

**SCHEDULE 1**

**TERMS AND CONDITIONS**

**Provision of Accommodation and Care Services**

**[Home Name]**

**Maria Mallaband Care Group Ltd**

*Copy for Information Only*

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## SECTION A

### AGREEMENT GUIDE AND KEY TERMS

We recognise that moving into a care home is a significant decision. Our aim is to assist you in making the right choice by making the terms upon which we provide care and accommodation clear and transparent. We will be entering into an agreement in which both parties will have rights and obligations. In our Terms and Conditions, we have attempted to set out in plain English those rights and obligations.

Our '**Key Information**' and '**Further Information**' fact sheets set out information that we believe will should assist you in making an informed decision about whether you want to move into our care home. These Terms and Conditions include and expand upon the information set out in those fact sheets.

The Terms and Conditions form part of the Agreement. By signing the Agreement, you are entering a legal agreement. We therefore advise that you review both the Agreement and Terms and Conditions carefully and seek independent legal advice should any issue be unclear.

#### **KEY TERMS**

We draw your specific attention to the following **Key Clauses** and advise that you consider these carefully. Please note the following points are a summary only and you are referred to the full Terms and Conditions.

**TRIAL PERIOD:** (Clause 5) You are entitled to a trial period of 28 days or longer if agreed with the manager in writing. During this period, you may terminate your placement on 7 days' notice in writing.

**FEES and FEE REVIEWS:** (Clauses 6 – 8) The fee payable is set out in the Agreement for the Provision of Care Services ('the Agreement') and the Statement of Fees set out in Appendix 1 to the Agreement.

Our range of fees is set out in the **Key Information Fact Sheet**. Fees are payable monthly in advance. The services covered by the fees include standard care, accommodation, food, laundry, utilities and a range of activities. We are able to provide additional services at additional cost. Staff escorts to appointments are additional services and charged at additional cost.

Payments towards your fees made by any other funding body (Local Authority/NHS) will be deducted from the amount you are required to pay. However, you remain liable for the total fee. If your needs change and you require a higher level of care the fees charged may increase. Fees are reviewed annually or if there is a change in your needs or if there is a legislative change that impacts upon our costs. We may undertake an assessment of your ability to pay our fees and may require that you have sufficient funds to pay our fees for a minimum period of 2 years. We will provide you with 28 days' written notice of an annual fee increase.

**CHANGES IN FUNDING ARRANGEMENTS:** (Clause 9) If you become eligible to receive state funded assistance towards the cost of your fees or indeed in full payment of your fees (whether through your local authority or the NHS), the amount/contribution you receive may not meet the whole amount of our fee and you or a family member may be required to meet the shortfall. If you are unwilling or unable to meet the shortfall, we may decide to terminate this Agreement.

**GUARANTOR:** (Clause 9) We may request that someone acts as a guarantor. The guarantor will be required to enter into a formal agreement in which they guarantee to pay our fees should you fail to do so. If the guarantor is unable to pay, we may have to commence court proceedings to recover the sums due and further we may have to terminate this agreement.

**SELF-FUNDING RESIDENT** (Clause 1.12) refers to a resident who is not eligible for local authority financial assistance and is therefore responsible for funding their care home placement. You are required to inform us if your placement is being arranged by a local authority, even though you are not eligible for financial assistance.

**CHANGES TO FUNDING ARRANGMENTS - THIRD PARTY TOP UP AGREEMENT:** (Clause 9) If you become eligible for local authority funded assistance, the amount that the local authority pays us may not meet our **Total Fee**. If this is the case, we may require that a third person, (usually a family member) agrees to pay a top up fee. A formal agreement will be entered into between the third party and the local authority. The third party should be aware that they will be liable to pay this fee throughout the period of your residency whilst your fees continue to be paid by the local authority. Default by the third party may result in you having to leave the Home.

**CHANGES TO FUNDING ARRANGEMENTS – NHS CONTINUING HEALTHCARE:** (Clause 9) If you become eligible for NHS Continuing Healthcare Funding, the Clinical Commissioning Group (CCG) responsible for providing the funding, may set a standard rate which it considers to be sufficient to meet your assessed care needs. However, this may be an amount which is less than our fees. Should this happen and the CCG does not agree to pay our full fee, you may be required to pay the shortfall. If agreement cannot be reached between you, us and the CCG about our fees, it may result in you having to leave the Home.

**FIRST PARTY TOP UP AGREEMENT (12 WEEK PROPERTY DISREGARD):** (Clause 9) When entering a care home for the first time a local authority may undertake a financial assessment to determine if you are eligible for state funding. During the first 12 weeks of your placement, the local authority will disregard the value of your property in determining whether you are eligible to receive state funding. If the local authority assesses that you are eligible to receive state funded care or a contribution to your care costs, the amount that the local authority may agree to pay may not cover our full fees. In this situation, you may be required to pay a top up to meet the full cost of our fees. This is known as a 'First Party Top Up'.

