



**Bwrdd Iechyd Lleol  
Local Health Board**

Bro Morgannwg  
Vale of Glamorgan

**MAIN CONTRACT FOR RESIDENTIAL CARE, NHS FUNDED  
REGISTERED NURSING CARE AND CONTINUING HEALTH  
CARE**

**VALE OF GLAMORGAN COUNCIL**

**AND**

**VALE OF GLAMORGAN LOCAL HEALTH BOARD**



### **Specific Client Groups**

Local Authorities and Local Health Boards are responsible for meeting the continuing health and social care needs of the following client groups (the definitions of which are in accordance with CSIW):

- Older People
- Older people suffering from mental illness
- People with dementia
- Younger adults assessed as requiring continuing health and/or social care as a result of illness or accidents or disability

### **Agency Responsibilities for arranging and funding Residential Care/NHS funded Registered Nursing Care and Continuing Healthcare.**

<b>Care Required</b>	<b>Funding Agency</b>	<b>Location</b>
Personal Care	Self/Local Authority	Care Home
Registered Nursing Care	Local Health Board	Care Home
Rehabilitation/Recovery	Local Authority/Local Health Board	Care Home
Respite Healthcare	Local Health Board	Care Home
Specialist Healthcare Equipment	Local Health Board	Care Home
Specialist Healthcare Treatment/Support	Local Health Board	Care Home
Continuing NHS Patient Status	Local Health Board	Care Home

## NATIONAL ASSISTANCE ACT 1948

## NATIONAL HEALTH SERVICE AND COMMUNITY CARE ACT 1990

## HEALTH AND SOCIAL CARE ACT 2001

## CONTRACT FOR THE PROVISION OF RESIDENTIAL CARE AND/OR NHS FUNDED REGISTERED NURSING CARE AND/OR CONTINUING HEALTH CARE

### PARTIES

This contract is made the \_\_\_\_\_ day of \_\_\_\_\_ 200 between The Vale of Glamorgan Council, Civic Offices, Holton Road, Barry, Vale of Glamorgan, CF63 4RU) ("the Council") and Vale of Glamorgan Local Health Board, 2 Stanwell Road, Penarth, Vale of Glamorgan, CF64 2AA ("the Local Health Board") and *College Fields Nursing Home* ("The Provider") and relates to the provision of one or a combination of the following: Residential Care; Registered Nursing Care; Continuing Health Care at (*location*)

### Whereas:-

1. The Council is responsible for carrying out assessments in accordance with Section 47 of the National Health Service and Community Care Act 1990 and enabling the provision of services to meet the needs identified by an assessment in accordance with the provisions of Part III of the National Assistance Act 1948. The Local Health Board is responsible for meeting the Continuing Healthcare Needs in accordance with WHC(95) 'NHS Responsibilities for meeting Continuing Health Care Needs' and Registered Nursing Care in accordance with the Health and Social Care Act 2001.
2. The Council and the Local Health Board are required to arrange provision ("the Services") as specified in the Service Specification ("Specification") annexed as Schedule A.
3. The Provider has agreed to provide the Services in accordance with the terms and conditions set out in this contract.

### IT IS AGREED AS FOLLOWS:-

#### 1. DEFINITIONS:

In this contract and its schedules the following words shall have the following meanings:-

**"Caldicott Principles"** are those principles by which patient identifiable information is only transferred for justified purposes and that only the minimum necessary information is transferred in each case

The **"Commencement Date(s)"** is/are set out in the Individual Care Contract

**"CSIW"** refers to the Care Standards Inspectorate (Wales).

**"Continuing Care"** – A joint package of care provided by health and social services.

**“Continuing Healthcare”** – A range of healthcare services provided by health including Rehabilitation/Recovery, Respite Healthcare, Specialist Healthcare Support, Specialist Healthcare Equipment, Specialist Treatment, Continuing NHS Patient Status.

**“Continuing NHS Patient Status”** – The Service User retains NHS Patient Status, therefore the cost of the placement is totally funded by the NHS

**“Doctor”** is a medically qualified practitioner.

The **“Expiry Date(s)”** where appropriate is/are set out in the Individual Care Plan Contract.

The **“Care Home”** – is the registered Home in which the Service User is or is to be accommodated

The **“Officer”** is a person authorised by the Council.

