%, and may suspend further Placements until the breach is remedied .
- (iii) 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 reduce the Price by 10%, and may suspend further Placements until the breach is remedied.
- (iv) if the Provider's grading by the Care Inspectorate under its Quality Assurance Framework on the themed area of Quality of Care and Support falls below 3, then the Council reserves the right to reduce the Price by 10% from the date of the Care Inspectorate's visit that leads to that reduced grading until the date of the visit that re-instates a grading of 3 or above and may suspend further Placements during the period it is aware such a reduced grading pertains.
- (v) if the Provider fails to comply with the provisions of Paragraph A.9.1, then the Council reserves the right to reduce the Price accordingly
- (vi) 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 Service User'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.
- (vii) If the Provider refuses to accept referrals to the Service that the Council considers are suitable and cannot provide reasons therefor to the reasonable satisfaction of the Council, then payment for places that remain empty as a result will be withdrawn

A.21.11 The Council shall advise the Care Inspectorate of any material or persistent breach in its opinion of Contract by the Provider.

A.21.12 Nothing in this Paragraph A.21 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 Paragraph A.21 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.21.13 Where the Contract is terminated, each Individual Placement Agreement will also terminate. Notice to

terminate the Contract will be taken as Notice to terminate each Individual Placement made under the Contract.

A.21.14 The provisions of the Confidentiality, Data Protection, Freedom of Information, Indemnity and Insurance Paragraphs will survive the termination of this contract by any means.

Non Breach Provisions

A.21.15 The Provider shall give the Council 13 weeks' written notice of its intention to:

- (i) close the Care Home;
- (ii) sell the Care Home;
- (iii) substantially reconfigure the Service;
- (iv) significantly change the facilities or amenities of the Care Home; or
- (v) move the Service to a different location.

A.21.16 In the event that notice is served under Paragraph A.21.15, the Council may but shall not be bound to terminate the Contract at the end of the 13 week notice period.

A.21.17 Where 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 all reasonable endeavours to give such notice.

A.21.18 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.21.19 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 Paragraph on the date of the said loss or destruction or vacation of the Care Home.

General Provisions

A.21.20 During any period of notice referred to in Paragraph A.21, the Provider and the Council shall co-operate with each other to ensure that Service Users' Care requirements continue to be met; and they shall fully co-operate and consult with Service Users and their Representatives in making suitable alternative Care arrangements for Service Users.

A.21.21 Neither Party shall be entitled to withhold performance of their obligations under the Contract during any period of notice required under Paragraph A.21.

A.21.22 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 Paragraphs of this Contract which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

A.22 SUSPENSION

A.22.1 The Council may suspend Placements to the Service where:-

- (i) it considers that a breach or series of breaches of the Contract by the Provider creates an immediate or serious risk of harm to Service Users;
- (ii) a situation described at Paragraphs 21.10(ii), (iii), or (iv) applies
- (iii) notice of assignment, 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 Paragraph A.21;
- (iv) the Care Home has received a score of 2 or less in its most recent Care Inspectorate grading;
- (v) the Care Inspectorate has placed a Suspension of Admissions on the Care Home;
- (vi) the Council considers that a situation as described at paragraph A.24.11 applies.

A.22.2 Once a decision has been taken to exercise its right of suspension as per Paragraph A.22.1, the Council will;

- (i) notify the Provider in writing of the reason for the suspension and the date at which the suspension will take effect; and
- (ii) notify the Care Inspectorate of the suspension.

A.22.3 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 Service Users continue to be met.

Consequences of Suspension

A.22.4 During any period of suspension:

- (i) the Council shall use reasonable endeavours to ensure that no further Service Users are referred to the Service and the Provider shall cease to accept referrals of Service Users from the Council or Agreed Persons.
- (ii) the Council will work together with the Provider to ensure that there is no interruption in the Service to existing Service Users and to address the issues that led to suspension and the

Provider shall cooperate fully with the Council;

- (iii) the Council may organise additional Interim Care Assessments for existing Service Users within short timescales and will endeavour to agree with the Provider a mechanism or timetable for doing this to ensure that they are able to participate fully;
- (iv) the Council will 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.
- (v) the Council will cease payment for places that are vacant as a result of a suspension

A.23 BUSINESS CONTINUITY AND CONTINGENCY

- A.23.1 The Provider will 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.23.2 Where any Party becomes aware of anything which may lead to a serious risk to the health or safety of Service Users they will alert the other Parties.
- A.23.3 The Council and Provider will then meet to discuss any issues raised by A.23.2 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.24 ADULTS AT RISK

- A.24.1 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 Paragraph B.9.1.
- A.24.2 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 Service User and their Representative and that all Staff and Volunteers are trained in these policies and procedures.
- A.24.3 Without prejudice to the generality of A.24.2, 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 Service User. The Provider shall immediately inform the Care Manager of any such reports. Disclosure of such reports shall not be regarded as a breach of Paragraph A.10 (Service User Confidentiality).
- A.24.4 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.24.5 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:

- (i) 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;
- (ii) recognising risk from different sources in different situations and recognising abusive behaviour by other Service Users, colleagues, and family members;
- (iii) the duty of Staff to report suspected abuse, neglect, harm or exploitation;
- (iv) 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;
- (v) inter-agency information sharing and clarity on confidentiality and disclosure of information in such circumstances;
- (vi) the procedures for reporting abuse or suspected abuse both internally and to other external agencies who have legal duties to protect Adults at Risk;
- (vii) protection for whistle blowers;
- (viii) working within best practice as specified by this Contract;
- (ix) child protection, where appropriate.

A.24.6 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.24.7 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.24.8 The Provider shall ensure that prompt action is taken in response to individual complaints from or concerns of Staff, Volunteers, the Service User and/or their Representative. Any such action shall follow the timescales identified within the Complaints Procedure.

A.24.9 The Provider shall have in place and implement procedures to prevent Staff gaining any personal benefit when working with vulnerable people.

A.24.10 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.24.11 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.25 NOTICES

- A.25.1 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.25.2 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.25.3 Any change to the Council or the Provider's Nominated Officer shall be communicated to the other Party as soon as possible.