**FIRST PARTY TOP UP – DEFERRED PAYMENT AGREEMENT:** (Clause 9) If you have a property to sell, a local authority may enter into a Deferred Payment Agreement with you whereby it agrees to meet the costs of care until such time as your property is sold, at which time you will repay to the local authority fees paid on your behalf. The local authority may not agree to pay our full fees. In this case you may be required to pay the difference. This is known as a 'First Party Top Up'.

**TERMINATION:** (Clause 10) Following the Trial period, either party may terminate this agreement on 28 days' notice. Shorter notice of termination can be given by us if; sums due under the Agreement are not paid, we are unable to meet your needs or if your behaviour or the behaviour of a relative or visitor places you, other residents or our staff at risk of harm.

**INSURANCE:** (Clause 12) The Company's insurance policy covers personal effects to the value of £1000 (except cash) and high-risk items including jewellery, hearing aids and dentures. Each claim is subject to a £50 excess which will be paid by you.

**TEMPORARY ABSENCE:** (Clause 19) If you are temporarily absent from the Home, we will keep your room for you. We will continue to charge our full fee. If your absence becomes prolonged (over 8 weeks) and you wish us to keep your room, we will review our fees to see if we are able to offer a discounted fee. However, many of our costs; for example; staff, mortgage, utilities are fixed costs which will not reduce if you are absent from the Home. If the NHS stops paying FNC contributions during a period of absence, the fees that you are required to pay may increase.

**COMPLAINTS:** (Clause 21) If you are unhappy with any aspect of the service you have the right to complain. We have a robust complaints' process, the details of which are set out in our complaints policy. If you have cause to complain this will not affect your care and treatment and rights under the Agreement.

**VARIATION:** (Clause 23.5) We reserve the right to vary the Terms and the Condition of the Agreement in order to be able to deliver an effective and efficient service. If we vary the terms we will always act reasonably. Variations will be made in writing and 4 weeks' notice will be given.

**LASTING POWER OF ATTORNEY:** (Clause 22) If in the future a Resident no longer has the mental capacity to manage their affairs, they may need a representative appointed. Not having a Power of Attorney appointed can impact upon your ability to pay your fees and meet your obligations under this Agreement. We therefore recommend that you arrange for the appointment of a Power of Attorney to manage your financial affairs in the event that you are no longer able to.

## SECTION B

### TERMS AND CONDITIONS

#### 1. DEFINITIONS

- 1.1. The Terms and Conditions contained in this document apply to the people we support. In this document, where we refer to 'we', 'us' or 'the **Company**' or to a similar expression, the reference is to the '**Company**' or '**Home**'.
- 1.2. References within this document to '**Resident, you and yours**' are references to the person named within the Agreement who is to receive the accommodation, personal care and (where necessary) nursing care.
- 1.3. References to '**Client, Client's Next of Kin**' or '**Client's Representative**' are references to the party to the Agreement who enters into the Agreement to pay our fees in consideration for provision of services under this Agreement to the '**Resident**'.
- 1.4. References within this document to '**week**' or '**weekly**' are references to the 7-day period commencing on a Saturday and ending on the following Friday (inclusive).
- 1.5. References within this document to '**Manager**', are references to the individual responsible for the overall running of the Home.
- 1.6. **Funded Nursing Care** is a contribution paid by the NHS to the cost of nursing care provided by a registered nurse.
- 1.7. **NHS Continuing Healthcare** is a free package of care for people who have a primary health need. Such care is provided to meet health and associated social care needs arising because of a disability, accident or illness. It is arranged and funded by the NHS. It is not means tested and is based on assessment of need following criteria set out in a National Framework. NHS continuing healthcare can be withdrawn if your assessed needs no longer meet the eligibility criteria.
- 1.8. **Local Authority Funding** is funding paid by the local authority to meet your assessed social care needs. Local authority funding is means tested and eligibility will depend on each local authority's assessment criteria.
- 1.9. **Third Party-Top-Up** refers to a payment made by a third party towards the costs of the Resident's care in order to meet the shortfall between what a local authority will pay, and the fees charged.
- 1.10. **First -Party-Top-Up** refers to a payment made by the Resident towards the costs of the Resident's care in order to meet the shortfall between what a local authority will pay.
- 1.11. **Guarantor** refers to an individual who enters into an agreement guaranteeing to pay the fees in the event that the Client' fails to do so.

**1.12. Self-Funding Resident** refers to a resident who is not eligible for local authority financial assistance and is therefore responsible for funding their care home placement (whether or not they make payment direct to the Home or to their responsible local authority) and regardless of whether the arrangements for their care are made by the local authority.

**1.13. Total Fees** refers to the Total Weekly fee that is due for the provisions of services under this Agreement set out in the **Statement of Fees at Appendix 1**.

## **2. PHILOSOPHY OF CARE**

**2.1.** The Company will try to provide a comfortable and happy home and hopes that its residents will enjoy living at the Home. The Company, the staff and management within the Home will do everything possible to respect residents' rights, particularly by observing the values of privacy, dignity, independence and choice which can be threatened by living in a communal environment and having to cope with disabilities. The Company recognises that providing good care is a co-operative process and it will attempt to consult its residents and, where appropriate, their relatives, friends and representatives at all times and as fully as possible. This document should be read and interpreted in light of these principles.