The **“Designated Case Manager”** is the person authorised by the Local Health Board to monitor and review Continuing Healthcare placements.

**“Local Health Board”** – The commissioning body responsible for funding registered nursing care in nursing homes and continuing healthcare services.

**“NHS Funded Nursing Care Assessment”** – The part of a comprehensive assessment carried out by a suitably qualified nurse which will determine whether the person is eligible for NHS Funded Nursing Care in a care home.

**“NHS Funded Registered Nursing Care”**

Nursing care by a registered nurse as meaning any services provided by a registered nurse and involving (a) the provision of care or (b) the planning, supervision or delegation of the provision of care within a care home

**“Nursing Home Co-ordinator”** – Co-ordinates on behalf of the Local Health Board, the administration of NHS Funded Nursing Care including liaison with Local Authorities and Care Homes; ensuring payments to Care Homes; maintenance of the database and providing administrative support to the Nurse Director within the Local Health Board.

The **“Proxy”** is the individual nominated by the Service User to represent him/her.

The **“Service User” and the “Service Users”** is/are the named individual(s) receiving or who will be receiving the care of the Provider.

**“Staff”** are persons employed by the Provider in the Home.

**“Suitably Qualified Nurse”** – A registered nurse who has been authorised by the Local Health Board to assess eligibility for NHS funded registered nursing care.

The **“Care Allowance”** is that part of the total fee charged by the Provider in respect of the Service User to be paid by the Council.

The **“Full Normal Charge”** will consist of the weekly fee agreed by the Council and Local Health Board at the commencement of each financial year. It is accepted by all parties that the Full Normal Charge is not intended to equal or exceed the true cost of providing the Services to the Service User. The Local Health Board Contribution will be either:

- a) the Registered Nursing Care component or
- b) the Continuing Health Care component

The “**Personal Expenses Allowance**” is the sum of money identified as solely for the Service Users use as notified from time to time by the Council and such sum shall not to be used whole or in part as a Third Party Contribution.

The “**Sponsor**” is the person who agrees to pay the Third Party Contribution.

The “**Third Party Contribution**” is that sum of money to be paid by a named Third Party or Parties (herein after referred to as the Sponsor) to the Provider to meet the difference between the Provider’s fee and the sum of the Care Allowance in respect of the Service User and the Service User’s Contribution as specified in the agreed Financial Statement annexed as Appendix 1 to the Individual Care Contract.

The “**Specification**” is the document specifying the services to be provided to the Council and the Local Health Board and to the Service User by the Provider annexed as Schedule A to this contract.

“**Individual Care Contract**” is the document annexed as Schedule B and will be completed with the necessary details in respect of each Service User to be accommodated at the Home.

The “**Financial Statement**” is the document annexed as Appendix 1 to Schedule B

The “**Statement of Aims**” is annexed as Appendix 2 to Schedule B

The “**Regulatory Authority**” is the Authority responsible for registering the Care Home for the area in which it is situated.

## 2. DURATION OF CONTRACT

- 2.1 The Contract shall commence on the 1<sup>st</sup> December 2004 and will remain in operation in accordance with this Contract.
- 2.2 The Terms and Conditions of this Contract shall replace any previous agreement entered into between the parties or their predecessors.
- 2.3 The obligations of the Parties to the Contract will operate only when all parties have signed an Individual Care Contract in respect of a Service User, except in those cases classed as emergency admissions.