A.26 FORCE MAJEURE

- A.26.1 If any Party to this Contract is prevented or delayed in the performance of any of its obligations under this Contract by Force Majeure (as defined in Paragraph A.26.5), 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 will 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 Paragraph A.26.2 for so long as the cause of prevention or delay shall continue.
- A.26.2 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 Paragraph A.21.20 shall apply to the said period of notice.
- A.26.3 The Parties agree to use their best efforts to ensure that during any period when Force Majeure circumstances exist, the Care needs of the Service User are accommodated to the fullest extent practicable.
- A.26.4 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 will be suspended to the extent the Service is not available
- A.26.5 For the purposes of the Contract "Force Majeure" shall be 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.

A.27 PREVENTION OF COLLUSION AND CORRUPT OR ILLEGAL PRACTICES

- A.27.1 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:
- (i) 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 practised

collusion in tendering for the Contract or shall have employed any corrupt or illegal practices either in the obtaining or the carrying out of the Contract; or

- (ii) 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 Service User.

A.28 VARIATIONS AND COURT'S POWER TO MODIFY THE CONTRACT

A.28.1 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.28.2 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.29 TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) (T.U.P.E.)

A.29.1 Where reasonably requested to do so at any time either Party will provide all relevant and up to date information in connection with regulations in respect of T.U.P.E. as the requesting Party may require.

A.29.2 The Party providing information under Paragraph A.29.1 will not unreasonably withhold or delay the provision of information requested and will not knowingly do or omit to do anything that may adversely affect an orderly transfer of responsibility for provision of the Service.

A.29.3 The Provider will indemnify the Council and/or any successor provider against all reasonable costs, expenses and liabilities incurred as a result of any claim made by any employee of the Provider prior to being transferred under T.U.P.E. arrangements.

A 30 WAIVER OF REMEDIES

A.30.1 No 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.31 ENTIRE AGREEMENT

A.31.1 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.

A.32 LAW OF SCOTLAND

A.32.1 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 Intermediate Care Placements

B.1 INTRODUCTION

- B.1.1 The Parties to this Contract understand that public policy in Scotland is that older adults will be supported to remain in their own homes where possible and practicable. Some individuals though, will require a period of Intermediate Care which it is considered will be better delivered within a Care Home able and contracted to provide such a Service, focussed on enabling the Service User to return home whenever practicable, and to avoid, or reduce the duration of, admissions to hospital.
- B.1.2 The purpose of this Contract is to ensure that where the Council has determined a person's assessed needs will be best met for a period of time through a placement to Intermediate Care in a Care Home setting, the approach, facilities, and services that will be available there to help achieve the higher level outcomes (described at Paragraph B2 below) 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.1.3 The more specific Outcomes for each Service User will be set out by their Care & Support Plan and Personal Plan. These will explicitly address opportunities for enablement and be elicited from conversations with the Service User and/or their Representative, drawing from information sought from health and care professionals involved in their care/treatment, 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 will allow the delivery of genuinely personalised services within any setting, including a temporary communal one such as a Care Home, as long as prior agreements on the nature of that physical and care environment have been clearly set out.
- B.1.4 The purpose of the Council making Placements of Service Users is principally focussed on these outcomes (higher level outcomes set out hereunder and specific Outcomes for each Service User 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 Service Users. Where these are considered likely to apply to all prospective Service Users, they will remain set out as inputs within this specification.
- B.1.5 This service specification for Intermediate Care Placements is for Placements providing time-limited interventions for people who, on the basis of an Interim Care Assessment, are deemed to need some degree of rehabilitation, enablement and recovery, with the aim of preventing unnecessary admission to hospital, facilitating early hospital discharge, or preventing premature admission to residential care. Key to achieving this aim is close co-operative working with others involved in the planning and delivery of care, support, and treatment during and beyond the Placement.
- B.1.6 Experience suggests that a period of 6 to 8 weeks Intermediate Care is generally optimum, but it is important to emphasise that this is an indicative time frame. The actual period of time for which Intermediate Care should be provided, and its focus, should reflect the needs of the individual and be shorter or longer as appropriate, and this will be set out by the Council in the Individual Placement Agreement based on the Interim Care Assessment and the consequent Care & Support Plan, which will

themselves be the product of a multi-disciplinary and inter-agency process as deemed necessary by the Council

- B.1.7 It is a key requirement on both Parties to ensure that insofar as reasonably practicable in the legal and environmental context of a Care Home, Service Users will 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.1.8 This specification addresses the delivery of accommodation, equipment, provisions, enablement, personal care, support & supervision, *nursing, (retain if Provider is to provide nursing services and otherwise delete)* and liaison and joint working, for the purpose of delivering the higher level outcomes set out hereunder, and individually set Outcomes within each Service User's Care Plan and Personal Plan during their Placement.
- B.1.9 The Provider must adhere to the requirements on them set out within this Service Specification and in the other parts of the contract formed through the tender process.
- B.1.10 Most commonly, Service Users will be aged over 65, but it is recognised that adults under 65 will also have Intermediate Care 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 Service User and the impact of their Placement on other Service Users, and not their age.

B.2 OUTCOMES

- B.2.1 Parties are agreed that positive Outcomes for Service Users from the Service they receive whilst in the Care Home, as a stage in a rehabilitative or enabling journey, is the most important factor in the provision of the Service. For Intermediate Care placements the key outcome is a return for the Service User to their own home wherever feasible in the context of the other high level outcomes set out below at Paragraph B.2.3, or failing this, a move to the least intensive and intrusive model of care at the end of the Placement and the conclusion of the assessment of their longer term needs. It is however recognised that some Service Users placed to Intermediate Care Placements will not be able to return to live at home due to factors with their broader health and social functioning, and will require to move to other destinations including permanent care placements to Care Homes.
- B.2.2 Whilst the Service requires to be tailored to suit each individual Service User and achieve this key outcome within the context of a group setting and service, this will 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 Service User by the Provider. These plans must focus explicitly on the key outcome of a return home where feasible, and are best devised on the basis of conversations about certain common higher level outcomes as set out below at Paragraph B.2.3, which themselves require to be delivered in the provision of the Service in relation to every Service User.
- B.2.3 The Service will provide facilities and interventions that demonstrably promote Service Users to retain a focus on regaining the highest level of independence possible and confidence in returning home. To this end, whilst the Service will aim to ensure the following higher level outcomes that Service Users:
- feel and are safe and secure;
 - see people and engage socially;

- have things to do that they enjoy;
- inhabit a pleasant environment;
- experience everyday life as they wish;
- stay as well as they can;
- feel part of a community during their Placement in the Home,

this will not be at the cost of maintaining a positive attitude to returning home or moving to a less dependent model of care.