**2.2.** The Company aims at all times to comply with the Fundamental Standards and regulatory requirements within the Home.

## **3. RIGHTS OF RESIDENCY/ROOM ALLOCATION**

**3.1.** Residency in the Home does not constitute any tenancy nor an assured tenancy under the Housing Act 1988 and does not create or infer any right to security of tenure. The Resident will be allocated a room on admission which they will occupy as a licensee only.

**3.2.** The Company would not normally ask a Resident to move from one room to another; however, we reserve the right to relocate a Resident at any time to ensure we are able to deliver effective and efficient care services in line with assessed needs. The Company will undertake to provide a reasonable period of notice of such relocation and will discuss reasons with the Resident and their representative unless there are exceptional circumstances which require an urgent move. If such a move is unacceptable to the Resident or the Client, then they have the right to terminate the Agreement with immediate effect without penalty.

**3.3.** The Company shall have, and requires, full, free and unrestricted access to the room in order, amongst other things, to provide the services referred to in this document.

## **4. HEALTH**

**4.1.** On acceptance of their residence at the Home, a care plan will be prepared to outline the management of the Resident's care. The Resident (or where appropriate), their appointed representative/relative(s) will be invited to state what they want from their care and will be advised as to how we will endeavour to meet these objectives.

**4.2.** The Company will comprehensively assess and document the Resident's health needs. Care will be provided in accordance with that assessment to ensure that the Resident's needs are met.

## 5. **TRIAL PERIOD**

- 5.1. The Resident will be entitled to a trial period on first being admitted to the Home. This will be for a period of 28 days from the date of admission or for such other period as shall be agreed in writing between the Manager and the Resident and/or Client.
- 5.2. Notice of one week will be required from either party to terminate the Agreement during this trial period.
- 5.3. All fees as prescribed in clause 6 are payable during this period.
- 5.4. Termination after the Trial period will be in accordance with the provisions set out in Clause 10.

## 6. **FEES**

- 6.1. The Total Fees payable for the provision of services are set out in the **Agreement** and the **Statement of Fees at Appendix 1**.
- 6.2. Fees are payable from the date when we are informed by the Resident (or on their behalf by their appointed representative/relative) that they wish to come to the Home, and we hold a place for them unless otherwise agreed with the Manager in writing.
- 6.3. Unless otherwise provided for within this Agreement, the **Total Fees** payable under this Agreement remain the liability of the Client.

### **Services Included in Basic Fee**

- 6.4. Unless otherwise stated, the fees charged under this Agreement for the services provided hereunder include:
  - staffing the Home on a 24-hour basis,
  - accommodation,
  - full board including snacks,
  - cleaning of rooms,
  - a range of on-site activities,
  - a reasonable choice of menus (including special diets),
  - the laundering of bed linen and personal clothing not requiring dry cleaning.

### **Changes in Care Needs**

- 6.5. If the Resident's needs change during the period of their residency, requiring greater staff input and support, the Company may increase the fees in order to meet this higher level of support. An assessment of need will be undertaken before the fees are increased.
- 6.6. We will use our reasonable endeavours to provide the Client with 7 days' notice of any change in fees to meet the cost of higher level of care and support. Higher levels of care and support (for example 1:1 care) will only be initiated and charged to the Client without 7 days' notice being given by the Company, if it is required in order to protect the Resident, other residents or staff from the risk of harm. In this case we will give the Client prior notice of the increase in fees. If you do not wish to pay the fees for the higher levels of care and support, you can terminate this Agreement without penalty with immediate effect.

### **Funded Nursing Care Contributions from the NHS**

- 6.7.** If the Resident requires nursing care, the CCG will assess whether you are eligible to receive Funded Nursing Care (FNC). FNC is a payment made by the NHS to the Resident towards the costs of nursing care provided by a registered general nurse. If the CCG has assessed that you are eligible for Funded Nursing Care (FNC) and pays this direct to the Home, the amount received will be deducted from the **Total Fee** set out in Appendix 1 and you will be charged the net amount. The Client will, however, remain liable for the **Total Fee** in the event that FNC funding is withdrawn or if the CCG defaults on payment.
- 6.8.** If the resident is admitted to hospital, the CCG may stop making FNC payments to the Home during the period of the admission. As the Client remains liable for the **Total Fee**, this may result in an increase in fees payable by the Client.