## 3. TERMINATION

- 3.1 Subject to Clauses 3.2. and 3.3 this Contract or the Individual Care Contract may be terminated by any of the parties giving the other parties twenty eight days written notice. Any of the parties can agree to a lesser period of notice provided it is agreed in writing. During the period of notice all parties shall co-operate to ensure that the interests of the Service Users continue to be met.
- 3.2 The Council and/or the Local Health Board may terminate this Contract immediately without notice and recover any resulting reasonable financial loss from the Provider (excluding any losses due to failure or negligence on the part of the Council and/or the Local Health Board) in the following circumstances, subject to clause 16:-
  - 3.2.1 if the Provider or a member of staff working in the Home is found, following a proper and fair investigation, to have engaged in any serious misconduct which, in the reasonable opinion of the Officer and/or Designated Case Manager , was prejudicial to the Service and the Provider failed to take prompt and reasonable steps to protect the Service User;
  - 3.2.2 upon the Home ceasing for whatever reason to be registered pursuant to the provisions of the Care Standards Act 2000 or any statutory modification or re-enactment thereof;
  - 3.2.3 if either the Council and/or the Local Health Board is satisfied that the Provider has committed any serious breach of this Contract or has consistently failed to perform the terms, conditions and obligations imposed by this Contract
  - 3.2.4 if the Provider persistently fails to take corrective action following its default in the provision of this Contract following a reasonable period of notice given by the Council or the Local Health Board
  - 3.2.5 if the Provider or a person on the Provider's behalf with its knowledge and authority offers any improper inducements or exerts unreasonable pressure on potential Service User(s), the Service User(s) relatives or other interested parties in attempting to procure improperly potential Service Users into using the Home or any other Home run by the Provider, or takes unreasonable financial advantage of the relationship with a Service User;
  - 3.2.6 if the Provider shall have given any financial inducement or reward to an elected Member or Officer of the Council or the Local Health Board in order to gain unfair advantage under or in connection with this Contract and or has committed any offence under the Prevention of Corruption Acts or Section 117 of the Local Government Act 1972;
  - 3.2.7 if the Provider shall have been convicted of an offence under the provision of the Care Standards Act 2000;
  - 3.2.8 if the Provider becomes bankrupt or makes a composition or arrangement with its creditors or has a proposal in respect of its company for the voluntary arrangements

- for a composition of debts or scheme or arrangement approved in accordance with the Insolvency Act 1986;
- 3.2.9 if the Provider has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrative receiver or the making of an administration order;
  - 3.2.10 if the Provider has a winding –up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding up passed;
  - 3.2.11 if the Provider has a provisional liquidator receiver or manager of its business or undertaking duly appointed;
  - 3.2.12 if the Provider has an administrative receiver as defined in the Insolvency Act 1986 appointed;
  - 3.2.13 if the Provider has possession taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the floating charge;
  - 3.2.14 where the Court or a Creditor are entitled to appoint or have appointed a receiver, a manager, or administrative receiver or which entitle the Court to make a winding up order;
  - 3.2.15 if there is any material change in the management of the Home, which in the reasonable opinion of the Officer/Designated Case Manager is likely to be prejudicial to the Service User.
- 3.3 The Individual Care Contract will terminate immediately:-
- 3.3.1 on the death of the Service User;
  - 3.3.2 on the Expiry Date referred to in the Individual Care Contract
  - 3.3.3 on the cessation of permanent residence of the Service User at the Home  
Cessation of permanent residence will arise, from the date of leaving as a result of the following circumstances:
    - 3.3.3.1 if the Service User following an assessment of need is to have his/her needs met other than by accommodation in the Provider's Home; or
    - 3.3.3.2 if the Service User informs the Council that he/she wishes to leave the Home and there is a reasonable alternative available; or
  - 3.3.4 following temporary absence as detailed in Clause 9.3
  - 3.3.5 in the event of the death of a Service User, the Council and /or Local Health Board shall fund the placement (excluding any third party payment) for 4 days following the death of the Service User. The Service User's room shall not be occupied by another person during this time who was not already sharing the room. During the 4 days following the death of the Service User, the Officer, the Local Health Board and any person duly authorised by them together with any relatives or friend (as previously nominated by the Service User) of the Service User shall be allowed by the Provider to take away the possessions of the deceased and shall be afforded access at any reasonable time to the Service User's former room. The Provider may reasonably refuse removal of possessions unless a signed receipt for the same is offered.
- 3.4 If for any reason and prior to the commencement of the service the Service User becomes permanently unable to receive the Service any agreement in respect of that Service User shall be deemed frustrated and consequently void.
- 3.5 This Contract will be reviewed by 1<sup>st</sup> December 2004 by the Council the Local Health Board and the Provider, but this review date may be extended by mutual agreement to a later date.