B.2.4 The Service will be delivered in ways which clearly encourage Service Users to feel they are:

- only temporarily staying in the Home;
- treated as an individual;
- valued and respected;
- listened to;
- party to decisions about their care & support during their Placement and into the future;
- supported to live well and to plan for a good end of life where this is appropriate;
- able to have family and friends involved as they wish;
- able to trust Provider's staff and to rely on them to respond appropriately;
- afforded privacy.

B.2.5 The Provider will adopt an enabling approach to deliver these facilities and interventions in ways which are likely to generate a positive improvement for Service Users related to:

- regaining or retaining skills to support themselves in everyday living tasks;
- their confidence and morale for independent living;
- mobility;
- improved health and appropriate management of symptoms.

B.2.6 The Provider is required to maintain as part of recording for each Service User, an account of how the delivery of the Service to each Service User has taken, and will take, into account the achievement of these high level outcomes and also the more specific detailed Outcomes within each Service User's Personal Plan which will underpin achievement of the high level outcomes. These will be examined by the Council as part of both future Care Planning, and the monitoring referred to at Paragraph A8, and failure of records to demonstrate the pursuit of these outcomes by the Provider will be considered a material breach of contract to be managed under the terms set out at Paragraph A21.

B.2.7 The Provider will maintain records that demonstrate at an aggregated level the pathways of Service Users through the Service and the views of Service Users on the Service. These will detail; where Service Users were admitted from, numbers of Service Users admitted to hospital, including cause, frequency, and duration, and identifying emergency admissions and multiple admissions; death rates across Service Users; numbers of Service Users moving to permanent placements or to other Care Homes or to other forms of accommodation; Service Users returning home; numbers and nature of significant events notifiable under the terms of Paragraph B.9 below. All data will include relevant dates. These records will 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 at the time of Placement to deliver within peoples' homes or in other forms of available housing, or in an NHS in-patient setting. It is understood that the majority of people who will meet such criteria will be drawn from the older population in our communities.

B.3.2 Two typical routes to an Intermediate Care Placement are envisaged. These are step-up from own home to avoid an unnecessary hospital admission or premature admission to long term care, and step-down from a hospital to avoid unnecessary prolonged stay therein following a clinical decision that they are medically fit for discharge. Generally the defining feature of such Placements will be potential for improvement in function and / or confidence and a 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.

B.3.3 It is recognised and agreed by both Parties that some Service Users placed to Intermediate Care will have a level of dementia which impacts upon both their functioning and decision making ability, and also on their confidence. In severe cases this may require interventions under the relevant legislation. Notwithstanding these factors, the provision of the Service will aim to provide the same rehabilitative outcomes for those Service Users with dementia as for Service Users without, and the Provider requires to ensure the needs of those with dementia are taken into account at both a Service design level and at individual Personal Plan level.

B.4 SERVICE STANDARDS

B.4.1 The Service must adhere to the appropriate Care Standards as determined by the Care Inspectorate, to relevant legislation, and to best practice guidelines relevant to the Service as issued from time to time by the Scottish Government or COSLA 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 set out at Paragraph B.4.1 above being met needs to be maintained by the Provider within records for individual Service Users available to the relevant Care Manager and Nominated Officer involved in monitoring performance of Service delivery under this Contract.

B.4.3 Particular regard should be had to the Intermediate Care Framework for Scotland published by the Scottish Government in June 2012 in the delivery of the Service.

B.4.4 Service delivered to people with dementia will 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.4.5 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 Paragraph A21 (Breach & Termination of Contract).

B.5 SERVICE DESCRIPTION

B.5.1 The provision of Care for Intermediate Care Service Users by the Provider shall meet all assessed needs of the Service User as identified in the Interim Care Assessment (excepting those identified as to be met by NHS and/or Council staff), and any revision of this by the Council, in relation to; accommodation; equipment; meals & nutrition; 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, in which circumstance any additional Staff costs and unavoidable expenses by Staff will be dealt with under Additional Care arrangements); rehabilitation, enablement and recovery; support & supervision; personal care; *and general nursing services (retain where Provider is contracted to provide nursing and delete otherwise)* for a Service User. It will 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 The Provider will have to communicate and work closely with staff from a variety of agencies and disciplines, and with families/carers, to ensure as positive and as seamless a link as possible between the Service User's Placement in the Care Home and their previous and subsequent locations, and their previous and subsequent care, support, and treatment arrangements. The Provider will ensure that Staff are readily available, fully acquainted with the Service User's Care & Support and Personal Plans, and with an up to date knowledge of the Service User's situation, to liaise and co-operate with such other Staff and others as may be required to ensure positive outcomes for the Service User from the Placement.

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. Generally the furnishings, decor, and equipment used for any Service User 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 Service User.

B.5.4 Notwithstanding B.5.1 above, both Parties agree that some Service Users or proposed Service Users may have a level of need for care, supervision, or intervention which is outwith the anticipated range of need for Service Users. Where both Parties agree that this is the case they will seek to agree a level of Additional Care, as defined at Paragraph A.1.7 herein, for the Service User in question, and in accordance with the provisions of Paragraphs A.4.2, A.5.1, A.5.8, C.1.1 herein

B.5.5 Service Users on an Intermediate Care Placement require a care approach by Staff which is focussed on a return home, or if this is impractical, on assisting the identification of the least interventionist alternative setting, and an environment that can encourage the retention or regaining of everyday self-supporting skills. This is necessarily a very different environment from that required for successful long term care of residents in Care Homes, and so Service Users shall occupy dedicated accommodation, including communal areas, not shared by other categories of resident. This does not preclude other separate parts of a Care Home providing other forms of placement.