### **Payment of Fees**

- 6.9.** Fees are payable by Direct Debit in advance on the third day of each month unless alternative arrangements are agreed in writing.
- 6.10.** Fees paid by any method other than Direct Debit will incur an additional charge.
- 6.11.** All accounts must be settled within seven days of presentation of an invoice.
- 6.12.** Fees are calculated using the following formula:
- Weekly fee divided by 7 days, multiplied by 365 days divided by 12 months to give 12 equal fixed monthly figures.
- 6.13.** If written notice to terminate this Agreement has been given by the Company or by the Client in accordance with the terms of this Agreement, then any fees paid in advance to the Company (insofar as those fees cover a period that is in excess of the required notice period) will be apportioned on a pro-rata basis and reimbursed to the Client save for any deductions made in accordance with the Terms and Conditions set out herein.
- 6.14.** Any amount due within the terms of this Agreement not paid to the Company on its due date will bear interest from the due date to the date of actual payment at a rate of 2% above the LIBOR rate as confirmed by Lloyds TSB Bank plc. Interest due must be paid together with the amount of arrears in question.
- 6.15.** The Company is entitled to recover all legal fees and other expenses incurred in pursuing payment of any overdue fees and other sums payable under the Agreement that are not paid in accordance with these Terms and Conditions.

## **7. FEE REVIEWS**

- 7.1.** The fees that the Company charge are calculated taking into account a number of factors. The Company will carry out a review of its fees annually, or more frequently if one of the events set out in clause 7.5 below should arise.
- 7.2.** The Company's annual fee review takes place on 1 April. The Fee increase will apply to all residents regardless of the date of admission to the Home.

- 7.3.** The Company will apply an annual increase of 6% to the **Total Fee** per annum.
- 7.4.** If a contribution is made to your fees by a local authority or the NHS, (through a Funded Nursing Contribution or Continued Health Care) the local authority or NHS may not increase its contribution by the same percentage as the Company's fee increase. This may result in the amount that you are required to pay being greater than 6% of our **Total Fee**.
- 7.5.** In addition to annual fee reviews, the Company will carry out a review of its fees if one of the following situations arise:
- 7.5.1.** There is a change in the Resident's care needs;
- 7.5.2.** There is a change in any legal requirements to which the Company is subject, and which will lead to an immediate increase in the Company's costs;
- 7.5.3.** There is an increase in the level of FNC paid by the CCG to reflect the increase in costs in providing nursing care.
- 7.6.** Save for where there is an urgent need to provide higher levels of care and support as set out in Clause 6 above, the Company will notify the Client at least 4 weeks in advance of any increase in the Company's fees (insofar as this is practicable) or as soon as is reasonably practicable.
- 7.7.** In circumstances where there is an urgent need to provide higher levels of care and support to avoid harm, we will provide you with immediate notice of any fee increase required to cover the higher care and support costs. If you do not agree with our decision, we will liaise

## **8. ADDITIONAL SERVICES**

- 8.1.** The Additional Services listed below are examples of services that can be provided at extra charge that are **not** included within the **Total Fee**. Details of the extra charges will be provided upon request and before the additional services are provided.
- 8.2.** Additional Services will be paid for by the Client directly.
- Professional hairdressing – by arrangement with the contracted hairdresser
  - Dry Cleaning
  - Alcoholic Beverages, Confectionery, Stationery, Personal Interest Magazines/Personal copies of newspapers
  - Basic Soaps and Toiletries (soaps, hair shampoo, bath foam, talcum powder and toothpaste/steradent tablets) are provided in the inclusive charge. Any special requests
  - Clothing, Shoes and Slippers
  - Telephone – incoming calls are inclusive on the Home telephone. Outgoing calls on the Home's telephone line will attract charges as applicable from the provider
  - Chiropody – by arrangement with the contracted chiropodist
  - Physiotherapy – by arrangement by the GP or privately
  - Aromatherapy, Reflexology
  - Off Site Activities/Events – at cost (including transport costs)
  - Incontinence Pads – the NHS provide a maximum of four incontinence pads per 24-hour period. Any additional pads are charged
  - Staff Escorts – in the event that Clients require an escort for appointments or outings then the Company may, subject to availability, provide a member of staff at a charge of

£20.00 per hour for the time spent away from the Home. Please note that we cannot guarantee a staff escort will be available.

- Specialist equipment, in the event that the weekly fee agreed following assessment does not include the cost of equipment required or requested by the client.