#### 4. TERMINATION CONSEQUENCES

- 4.1 On the expiry or other termination of this Contract, the Provider shall cease to provide services pursuant to this Contract and shall, subject to clause 4.2 below, cease to be entitled to receive payment pursuant to Clause 7 hereof.
- 4.2 The expiry or termination of this Contract shall be without prejudice to any rights, which have already accrued to either of the parties under this Contract.
- 4.3 If the Contract is terminated in accordance with the terms of this Contract the Council and the Local Health Board shall:
  - 4.3.1 be entitled to repossess any equipment belonging to the Council and Local Health Board used in the provision of the Service
  - 4.3.2 be entitled to deduct from any sum or sums due to the Provider under this contract

#### 5. THE PROVIDER'S OBLIGATION

The Provider agrees:-

- 5.1 To provide care to the Service User in accordance with the Specification and the Individual Care Contract together with its attached Appendices.
- 5.2 To collect from the Sponsor the Third Party contributions identified in Appendix 1 of the Individual Care Contract
- 5.3 To notify the Officer as soon as possible and in any event within 12 weeks of any debt to the Provider accumulated by the Service User or Sponsor.
- 5.4 To allow at any reasonable time the Officer/Designated Case Manager and other duly authorised person access to the Care Home and to records/information reasonably required to enable monitoring and to review the performance of this contract.
- 5.5 To maintain in respect of each Service User a Personal File which shall include the matters required to be recorded in accordance with Appendix 2 of the Individual Care Contract
- 5.6 To record significant incidents ongoing or affecting the Service User and in particular to notify the Officer and or Designated Case Manager immediately and also in any event the CSIW Regional Office within 24 hours if any of the following events occur, such notice being confirmed in writing within 3 working days.
  - 5.6.1 When the Service User's refusal of assistance adversely affects his/her well-being or the well-being of others.
  - 5.6.2 Any other occurrence directly affecting or involving the Service User and required to be notified to the appropriate office of the National Assembly for Wales under the Care Homes (Wales) Regulations 2002
- 5.7 To provide or arrange for support/supervision to be available for the Service User under the terms of this contract at all times.
- 5.8 In the event of the death of the Service User to immediately notify the Service User's identified emergency contact.
- 5.9 If the Service User suffers a serious illness, the Provider shall seek any necessary medical attention and immediately notify the Service User's identified emergency contact.

- 5.10 In the event of unexplained absences from the Home, and having made reasonable efforts to locate the Service User the Provider shall, inform the Police, the Officer and/or the designated Case Manager and the Service User's identified emergency contact as soon as possible and in any event within 24 hours such notice being confirmed in writing within 3 working days.
- 5.11 Not to assign or sub-let contract any part or whole of the Services to be provided under this contract without the written consent of the Council or the Local Health Board.
- 5.12 Where identified by the Council, to provide the Service User each week for his/her personal use the Personal Allowance and to obtain a receipt (where practicable) from the Service User for each payment.
- 5.13 To maintain a valid registration of the Home pursuant to the Care Standards Act 2000 where applicable or any statutory modification or re-enactment thereof, and to inform the Council and/or Local Health Board as soon as possible and in any event within 24 hours such notice being confirmed in writing within 3 working days, if any notice under the Care Standards Act 2000 has been issued in connection with the Home by the Care Standards Inspectorate for Wales (or equivalent body). The Council and the Local Health Board may at any time approach the Care Standards Inspectorate for Wales (or equivalent body) for any information relating to the Home or the Service to be provided hereunder and this contract shall constitute an authority to the appropriate CSIW Regional Office to divulge any such information as the Council and the Local Health Board may require.
- 5.14 If required by the Council or the Local Health Board, the Provider shall provide all information required and make available (whether held on paper or electronically) original correspondence, case-notes, diaries, records, statements of account, vouchers and all other documents relating to the provision of services under this Contract including details relating to staffing and management of the Home and supply copies of the same if so requested within 24 hours.

## 6. THE COUNCIL AND THE LOCAL HEALTH BOARD OBLIGATIONS

- 6.1 The Council and the Local Health Board is responsible for ensuring the Service User receives care as specified in the Individual Care Contract and Appendix 2 thereof.
- 6.2 The Council and the Local Health Board agree to pay to the Provider the Charge set out in Appendix 1 of the Individual Care Contract Such funding levels will be discussed and agreed with Providers on an annual basis. Where there is an identified Continuing Healthcare component, the Local Health Board will reimburse the Council on receipt of an invoice from the Council. In respect of Continuing NHS Patient Status, the Local Health Board will reimburse the Provider on receipt of an invoice from the Provider.
- 6.3 Where Service Users wish to pay their registered nursing care fees direct to the Provider and notify the Provider in writing accordingly these wishes will be respected where reasonably practicable to do so. The Provider shall inform the Council within five days of such notification being received. (Individuals may subsequently decide to receive Nursing care by a registered nurse paid for by the Local Health Board, but to do so they would need to undergo an assessment of the care by a registered nurse.)