B.5.6 The accommodation providing the Service will include a domestic style and scale kitchen area and bathing area, domestic scale common sitting areas, and space to permit supervised rehabilitative exercise. Canteen style dining areas must be avoided in favour of more domestic style and scale

facilities, and Service Users will be offered the option of eating in their rooms if they choose. Design and decor will incorporate features to minimise confusion in Service users, including those with dementia.

- B.5.7 The Interim Care Assessment and Care & Support Plan shall be the key instruments in determining the level of Care a Service User requires on admission to the Care Home and the specific rehabilitative or recuperative objectives for the Intermediate Care Placement, which shall be set out therein and will incorporate the views of other professionals involved in the wider care, support, and enablement of the Service User, and their role during the Placement. Throughout the Placement, the Personal Plan shall determine how that Care is to be provided and those Objectives pursued for the Service User.
- B.5.8 The Provider shall produce with the Service User and the Service User's Representative, a Personal Plan, no later than 3 days after admission, or within 3 days of receiving the Assessment and Care & Support Plan if this is later. Its preparation must fully take account of the various professional views referenced in the Care & Support Plan, and set out roles and responsibilities of such other professionals in the delivery of the Outcomes. This will detail at a day to day operational level, how the care needs identified in the Interim Care Assessment will actually be met, and how the Outcomes for the Service User identified in their Care & Support Plan will be pursued. A copy of the Personal Plan shall be given to the Care Manager and the Service User and their Representative immediately it is produced. 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 Service User's needs.
- B.5.9 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, a] The Service User and their Representative are consulted on all significant proposals which affect the life or comfort of the Service User during their stay, and their views shall be taken into account, b] 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.
- B.5.10 The Provider shall protect the Service User using observation and encouragement rather than direct assistance, and restraint and confinement will only be used where the Care Plan and Personal Plan identify that restraint and confinement are necessary, or to deal with an emergency where no safer practical option is available. The nature and extent of this shall be agreed as part of the review process detailed in Paragraph A.5. If the use of restraint and confinement is necessary in order to safeguard any Service User or other person then this must be recorded immediately in the records pertaining to the Service User on whom the restraint or confinement was used. Where the use of restraint and confinement are not in that Service User's Care Plan and Personal Plan but for unforeseen reasons they have to be used, the Provider shall notify the Council and that Service User's Representative in writing as soon as practicable thereafter, and will also inform other agencies as required by the circumstances and regulatory or legislative regimes, and the Service User's Care Plan shall be reviewed.
- B.5.11 The Provider shall support, enable, and encourage the Service User toward self-care with regard to their personal hygiene skills including assisting the Service User to manage their continence.
- B.5.12 The Service User will be accommodated in a single bedroom with en-suite toilet, wash basin, and bathing/showering facilities

- B.5.13 The Provider shall be alert to a Service User's state of health, including mental health, and shall seek to ensure good practice around health assessments and appointments being arranged for the Service User during their stay, including dental, sight, hearing and podiatry checks, and others as required. The Provider shall assist Service Users to maintain ongoing contact with health, social care, and housing services wherever this is featured in their Personal Plan or otherwise identified to support their long term goals. Where there are difficulties in achieving this, the Provider shall alert the Care Manager and the Service User's GP to these concerns. Any emergence or change to the incidence or pattern of falls will be recorded and notified to the Care Manager and to the Resident's GP.
- B.5.14 Where practicable and agreed by their usual GP, Service Users on an Intermediate Care Placement should continue that relationship through the Placement. However where this is not the case it is considered that Service Users will benefit from care from a single GP practice and community pharmacy during their placement, and both Parties will try to ensure this is achieved.
- B.5.15 Meals shall be provided to Service Users which are varied and nutritious and take into consideration the Service User's food preferences, special dietary needs, cultural factors and professional advice on best practice in respect of nutrition, as well as the Service User's preference on the timing of meals. The Provider will maintain a regular record of each Service User's weight subject to the Service User's consent where this is identified as a care requirement in the Service User's Care & Support Plan or Personal Plan. However, Service Users shall be as fully involved as it is safe to do in the choice, purchase, preparation, presentation and consumption of meals, snacks and drinks. The design, facilities and operation of the accommodation will be such as to safely and practically permit this level of involvement in a way that makes Service Users more able, and likely to be less dependent.
- B.5.16 The Service User shall have access to facilities to make beverages in their own room or another designated area unless safety considerations preclude, and the Provider shall ensure the Service User has access to a sufficient provision of light refreshments at all times.
- B.5.17 The Provider will ensure the presence at all times of *a qualified nurse, (retain where Provider is contracted to provide nursing and delete otherwise)* care Staff to work with an enabling and rehabilitative focus, and Staff to ensure a therapeutic environment is maintained including cleansing and catering arrangements, along with supervisory and management arrangements to ensure Service delivery. All Staff will have undertaken specific training on an enabling approach as set out by the Provider in their tender. Staff must be properly trained to assist or enable the Service User wherever and whenever necessary in all aspects of Care including in eating and drinking. This should be done in a manner that will promote the pursuit and achievement of agreed Outcomes for the Service User, including a return home. Staff will be registered with the SSSC as required and will have, or be making progress towards, the appropriate qualifications for each functional role undertaken within the Service.
- B.5.18 Each Service User shall provide their own clothing. The Provider shall assist the Service User or their Representative to determine what an adequate supply of clothing is to meet the Service User's needs during their stay, and shall assist the Service User 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 Service User's needs and reasonable preference, unless the Service User chooses to supply their own as part of their Personal Plan and to keep them oriented to their own home environment. The Service User will be as involved as they can be in the laundry of these items and their personal clothing, and the design and the facilities and operation thereof will encourage and support this.