## **9. CHANGES TO FUNDING ARRANGEMENTS**

### **Eligibility for Local Authority Funding**

- 9.1.** Unless we are informed otherwise, we trust and assume that any Resident whose care is arranged by a local authority is entitled to local authority financial assistance and that the Resident is not, therefore, a Self-Funding Resident.
- 9.2.** In the case of Self-Funding Residents, during the period of their residency, circumstances may arise that lead to a change in the Funding Arrangements of their placement. Therefore, if a Resident is not eligible for local authority financial assistance at the time they enter into this Agreement, they may become eligible in the future. It is therefore important that the Client is aware of the criteria for local authority financial assistance and that we are able to establish at the beginning of this Agreement how long the Client will be responsible for meeting the Company's fees out of the Resident's/Client's own financial resources. The Company at its discretion may therefore require details of the Resident's financial status as set out in Appendix 2. All financial information which is provided to us will be kept strictly confidential.
- 9.3.** If the Client is unwilling to provide details of the Resident's financial resources or if the Company determines that the Resident's financial resources are insufficient to pay the Company's fees for a minimum of two years, the Company at its discretion, may require a Guarantor Agreement to be entered into as set out in Appendix 3. The Guarantor will be responsible for meeting the fees if the Client fails to pay the fees due under this Agreement. The Guarantor will be given reasonable notice of the amount of any payment(s) due as they arise, together with an invoice for payment as soon as practicable. We will use our best endeavours not to allow arrears to build up without notifying the Guarantor.
- 9.4.** The Client remains liable for the **Total Fees** until the Agreement has been terminated. It is therefore important that the Client regularly reviews the financial position so that an application for local authority funding can be made in advance of the Client falling below the financial threshold when assistance is available.
- 9.5.** The Client agrees to provide the Company with 3 months' prior notice of the Resident becoming eligible for local authority funding.
- 9.6.** If the Resident becomes eligible for and chooses to accept local authority financial assistance, this Agreement will need to be terminated in accordance with the termination provisions set out in Clause 10 and a new Agreement will be entered into between the Company and the local authority covering the new financial arrangements. The fees we charge may be higher than the fees which the local authority will pay. If this is the case, it may be necessary for the Company and/or the local authority to enter into a separate Agreement with a third party (typically a family member) to meet the shortfall between the amount the local authority pays and our fees. This is referred to as a **Third- Party-Top-Up**. The Client should be aware that if there be a shortfall in fees, and a third party is not prepared to enter into a Third-Party-Top-Up agreement to meet this shortfall, the Company may decide to terminate the placement.

- 9.7. A Third-Party-Top-Up agreement should be arranged through the local authority. Before agreeing to the Third-Party-Top-Up, the local authority is required to consider whether it should meet the full cost of your placement. If the local authority does not provide its authority to a Third-Party-Top-Up agreement, the Company may decide to terminate the placement. If the third-party defaults on the Third-Party-Top-Up payments, the Company may decide to terminate the placement.

**Eligibility for Continuing Health Care Funding or Funded Nursing Care**

- 9.8. If the Resident is admitted as a residential resident and the Resident's needs change, we will undertake a reassessment to determine whether the Resident requires nursing care. This may result in an increase in the weekly fee we charge to reflect the higher level of needs.
- 9.9. If we consider that the Resident requires nursing care, we will request an NHS assessment to determine whether you are eligible to receive **Funded Nursing Care (FNC)** or **Continuing Health Care (CHC)**.
- 9.10. If the Resident is eligible to receive Funded Nursing Care (a payment by the NHS towards the costs of care provided by a registered nurse) the FNC payment may not cover the full increase in our fees. We shall give you 28 days' notice of any changes to the fees that will be charged.
- 9.11. Should the Resident's care needs change, and they are assessed as having a 'primary health need', the Resident may become entitled to NHS **Continuing Healthcare (CHC) funding**. The NHS will usually pay a standard fee which it assesses is sufficient to meet your 'assessed care needs'. Our fees may be higher than the NHS will agree to pay. The NHS may determine that your needs can be met in a more basic care setting. If you become eligible for Continuing Health Care Funding (CHC) during your stay, and the NHS refuses to meet our full fee, you may be required to meet the difference between our fee and the amount the NHS will pay.
- 9.12. As soon as is reasonably practicable after we are informed of eligibility for NHS Continuing Healthcare funding, you will be informed of any additional fees we may require. If they are agreed, it will be necessary at that time to enter into a new agreement detailing these charges and the funding arrangements to cover them. If the fees are not agreed, we may be able to move you to a standard/lower fee room if one is available. You should be aware that if you are not prepared to enter into an agreement to pay the difference in fees and an alternative standard room is not available, the Company may decide to terminate the placement.

**Retrospective Funding Decisions**

- 9.13.** In some circumstances a local authority or the NHS may retrospectively determine a resident is entitled to receive local authority financial assistance, FNC or NHS Continuing Healthcare funding. Should this happen, the Client will remain liable for the full fees charged under this Agreement up until the time when this Agreement is terminated in accordance with the termination provisions set out in Clause 10, and a new agreement entered into between ourselves and the funding body.

If the fees the local authority or NHS agree to pay are lower than those that we charge, the **Total Fees** under this Agreement remain payable until this Agreement is terminated. Any refunds will be made to the Client by the local authority and/ or NHS.

The Company will not be liable for refunding any fees paid under this Agreement.

#### **Twelve Week Property Disregard**

- 9.14.** When undertaking a financial assessment to determine eligibility for local authority funding, a local authority will disregard the value of the Resident's property for a period of 12 weeks. This may result in the local authority meeting all, or contributing to the costs, of the Resident's care during this period. If the fees the local authority agrees to pay during this period are lower than the fees we charge, you may be required to meet any shortfall. This is called a 'First Party Top Up'.

You are required to inform us if a local authority is disregarding your property for the purposes of assessing your eligibility during the 12 weeks after your admission to the Home.

#### **Deferred Payment Agreement**

- 9.15.** If you have entered into a Deferred Payment Agreement with a local authority you are required to disclose this to us.

A local authority will pay the costs of your care until you have sold your property. If the fees the local authority agrees to pay during this period are lower than the fees we charge, you may be required to meet any shortfall. This is called a 'First Party Top Up.'