## 7. PAYMENT

- 7.1 Payment by the Council to the Provider including the Local Health Board Contribution will be made 4 weekly, in accordance with Appendix 1 of the Individual Care Plan that is two weeks in advance and two weeks in arrears. Such payment shall be based on the verification of service provision by the Provider as agreed. Any corrections to under or overpayments will be made in the following 4 week period or as soon as possible thereafter.
- 7.2 Where the Local Health Board is responsible for funding the total cost of the placement, payment to the Provider shall be made 4 weekly in arrears.
- 7.3 Acceptance by the Provider of any payment shall be deemed agreement to the contract terms prevailing at the time of such acceptance. If an excess payment for the Service User shall be made by the Council and/or the Local Health Board, the Provider shall repay such excess payment to the Council and/or the Local Health Board upon demand and in default thereof the Council shall deduct that amount from the next payment due to the Provider howsoever and wheresoever arising.
- 7.4 Any underpayment by the Council and/or the Local Health Board of the full normal charge should be notified by the Home within 14 working days providing details of the reason for the underpayment. The revised payment will be made within the next 4 weekly payment period.

## 8 REVIEW

- 8.1 Where a Service User's needs have been reassessed by the Council and or the Local Health Board, resulting in changes to the Services, irrespective of whether such changes are temporary or permanent, the Provider will make the necessary changes to the Service within 7 days of receiving written notification from the Council and or Local Health Board.
- 8.2 Where the amended Services are substantially the same as previously provided, the rate specified in Appendix 1 of the Individual Care Contract shall apply to such services.
- 8.3 In the event that services are reduced or increased pursuant to this Clause the rate specified in Appendix 1 of the Individual Care Contract shall be varied to the rate that would apply at the inception of such a contract for the new level of Services.

## 9. RESIDENTS TEMPORARY ABSENCES

- 9.1 The Provider shall where such absences are known, notify the Officer and/or Designated Case Manager in writing of all planned absences in excess of 72 hours and all unplanned absences in which case the provisions of paragraph 9.3 below as to payment shall apply.
- 9.2 The Service User's place shall be held open by the Provider for a minimum period of 6 weeks from the first day of the absence unless the contrary is agreed. The Council shall pay to the Provider the full normal charge for the first 4 weeks of absence and 80% of the full normal charge for the remainder of the period that the Service User's place is held open. If, on assessment, the Council and the Local Health Board determine that the Service User will not return to the Provider the Council may give the Provider 28 days notice of termination at any time and within the notice period the applicable appropriate rate as above shall be paid. The Provider shall be under a duty to mitigate his claim for charges and shall take all reasonable steps to re-let the placement in which case the charge to the Council for the place so held open shall not be payable from the date of the re-let.

- 9.3 The Service User's room shall not be used for the accommodation of other persons (except a person already sharing the room) during the period that the placement is being held open.
- 9.4 The Statement of Aims set out in Appendix 2 to the Individual Care Contract and the retention of the Service User's placement shall be reviewed by the Council and/or the Designated Case Manager within four weeks following the date of admission where a resident remains in hospital.

## 10 CONFIDENTIALITY

The Provider, the Council and the Local Health Board shall at all times:-

- 10.1 Comply with the Data Protection Acts.
- 10.2 Respect and treat information relating to a Service User as confidential.
- 10.3 Not make use of, for their own purposes, or disclose to any person (except as may be required or permitted by law), any information concerning the Service User, or any information contained in any material provided to them by the other parties to this Contract and pursuant to this, unless such information is in the public domain, and all such information shall be deemed to be confidential.
- 10.4 Only share information relating to Service Users in accordance the Information Sharing Protocol based on Caldicott Principles
- 10.5 Commercially sensitive information relating to this contract shall not, other than to their professional advisers auditors and as required by law, be disclosed to any other persons unless previously agreed by both parties.
- 10.6 At all times information will be dealt with in accordance the Information Sharing Protocol based on Caldicott Principles.