- B.5.20 The Provider shall nonetheless ensure that the items referred to at B.5.19 above are changed and cleaned 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 Service User, or where for infection control or other reasons a Service User requires more regular changes.
- B.5.21 In the event of loss or damage of a Service User's personal clothing due to the fault of the Provider, the Provider shall be obliged to recompense the Service User for the cost of replacing such clothing. For the avoidance of doubt this excludes fair wear and tear. Service User's clothing shall be for their sole use and where the Service User or their Representative agrees, personal clothing may be discretely marked or labelled by the Provider in a manner acceptable to the Service User or their Representative that is not visible when worn, to assist identification after laundry.
- B.5.22 Flannels, sponges, toiletries and similar items shall be supplied, if the Service User does not bring and maintain their own supply, and must not be shared amongst Service Users. These may be marked discretely to identify the relevant Service User, if necessary and as practical.
- B.5.23 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 Paragraph A.11.8
- B.5.24 Where a Service User qualifies for transport supplied by the NHS to attend for a clinical appointment/treatment, the Provider will, where practicable, ensure this is arranged. For the avoidance of doubt, the cost of providing transport for the Service User to and from scheduled medical appointments, as well as for emergency admissions to hospital is not covered in the Price.
- B.5.25 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 Service User, to that Service User or their Representative, whom failing, their Care Manager, and retain the valuables, cash or documents in a secure lock fast place.
- B.5.26 Where it is necessary for a Service User to be moved from their room in the Care Home, the Provider shall seek and obtain the consent of the Service User 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 move the Service User shall be returned to their former room if they so request and if appropriate.
- B.5.27 The Provider shall be entitled to offer Extras, and these must be specified and priced in the Occupancy Agreement. Examples of Extras are given in Paragraph 8 of Appendix 5. For the avoidance of doubt, under no circumstances shall the Council be liable to pay for such Extras provided to a Service User.

B.6 CREATION OF PLACEMENTS

- B.6.1 After the pre-admission assessment referred to at Paragraphs A.5.1 and A.5.2, the Council shall issue an Individual Placement Agreement confirming the Placement. The Individual Placement Agreement shall confirm that the terms and conditions of this Contract apply to the Placement. The pro-forma for the Individual Placement Agreement forms Appendix 2 hereto.
- B.6.2 To avoid unnecessary hospital admission where it is assessed by the Council or an Agreed Person that an individual should not remain in their own home, the Provider must be ready and able to accept step-up admissions to any vacant places round the clock on minimum notice of 1 hour. *[Note - This may not be required if locality has rapid response 24/7 community service that can provide immediate*

emergency cover into a person's own home pending a fuller assessment and referral to residential Intermediate Care or other service, but in any case the detail of required alternative admission arrangements should be inserted here]

B.7 ENDING OF PLACEMENTS

- B.7.1 The Placement will end either on the date set out in the Individual Placement Agreement, or on another date following amendment thereof by the Council, following multi-disciplinary consultation, and taking account of the circumstances of the Service User and their likely benefit from an extended or shortened Placement.
- B.7.2 During an Intermediate Care 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 Service User's Placement and they shall advise the other Party of the reasons for their decision to do so. Where the Council considers that the reason for termination by the Provider is unreasonable, the payment for that place may be withdrawn until the planned end date of the Placement unless another Service User takes up that place.
- B.7.3 The Service User is free to end their use of the Service at any time. Either Party must notify the other Party of any such occurrence as soon as practicable (but in any event not later than 1 working day after the receipt of such information)
- B.7.4 The Provider and the Council shall co-operate to ensure that the Service User's needs are met during any period of notice to terminate a Placement.
- B.7.5 If the Service User dies, the Placement shall terminate 1 day after the date of death (the date of the Service User's death being day zero) unless the death occurs within one complete day of the planned end of a Placement, in which case the Placement shall end on the date agreed in the Individual Placement Agreement.
- B.7.6 In the event of the death of a Service User, the Provider shall inform the Service User's Representative and 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 Service User the Provider shall comply with this request within 3 days of the death where practicable, failing which as soon as reasonably practicable thereafter.
- B.7.7 The Provider shall make all reasonable efforts (with the involvement of the Service User's Representative) during the day following the death of a Service User, to remove the Service User's personal effects from the Service User's room within the Care Home and arrange for the same to be put in a place of safekeeping. In the absence of a Service User's Representative, the Council shall provide assistance to the Provider to remove the Service User's personal effects from the Care Home.
- B.7.8 If the Service User has no Representative or family or friends who can arrange the Service User's funeral, the Provider shall 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 COMPLAINTS & SUGGESTIONS

- B.8.1 The Provider and the Council shall inform the Service User 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, or the Scottish Social Services Council where the complaint relates to an individual registered with them. The Occupancy Agreement shall detail the Provider's Complaints Procedure and the Provider shall assist the Service User with the completion of the documents if required. Such assistance may, if appropriate, include arranging independent advocacy or support from an independent agency. The Provider will make it clear to Service Users that Service Users can pursue a complaint through whichever route or routes they choose.
- B.8.2 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 and the local authority within whose area the Care Home is situated of the allegations or evidence of abuse in accordance with Paragraph A.24 of this Contract.
- B.8.3 The Service User 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 practically be applied to the Service.
- B.8.4 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 Paragraph A.20 (resolution of disputes) shall be followed.
- B.8.5 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 will be sent to the Council no less than annually and more often if required under the Council's contract management procedures.
- B.8.6 In order to support and extend a culture of improvement and development, Providers should actively encourage feedback from Service Users and their Representatives, and assist this by sharing with them information about their feedback and complaints processes.

B.9 NOTIFICATION OF SIGNIFICANT EVENTS

- B.9.1 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 Service User's Representative of any of the following: i) any significant incident, including allegations or evidence of abuse or harm relating to the Service User or to the Care of the Service User; ii) maladministration of the Service User's funds or property, or serious loss or damage to the Service User's property; iii) significant changes in the Service User's needs or circumstances; iv) any change in the named member of Staff responsible for an overview of the Care of the Service User; v) formal complaints in respect of any aspect of the Service User's Care, subject to the consent of the Service User and/or their Representative not having been withheld; vi) unplanned absence of the Service User from the Care Home; vii) the Service User'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; viii) maladministration of medicines including neglect to administer and refusal of Service User to comply with administration; ix) death of the Service User.

- B.9.2 Where verbal notification is given by the Provider of any of the circumstances required immediately above the Provider will also submit a written report on those circumstances to the Council within 3 working days of the circumstances occurring.
- B.9.3 In the event of a significant incident or accident occurring to a Service User with a mental disorder as defined in the Mental Health (Care & Treatment) (Scotland) Act 2003, the Provider.