#### **Discharge to Assess**

- 9.16.** If the Resident's placement has been arranged by a local authority/CCG/ or NHS Trust in order to facilitate the Resident's prompt discharge from hospital on a 'Discharge to Assess' basis, the Client will be required to sign this Agreement confirming that they will be responsible for the terms set out in the Agreement, including the fees. If a local authority/CCG/NHS Trust pays our fees during the Assessment period, no charge will be made to the Client. The Client will be responsible for our fees in the event that the local authority/CCG/ or NHS Trust determines that the Resident is not eligible to receive state funded support or in the event that state funded support is withdrawn.

## **10. TERMINATION**

### **Termination on Death**

- 10.1.** This Agreement will terminate immediately on the Resident's death.
- 10.2.** The room must be cleared within 3 days after the date of death.
- 10.3.** Fees will be charged up to the date of death. Any fees paid in advance to the Company will be reimbursed on a pro rate basis save for any deductions made pursuant to this Contract.
- 10.4.** On the Resident's death, the Client agrees to inform the Company of the details of the executors/administrators appointed by the Resident's estate.
- 10.5.** The Client agrees to inform the appointed executors/administrators of the Resident's estate of any fees that remain outstanding within 7 days of the date of the Resident's death.

### **Termination by the Company**

- 10.6.** The Company may terminate this Agreement in any of the following situations:
  - 10.6.1.** the Client fails to pay the fees due and payable under this Agreement;
  - 10.6.2.** the Company can no longer provide care which is appropriate for the Resident's needs within the Home;
  - 10.6.3.** there is an irreconcilable breakdown in the relationship between the Resident and/or the Resident's relatives or representatives which interrupts the service or safe delivery of care to the Resident or other service users;
  - 10.6.4.** the Home closes and/or the Company's registration in respect of the Home is cancelled;
  - 10.6.5.** where in the opinion of the Company the Resident is disruptive and/or presents a risk to the welfare of the other service users in the Home, or its staff (in which case the Company's right to cancel will be exercised reasonably taking account of the type of care that the Home has agreed to provide to the Resident and after all reasonable efforts have been made by the Company to manage the risk);
  - 10.6.6.** the Resident's funding arrangements change and there is no person willing to enter into a Third-Party-Top -Agreement;
  - 10.6.7.** the Client refuses to pay additional charges not met by CHC and/or FNC payments.
- 10.7.** In such cases the Company will endeavour to work with the Resident, professionals and the Resident's family to determine appropriate alternative accommodation.
- 10.8.** The Company will give no less than 28 days written notice save for clauses 10.5.2, 10.5.3, 10.5.4 above where the notice period will be a minimum of 7 days' notice of termination.

**10.9.** Notice will be given in writing and served on the Client.

**Termination by the Client**

**10.10.** The Client may terminate this Agreement upon giving the Company not less than 28 days written notice of termination.

**10.11.** Should the Resident vacate the Home before the expiry of the 28-day notice period the full fees due for the Notice period will remain payable.

**10.12.** If the Resident vacates the room during the notice period and the room is used to accommodate another resident, the fees due for the remainder of the notice period will be reduced to take into account any sums received during that period.

**11. NOT USED**

**12. INSURANCE**

**12.1.** Our insurance policy provides cover for Resident's personal belongings up to a maximum value of £1,000 at any time, with the exception of cash.

**12.2.** The policy carries a £50 excess payable by the Resident for each claim made under the policy.

**12.3.** If personal belongings, such as furniture and items e.g. cash, credit cards, deeds, documents or personal effects of greater value are kept in the Home, they should be covered by the Resident's own insurance.

**12.4.** High risk items such as jewellery/hearing aids/spectacles/dentures/cash are not covered by the Company's insurance and the Resident should make appropriate insurance provision.

**13. SMOKING & ALCOHOL**

**13.1.** The Home is non-smoking. Residents are asked to discuss smoking arrangements prior to admission. Smoking is not permitted in the bedrooms or in any area of the Home building and there can be no exception made.

**13.2.** Alcoholic drinks are allowed but the Home would prefer to hold personal stocks which will be made available upon request.

**14. EQUALITY AND DIVERSITY**

**14.1.** We operate an equal opportunities policy with regards to the users of our services and to the employment of staff. This being the case, the Resident has the right to refuse the care of any employees at the Home for their own personal reasons, but if in an emergency that member of staff is the only person qualified to give the necessary care and the Resident continues to refuse that person's help it will be entirely at the Resident's own risk.

- 14.2.** The Resident's cultural and religious beliefs will be respected, and we will endeavour to meet all of their reasonable requirements so far as is reasonably practicable.

## **15. VISITING**

- 15.1.** Visiting times are as flexible as possible. There are no restrictions but if treatments are to be carried out during the course of a visit the Home may request that visitors wait outside the room until the Resident is ready to receive them.
- 15.2.** Visitors can be provided with meals at a reasonable price and with notice; non-alcoholic drinks are available free of charge.
- 15.3.** In the interest of general safety visitors are required to sign in and out and to inform staff if a Resident is leaving the premises with them.
- 15.4.** All visitors to the Home must conduct themselves in such a manner as not to disturb the peaceful enjoyment of the Home's community. Visitors must also be civil towards staff and the Manager reserves the right to restrict visitors who cause difficulties within the Home.