## 11. CONTRACT COMPLIANCE

- 11.1 The Officer and/or Designated Case Manager shall be entitled to ascertain by whatever lawful means he/she considers appropriate and proportionate whether the Provider has performed the services provided for and in accordance under this Contract.
- 11.2 Without prejudice to the previous clause either the Officer or the Designated Case Manager or both of them may at their discretion serve upon the Provider a written notice specifying apparent deficiencies in the agreed Services with a requirement either to show that there are no such deficiencies or to bring those Services up to a required standard within a specified and agreed period of time. Failure to comply with such a notice may constitute a fundamental breach of contract, which shall entitle the Council or Health Board to suspend payment of all, or part of the charges from the date of service of the notice.
- 11.3 In the event of the Provider being in fundamental breach of this contract to the extent that the safety and well-being of the Service User is endangered, the Council and/or the Local Health Board shall be entitled to employ and pay other persons at reasonable expense to the Provider to provide and complete the provision of the Service or any part thereof and or to use the Provider's facilities to secure the safety and the well-being of the Service User where no other satisfactory arrangement which is consistent with the wellbeing of the Service User can achieve this.

## 12. OBSERVANCE OF STATUTORY REQUIREMENTS

The parties to this Contract shall comply with all statutory and other provisions to be observed and performed in connection with the commissioning and provision of the services under this

Contract including assessment and placement of Service Users, the Specification and any relevant

Codes of Practice, Codes of Conduct, Regulations and Guidance.

## 13. INSURANCE

- 13.1 The Provider must fully and promptly indemnify the Council and /or Local Health Board against all losses, damages, costs, expenses, liabilities, claims whether these arise under statute or common law, which the Council and/or Local Health Board suffers as a result of negligence, default or breach of statutory duty on the Provider's part in carrying out its' obligations under this Contract or on the part of any person employed or engaged by the Provider in carrying out the Provider's obligations under this Contract.

The Provider will not be liable to indemnify the Council and/or Local Health Board where losses are due to any negligence, default or breach of statutory duty on the part of the Council and/or Local Health Board or on the part of their employees acting in the course of their employment.

Except where the Provider's liability for any of the Council and/or Local Health Board losses, which relate to personal injury or death shall be unlimited, the Provider's liability for the Council's and Local Health Board losses shall be limited to the annual value of this Contract in respect of this and every claim.

- 13.2 The Council and Local Health Board must fully and promptly indemnify the Provider against all losses, damages, costs, expenses, liabilities, claims whether these arise under statute or common law, which Provider suffers as a result of negligence, default or breach of statutory duty on the Council's or Local Health Board part in carrying out their obligations under this Contract or on the part of any person employed or engaged by the Council and/or Local Health Board in carrying out their obligations under this Contract.

The Council and/or LHB will not be liable to indemnify the Provider where losses are due to any negligence, default or breach of statutory duty on the part of the Provider or on the part of its' employees acting in the course of their employment.

Except where the Council's and/or Local Health Board's liability for any of the Provider's losses, which relate to personal injury or death shall be unlimited, the Council's and Local Health Board's liability for the Provider's losses shall be limited to the annual value of this Contract in respect of this and every claim.

- 13.3 The Provider shall maintain an Insurance Policy to comply with the Employers Liability (Company Insurance) Act 1969, Public Liability .

- 13.4 Staff administering medication shall have appropriate medical malpractice cover.

- 13.5 The Provider shall produce such evidence as the Council and/or Local Health Board may reasonably require that the insurances referred at Clause 13.3 and 13.4 has been taken out and is in force at all times.

## 14. COMPLAINTS

- 14.1 The Provider shall operate a procedure for examining any complaint made by or on behalf of the Service Users and their families shall be informed in writing by the Provider of the means of registering a complaint including Council and NHS Complaint Procedures, how the complaint will be dealt with, and informed of the outcome.
- 14.2 All complaints made to the Provider by or on behalf of a Service User to the Provider shall be recorded and a copy of any such complaint shall be forwarded to the Council and/or Local Health Board within 2 working days. The Provider shall set out his response to the complaint in writing and copy to the Council and/or Local Health Board within twenty eight days thereafter.