Section C – Finance

C.1 ADDITIONAL CHARGES

- C.1.1 The Council shall pay an Additional Care Charge in exceptional circumstances where the Service User has been assessed as requiring Additional Care and the Council has not 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. In the event of any change in this regard during a Placement, the Council shall issue a revised Individual Placement Agreement.

C.2 PRICE CHANGES

either

- C.2.1 The Provider shall not be entitled to increase the Price during the term of the contract.

or

- C.2.1 With effect from the commencement date, the Price for succeeding Financial Years shall be adjusted in accordance with the following provisions: *(set these out as agreed locally through the tendering process)*

C.3 INVOICING WHERE PROVIDERS ARE NOT PAID BY RECURRING PAYMENT

[Adapt/delete according to local arrangements – note that present Paragraph A.4.1 stipulates payment in arrears]

- C.3.1 The Provider shall submit to the Council detailed invoices containing such information in respect of Service Users as the Council shall require including and without prejudice to this generality that information specified in paragraph C.3.2 below. Invoices shall be submitted *[* insert local requirements]*
- C.3.2 Invoices submitted by the Provider shall contain *[insert local requirements]* and must state in respect of each Service User and vacancy for which the Council is liable to make payment, the following information: *[insert local requirements]*.
- C.3.3 If the Provider submits an invoice for all the Service Users that is inaccurate or has omitted any information required under C.3.2, the Council shall only make payment in respect of the Service Users for whom information has been correctly submitted. The Council shall advise the Provider in writing to re-submit the required information on a detailed invoice.
- C.3.4 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 by the Council at *[Insert Address of Office to receive invoices]*. Any change to this address will also be notified

to the Provider by the Council. Should payment not be made within [28 days] from such receipt the Council shall, on demand by the Provider, pay interest at 4% per annum above the Bank of Scotland Base Rate from the later of (a) the date of receipt of the relevant invoice by the Council; or (b) the date when the sum became due by the Council to the Provider; or (c) the last date of execution of this Contract by the Parties, until such payment is made, such interest to be calculated on the daily balance outstanding including Value Added Tax (VAT) but not including any interest. Any demand for interest must be in writing, giving full details as to why it is considered the Council is liable for such interest and must be separate and not annexed to or incorporated within any other invoice, demand or communication submitted to the Council.

C.3.5 Interest due for late payment shall only accrue for invoices submitted after the Provider has signed the Contract.

C.3.6 The Price is exclusive of VAT. If the supply is standard rated for VAT purposes, then the Council shall pay VAT on that part of the Price for which the Council has a liability under this Contract.

C.4 SUPPORTING FINANCIAL DOCUMENTATION

C.4.1 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:

- i) 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 will be a copy of their most recent abbreviated accounts submitted to the Registrar of Companies;
- ii) For partnerships, sole traders and unincorporated associations the required information must be submitted in the format shown in Appendix 4 [insert local arrangements] and be certified by the Provider's accountant. As an alternative it will be acceptable for the Provider to submit a copy of their most recent audited accounts;
- iii) 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.4.2 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 Appendix 4.

C.5 MANAGEMENT OF SERVICE USER'S FINANCES

C.5.1 It is not expected that the Provider will regularly be formally involved with Service Users' finances as the placements are short term, and either the Service User's self management of their finances will be a desired Outcome, or any existing arrangement for managing their finances on their behalf will continue (or that new arrangements deemed necessary for the foreseeable future will be put into place). However

where the Provider is involved with Service User's finances the following shall apply

- C.5.2 The Provider shall be obliged, where appropriate or as required, to manage the finances of the Service User 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 will not apply to the Provider, then the Provider will at the same time notify the Council of such.
- C.5.3 The Council shall give the Provider any relevant information it holds on how a Service User's finances are to be managed. The arrangements for managing the Service User's finances will be included in the review process as detailed in Paragraph A.5. Between reviews, the Provider will report any concerns about the management of the Service User's finances to the Council.
- C.5.4 Where the Provider is appointee for the Service User, they will maintain complete, accurate and up-to-date records of all income and expenditure including the collection and payment for Extras. The Service User or their Representative will be supported to examine and understand such records and such records shall be immediately available to the Service User or their Representative or the Council acting on their behalf. The Provider must be able to account for the balance of finances of any Service User at any time.
- C.5.5 Should the Provider be managing the finances of the Service User under Part 4 of the 2000 Act or as Department for Works & Pensions appointee, the Provider shall:-
- i) hold sufficient cash to meet incidental expenses for any two week period and allow the Service User easy and flexible access to their funds;
 - ii) not combine funds of the Service Users to purchase items to be used communally;
 - iii) use the Service User's money that the Provider manages on behalf of the Service User to provide extra benefits to the Service User that are personal to the Service User;
 - iv) provide guidance to Staff on expenditure of the Service User's money, particularly for a Service User with mental incapacity;
 - v) ensure that the way monies must be spent on behalf of the Service User is recorded in the Service User's Personal Plan;
 - vi) consult the Care Manager regarding any significant items of expenditure out of the Service User's personal funds not agreed in the Personal Plan;
 - vii) confirm the arrangements for management of the Service User's finances in writing to the Service User and/or their Representative and the Care Manager.

This is the Appendix 1 referred to in the foregoing Contract between [PROVIDER'S NAME] and XXXX Council.

The Price

Intermediate Care Service in (NAME of CARE HOME)

Financial Year xxxx/xxxx

Per available place per week £ XXX.xx

(insert the Provider's accepted tender price above)

Per hour for each additional staff member – basic grade £XX.xx
(where agreed as required to meet Additional Care Needs)

Per hour for each additional staff member – higher grade £XX.xx
(where agreed as required to meet Additional Care Needs)

(insert the Provider's accepted hourly rates and staff grade descriptions above)

This is Appendix 2 referred to in the foregoing Contract between [PROVIDER'S NAME] and XXXX Council and is the Individual Placement Agreement issued by the Council to the Provider.

<Insert Council Address>

Our Ref:
Your Ref:
Date:

To: <Insert Care Home contact and address>

XXXX
XXXX
XXXX

Dear

INDIVIDUAL PLACEMENT AGREEMENT: <Insert Service User Name> <Date of Birth>

The Council has assessed <insert Service User name> as having needs that merit admission to the Intermediate Care Service at <insert Care Home name> and wish to secure a place for <insert Service User name> on the terms set out in the Contract for such Service [signed by the Provider on <insert date> and by the Council on <insert date> ("the Contract").