## **16. MEDICATION**

- 16.1.** As part of the admission process the Resident must declare to the Manager or Senior Nurse all medications and treatment creams that are currently used.
- 16.2.** If the Resident wishes to self-administer all or some of their prescription or non-prescription medications and treatment creams, then an assessment of their capability to self-medicate will be undertaken at the time of admission. If the assessment indicates that self-medication is appropriate, the Resident will be asked to sign an agreement recording the decision and from that point the Company accepts no responsibility and will have no liability in such circumstances unless due to any act of neglect or default on the part of the Company or its agents or an employee of the Company. This agreement, when signed, will be placed in the Resident's care file. The Company will review the assessment on an ongoing basis. The Home will be responsible for ensuring you receive your medication from the pharmacist on a regular basis.
- 16.3.** If the Resident either chooses not to be self-medicating or the assessment of the Resident's capabilities indicates that they are not capable of self-medicating, then the medications and treatment creams will be retained by the Manager or person in charge on admission.

**16.4.** In the event that a Resident who has not signed a self-medicating agreement wishes to self-administer any non-prescribed medications and treatment creams e.g. paracetamol, the Resident should inform the Manager or nurse in charge before doing so and the Company accepts no responsibility and will have no liability in such circumstances unless due to any act of neglect or default on the part of the Company or its agents or an employee of the Company.

## **17. PERSONAL POSSESSIONS**

**17.1.** Residents are encouraged to have personal possessions, subject to health and safety and fire risk assessments, which remain their property.

**17.2.** On admission an allocated member of staff will complete an inventory detailing the Resident's personal effects. We will ask for a declaration of any valuables that the Resident may have with them including cash.

**17.3.** Our insurance provisions are set out in Clause 12. The Company does not accept responsibility for loss or damage to Resident's personal possessions unless damage was caused by staff.

**17.4.** The Company reserves the right to inspect electrical equipment brought into the Home by or for the Resident and to prohibit the use of such equipment as may be considered by them to be unsafe or potentially unsafe.

**17.5.** Personal clothing is laundered in our laundry on site and all reasonable care will be taken with the handling of the Resident's clothing. All personal clothing must be named prior to being brought into the Home with a small tag name woven into the garment. The Home will use all reasonable endeavours to prevent damage to clothing. However, we request that all items of clothing are machine washable at high temperatures and can be tumble dried. The Company does not accept responsibility for lost items that are not appropriately labelled. The Company does not accept responsibility for damaged caused to items not suitable for washing at high temperatures and being tumble dried.

**17.6.** The Resident may request a key to their room and this request is to be documented. Such a request will only be refused by management if it would deem to place the Resident or other Residents at risk. Any decision will be discussed with the Resident.

**17.7.** All the Resident's personal possessions must be removed from the Resident's room within three days after the Resident's death or in the event of the Resident's moving from the premises immediately on the Resident's departure from the Home. In the event that personal possessions are not removed within the time set out in this clause, the Company will arrange for the possessions to be safely removed to a storage facility and all costs will be charged at cost to the Client. If the items are not collected from storage within 8 weeks the Home will arrange for the items to be sold or destroyed.

## **18. BENEFITS**

The Company may be able to give some guidance to the Resident regarding benefits that may be available to them. However, the claiming of benefits and seeking appropriate advice remains the Client's responsibility.

## **19. TEMPORARY ABSENCE**

**19.1.** Where the Resident is temporarily absent from the Home (e.g. for a holiday or during a stay in hospital) then full fees (Total Fee) remains payable for the period of the

Resident's absence up to 8 weeks. After this 8-week period, a review will be conducted, and fees may be reduced if the Company considers this to be reasonable in the circumstances.

- 19.2.** The Client should be aware that because the majority of the Home's costs are fixed (staff numbers, utilities, rent/mortgage, regulatory fees) and if the Company is required to retain the Resident's room, it is not possible to significantly reduce the amount charged should the Resident be absent from the Home.

## **20. DATA PROTECTION AND CONFIDENTIALITY**

- 20.1.** The Company will comply with its statutory duties under the Data Protection Act 2018, GDPR and its duties of confidentiality. The Company will take all reasonable steps to ensure that the information it holds about the Resident remains confidential and secure. Unless required by law or in circumstances that the Company deems necessary to ensure that the Resident's care needs are met, confidential information will not be disclosed without the Resident's prior consent.

- 20.2.** The Company is required by law to share personal information about people who use the service with other bodies at their request, for example our regulator, the Care Quality Commission, the police or the local authority safeguarding authority. The Care Quality Commission can request to see any documentation the Home holds about people who use the service for the purpose of fulfilling its regulatory functions. The Company cannot object to disclosure of this information. However, if the Resident/Client objects to any personal information the Company holds about them being shared, the Company can bring this to the attention of the Care Quality Commission, who should then discuss the matter with the Resident/Client before accessing their information. This will be discussed with the Resident during the care planning process.