## 15. MISCELLANEOUS

### 15.1 Whole Agreement

The Provider acknowledges that this Contract and its Schedules including the Specification and Individual Care Contract contains the whole agreement between the parties and that it has not relied upon any oral or written representation made to it by the Council, Local Health Board or their employees or agents and has made its own investigations into all matters relevant to this Contract.

- 15.2 Any decision, exercise of discretion, judgement or opinion or approval of any matter mentioned in this Contract or arising from it shall only be binding upon the Council and or the Local Health Board and or the Provider if in writing and shall be at its sole discretion unless otherwise expressly provided in the Contract.
- 15.3 Any notice to be served on any of the parties in relation to the main contract by the other shall be sent by prepaid recorded delivery or registered post addressed to the Group Director Community Care and/or the Chief Executive of the Local Health Board (*please refer to addresses on page 3*) or to the Provider at the Care Home and shall be deemed to have been received by the addressee within 48 hours of posting.
- 15.4 The Provider nor any employee of the Provider is not and shall in no circumstances:
- 15.4.1 hold himself out as being the servant or agent of the Council or the Local Health Board
  - 15.4.2 hold himself out as being authorised to enter into any contract on behalf of the Council or Local Health Board or in any other way to bind the Council or Local Health Board to the performance, variation, release or discharge of any obligation.
- 15.4 This Contract and all rights under it may be assigned or transferred by the Council or the Local Health Board.
- 15.5 This Contract is made in Wales and shall be governed by the laws of England and Wales, and in accordance with secondary legislation issued by the Welsh Assembly Government
- 15.6 Each of the parties shall pay their own costs and expenses incurred in connection with this Contract.

## 16. ARBITRATION

- 16.1 In the event of any unresolved dispute or failure to agree on any matter relating to this Contract arising between the Council, and/or the Local Health Board and the Provider of the service, the issue shall be resolved by arbitration.
- 16.2 Either party for the appointment of an independent arbitrator by the President or Vice President of the Chartered Institute of Arbitrators may submit a written request.

## 17. NO WAIVER

No failure by any of the parties to insist upon the strict performance of any condition of this Contract or to exercise any right or remedy upon breach of any provision of this Contract shall constitute waiver of any condition or waiver of any subsequent breach or default in the performance of any condition.

## 18. FORCE MAJEURE

Neither of the parties shall be liable to the other(s) for any failure to fulfil its obligations under the Contract if such a failure is caused by circumstances, which are beyond its reasonable control.

## 19. HUMAN RIGHTS ACT 1998

- 19.1 The Provider acknowledges that in relation to its obligations under this agreement it will abide by the provisions of the Human Rights Act 1998 and the Provider agrees that it will: -
- 19.1.1 at all times act in accordance with the Human Rights Act in relation to its obligations under this agreement and
  - 19.1.2 take such action as the Council and/or Local Health Board may reasonably require for the purpose of ensuring compliance with the Act.

## 20. VULNERABLE ADULTS

Providers are required to ensure that their Service Users are protected from abuse. Providers must demonstrate their understanding of the South Wales Adult Protection inter-agency policies and procedures for responding to alleged abuse and inappropriate care of vulnerable adults.

## 21. SEVERABILITY

If any term or provision in this Agreement shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law that term or provision or part shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected.

**SIGNATURE OF PROVIDER**

Signed as a deed for and on behalf of

**Director:**\_\_\_\_\_

**Date:**\_\_\_\_\_

**Secretary:**\_\_\_\_\_

**Date:**\_\_\_\_\_

**In the presence of:**\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Date:**\_\_\_\_\_

**SIGNATURE FOR .....LOCAL HEALTH BOARD:**

**Designation** \_\_\_\_\_

**Date:**\_\_\_\_\_

**SIGNATURE FOR**

**..... COUNCIL:**

**Designation** \_\_\_\_\_

**Date:**\_\_\_\_\_

Schedule A

- Service Specification

Appendix 1 to Schedule A

- Caldicott Principles

Schedule B

- Individual Care Contract & Financial Statement

Appendix 1 to Schedule B

- CarePlan