<Insert Service User name> has been assessed as requiring the care as detailed in the Care and Support Plan and the Service provided must meet the Service User's assessed needs as detailed in the Interim Care Assessment and Care and Support Plan provided by the Service User's Care Manager.

The Placement will start on <insert date> and is intended to end on <insert date>.

(Insert if appropriate) The Council has assessed (Insert Service User name) as requiring Additional Care as set out in the Care and Support Plan and has agreed to pay an Additional Care Charge of <insert weekly amount> for this additional level of care.

If for any reason you are not prepared to accept the Placement on the terms and conditions as set out in this letter, you must contact the Council immediately.

Yours faithfully,

A.N Other
Insert Position

Details of Council's Nominated Officers

Care Manager

Name: _____

Designation: _____

Address: _____

Finance/Administration

Name: _____

Designation: _____

Address: _____

This is the Appendix 3 referred to in the foregoing Contract between [PROVIDER'S NAME] and XXXX Council.

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 Service User's care management issues should be addressed to the Service User's nominated Care Manager, as informed through the Individual Placement Agreement

Provider's Nominated Officers

Council's Nominated Officers

<u>Care (A)</u>	<u>Finance/Administration (B)</u>	<u>Contractual Matters (C)</u>	<u>Finance/Administration (A)</u>	<u>Contractual Matters (B)</u>
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 Appendix 4 referred to in the foregoing Contract between [PROVIDER'S NAME] and XXXX Council.

DECLARATION OF FINANCIAL VIABILITY

[INSERT LOCAL ARRANGEMENTS]

This is the Appendix 5 referred to in the foregoing Contract between [PROVIDER'S NAME] and XXXX Council.

OCCUPANCY AGREEMENT PROFORMA FOR INTERMEDIATE CARE PLACEMENTS

OCCUPANCY AGREEMENT

between

.....(Service User)

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 occupancy between the Service User and the Provider and links to the Provider's contract with <insert Council's name>.

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Appendix 1 - Current list of Extras and their prices

Appendix 2 – Provider’s complaints procedure

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

- 1.1. We, the Provider shall meet all of your needs as assessed by <insert name of Council > in your Interim Care Assessment in relation to: accommodation; equipment; meals; activities; support, supervision & enablement; personal care, including, where applicable, nursing care, and where specialist services are delivered to you by the NHS or local authority staff, we will work with them to ensure success.
- 1.2. 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 will 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 time.
- 1.3. The main aim of providing the Service is to support your return home, and during your temporary stay in our Home, we will work to ensure your regaining of skills and 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 during your stay here.
- 1.4. 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 copies of Inspection Reports issued by the Care Inspectorate in respect of our Care Home.
- 1.5. We shall follow the requirements set out in this Occupancy Agreement and the contract we hold with your local Council for the provision of intermediate care services. A copy of that contract may be obtained from your Care Manager.
- 1.6. 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.
- 1.7. 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 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 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.

“Interim Care Assessment” means the assessment of your care & support needs for the duration of the placement, which is arranged and approved by the Council.

“Personal Plan” means the plan developed between us, and agreed by your Care Manager, 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 furnished room with en suite toilet, washbasin and shower or bath, 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.
- 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 <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 Service Users 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.
- 3.4 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.
- 3.5 We shall provide light and heat and shall explain to you how you may control the temperature and lighting level in your room.
- 3.6 We shall ensure that your room is in good decorative order.
- 3.7 We shall ensure a high standard of cleanliness in your room and throughout the Care Home which will also be kept free of offensive odours.
- 3.8 We shall provide you with bed linen, towels, flannels, sponges, toiletries and similar items for your own use to meet your needs, unless you choose to provide your own supply, together with a laundry service for your machine washable personal clothing. Bed linen shall be changed weekly or more often 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 may be industrial, clothing may wear out quicker than in a domestic situation. Please note that we are not responsible for supplying you with personal clothing.

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

*List (e.g. your own room, specified communal areas, gardens, domestic style kitchen and laundry, exercise area, etc.) **

** amend as necessary*

3.10 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.

3.11 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*].

3.12 You are free to consume alcohol if you wish. If we have concerns about the effects on you, your medication and /or other Service Users 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, and we shall work in conjunction with the National Health Service (NHS) Community Nursing Service on your behalf and with other community based health services as appropriate to your needs, including rehabilitation.

or

Whilst we do not offer nursing care ourselves, we shall work in conjunction with the National Health Service (NHS) Community Nursing Service on your behalf and with other community based health services as appropriate to your needs, including rehabilitation.

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 agrees 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 <insert name of Council > and to ensure the development and delivery of a Personal Plan that details how care will be delivered to you and how the outcomes identified as important for you will 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 <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 their 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 Service Users in the Care Home.
- 5.9 to ensure you can make and receive telephone calls in private to be paid for by you at cost, and have free 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 Service Users.
- 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 Will.
- 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 <insert name of Council >.
- 5.14 to work with you (and/or your representative) to ensure a smooth transition between your previous location and the Care Home, and also onward to your next location

6. Your Obligations To Us

You agree:

- 6.1 to work with others involved to the best of your ability towards achieving a return home and towards the other outcomes agreed for the placement
- 6.2 to inform us of any medication that you administer yourself, and allow us to monitor this.
- 6.3 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 Service Users and Staff.
- 6.4 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.

- 6.5 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.

- 6.6 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 any other Service Users affected. 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 Service Users.

- 6.7 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 will 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 as appendix 2, 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. Extras

8.1 We can arrange the following extra goods or services in addition to those covered by the price for your care and accommodation paid to us by the Council. You shall be responsible for the payment of these extra goods or services and we shall advise you of their cost beforehand. The current price of such extras is detailed in appendix 1

Insert list of extras

Examples of which may include:

- o *Hairdressing*
- o *Aromatherapy Massage*
- o *Newspapers*
- o *Shopping Trolley*
- o *Dry cleaning*
- o *Mobile Clothing Shop*
- o *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 as extras.