- 20.3.** If the Resident/Client has not raised any objection, the Care Quality Commission should notify the Company that they have reviewed service users' personal information, and the Company are able to share this information with the Resident as part of our Data Protection Governance.

## **21. COMMENTS, COMPLAINTS, GRIEVANCES**

- 21.1.** The Company strives to provide a quality service and requires your input to ensure that an appropriate level of Resident satisfaction is achieved. We welcome your comments, both positive and negative, regarding the service you receive. These are a part of our Governance System that enables us to learn and improve the services we offer. A copy of how to make comments, register concerns or complaints is in your Information Pack and displayed in reception.

- 21.2.** If you are in any way dissatisfied with our service, please discuss this with the Manager or the person in charge as soon as possible. If you wish to register a formal complaint, it is vital you follow our Complaints Procedure to ensure we fully consider your grievance.

## **22. LASTING POWER OF ATTORNEY**

During the period of your stay with us, you may require assistance in managing your financial affairs or due a deterioration in your health you may not have the capacity to continue to manage your affairs. This can result in difficulties in managing payments in accordance with this Agreement which can be difficult to resolve and may lead to non-

payment of fees and termination by the Company. The Company recommends that the Resident as soon as reasonably practicable after entering into this Agreement prepares a Lasting Power of Attorney Property and Welfare to ensure that the Resident's affairs can continue to be managed.

## **23. ADDITIONAL TERMS**

### **23.1. Force Majeure**

The Company shall be under no liability for any failure to perform any of its obligations if and to the extent that the failure is caused by any circumstances which are beyond its reasonable control.

### **23.2. Notices**

Any notice to the Client may be validly given if sent by email, recorded delivery post or hand delivered to the Client. Notices sent by post will be deemed to be received forty-eight (48) hours after posting.

### **23.3. Severance**

The invalidity, unenforceability or illegality of any provision (or part of a provision) of this Agreement under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions. If any invalid, unenforceable or illegal provision would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with whatever modification as is necessary to give effect to the intentions of the parties.

### **23.4. Waiver**

No waiver by either party of any breach or non-fulfilment by the other party of any provision of this Agreement shall be deemed to be a waiver of any subsequent or other breach of that or any other provision of this Agreement and no failure to exercise or delay in exercising any right or remedy under this Agreement shall constitute a waiver thereof. No single or partial exercise of any right or remedy under this Agreement shall preclude or restrict the further exercise of any such right or remedy.

### **23.5. Variation**

**23.5.1.** The Company reserves the right to vary the Terms and Conditions of this Agreement from time to time to ensure the Company is able to deliver effective and efficient care services in line with assessed needs. When making any variation the Company will always act reasonably and for valid reasons, for example changes that are necessary to give effect to new health and safety laws or sector regulations, or to improve the service that we provide to you, or fee increases made in accordance with this Agreement.

**23.5.2.** Save in cases where there is a change in needs requiring more immediate response, variations will be notified in writing four weeks in advance and will take effect from the date stated in the notice. Where a change in needs requires earlier intervention in order to meet a change in needs, then notification will be provided at the earliest opportunity, usually within seven days.

**23.5.3.** No variation of our Terms and Conditions shall be valid unless it is in writing.

**23.5.4.** If you object to any changes to the terms of our Agreement you have the right to terminate this Agreement without penalty.

### **23.6. Entire Agreement**

This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement.

**23.7. Third Party Rights**

A person who is not party to this Agreement shall have no right under the Agreements (Rights of Third Parties) Act 1999 to enforce any term of it.

**23.8. Governing Law and Jurisdiction**

This Agreement shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.

**23.9. The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013**

The Consumer Contract Regulations 2013 apply to you as a “consumer”. **If this Agreement is signed away from the Company’s place of business (the Home) then you have the right to cancel this Agreement within 14 days without giving any reason.** The cancellation period will expire after 14 days from the day the Agreement is agreed. To exercise the right to cancel, you must inform us of your decision to cancel this Agreement by a clear statement (e.g. a letter sent by post, fax or e-mail). If you cancel this Agreement, we will reimburse to you all payments received from you. We will make the reimbursement without undue delay. If you request us to commence the performance of services during the cancellation period, you shall pay to us an amount which is in proportion to what has been performed until you have communicated to us your cancellation of this Agreement. If the service, you have instructed us to provide is completed during the cancellation period you will have no right to cancel the Agreement.

**23.10. Privacy Notice**

**23.10.1.** As part of the services we offer, we are required to process personal data about our Residents and, in some instances, the friends or relatives of our Residents. “Processing” can mean collecting, recording, organising, storing, sharing or destroying data.

**23.10.2.** We are committed to providing transparent information on why we need your personal data and what we do with it.

**23.10.3.** Information about how we collect, process, retain and share your data together with details of your rights to access, rectify and delete data that we hold about you is set out in the Privacy Notice (Appendix 4).

*Copy for Information Only*