- o Chiroprody
- o Opticians
- o Dentistry
- o Physiotherapy
- o Transportation and Staff escorts to and from medical appointments}

8.2 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>

9. Insurance

9.1 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.

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

10. Notice and Termination Periods for this Agreement

10.1 This Agreement shall terminate automatically at the end of this intermediate care placement as detailed in the Individual Placement Agreement, unless we, you, and <insert name of Council >agree to vary the duration.

Appendix 1

(insert list of Extras available and current price)

Appendix 2

(insert Provider's complaints procedure)

This is the Appendix 6 referred to in the foregoing Contract between [PROVIDER'S NAME] and XXXX Council.

The following constitutes the tendered terms offered by the Provider and accepted by the Council for the Service delivered under this Contract

Insert the Providers tendered terms insofar as these are accepted by the Council

(Normally these will simply be the Provider's electronic acceptance of the Council's standard and special conditions of tender issued with the electronic ITT, and incorporating any material included by the Provider in their tender, so, for example, depending on local circumstance may include Provider's staff training plan and their commitment to adhere to that, plus any other features of their tender that form part of the award criteria)

COSLA resource pack on developing Intermediate Care in Care Homes – part 3

This part 3 of the pack offers a model introductory text for a tender invitation pack that councils/partnerships might use, with any required local variations, to set the context for potential bidders. The text in italics at the end is offered simply as a general starter on the range of issues to be considered and addressed in any invitation to tender. Before any tender is further developed, the commissioning agency's procurement professionals should be involved.

Introductory text for Invitation To Tender for Intermediate Care Services in Care Homes

“There has been much interest in the idea that the further development of Intermediate Care services will assist in reducing the number and duration of hospital admissions and permanent placements to residential care, as part of the Reshaping Care agenda for older people.

Intermediate Care is identified in the Intermediate Care Framework for Scotland (published by the Scottish Government in July 2012) as an ‘umbrella’ term describing an approach involving a collection of services working to common, shared objectives and principles. It provides a set of ‘bridges’ at key points of transition in a person’s life, in particular from hospital to home (and from home to hospital) and from illness or injury to recovery and independence.

Much of the work done to date has focussed on adapting homecare services and developing new models thereof, and on different patterns of deployment for NHS services.

However it is also thought that some individuals will have needs that, whilst not requiring them to remain in or be admitted to a hospital bed, cannot be met within their own home, despite local home based intermediate care initiatives, and that a temporary move to a halfway house setting as part of their journey towards reduced dependency and regained skills and confidence, would be beneficial to them and offer improved use of resources.

Such a halfway house setting, between their own home and hospital, might be some form of sheltered or supported accommodation, or could be a care home configured for such purpose.

As part of developing our local commissioning plans, we have concluded that in this area we do want to develop a Care Home based Intermediate Care service using external provision, and so are issuing this Invitation to Tender.

Should you choose to submit a tender, you will need to confirm that you are able to meet all of the requirements for providers set out in the proposed contract parts A, B, and C plus the appendices, and following such confirmation the award criteria will be applied to determine the successful tenderer(s).

In constructing a tender therefore, particular care should be taken to ensure it is clear how the service will be designed, delivered, and monitored, to ensure that the outcomes for service users, set out in the service specification at Part B of the proposed contract, are most likely to be achieved. In assessing the quality element of bids received, the council will require to see how the built environment, facilities, and service operation (including staff training, direction and management) will promote desired outcomes, and generally how the tender describes the service and explains how it will meet the service specification and other requirements of the contract.”

In extending the ITT beyond this proposed introductory text, Councils should then;

(move onto whatever standard ITT model and associated processes the local council or partnership uses)

(set out tender route (negotiated or via open or restricted competition as chosen locally)

(set out the required conditions of contract for the particular IC service sought locally using the offered model terms & conditions and service specification, but adapted to meet any particular local requirements. For example reaching a decision on which version of paragraph A.9.1 will be used to determine staffing levels in the service, and deciding whether nursing inputs will be delivered by the NHS (or indeed another contracted agency) or by the home under the contract)

(set out broad contract basis (e.g. block purchase, payment in arrears) and duration (including whether there is to be an option of extending the initial contract period and the detail of that) as per usual ITT, and ensure this matches the adopted model)

(set out selection and award criteria including price/quality balance, and the scoring system)

(note that the model contract terms & conditions and service specification (set out as part 2 of this resource pack), are framed as a contract formed by the joint signature of a paper document by the two parties. This is in recognition of the value of having a single document setting out all of the contractual relationship in one place that either party's staff may readily access and use in discussions, as opposed to the entire agreement being comprised of a series of electronic transmissions. Such an approach does not preclude an electronic tendering process, which is the preferred method, but concludes that process by the exchange of a single signed document. If this path is adopted then the ITT needs to clarify this is how the final contract will be formed.)

Your header here in this typeface, weight, size and colour

Paragraph of text here in this typeface, weight and colour. Please note that all text should be Arial (normal) point size 12 with a line spacing of exactly 14. To adjust line spacing in MS Word click Format > Paragraph and change line spacing option to "exactly" then change to size "14".

Do not adjust formatting, margins, alignments and so on. Our corporate documents must be laid out in a consistent way.

Do not use italics or underlining. Our corporate documents must follow RNIB Clear print guidelines.

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Tha am foillseachadh seo ri fhaighinn ann an cruthannan is cànan eile ma nithear iarrrtas.

অনুরোধসাপেক্ষে এই প্রকাশনাটি অন্য ফরম্যাট এবং অন্যান্য ভাষায় পাওয়া যায়।

یہ اشاعت درخواست کرنے پر دیگر شکلوں اور دیگر زبانوں میں فراہم کی جاسکتی ہے۔

ਬੇਨਤੀ 'ਤੇ ਇਹ ਪ੍ਰਕਾਸ਼ਨ ਹੋਰ ਰੂਪਾਂ ਅਤੇ ਹੋਰਨਾਂ ਭਾਸ਼ਾਵਾਂ ਵਿਚ ਉਪਲਬਧ ਹੈ।

هذه الوثيقة متوفرة بلغات ونماذج أخرى عند الطلب

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