

This version of the Age-Related Residential Care Services Agreement incorporates all of the amendments made to the Agreement up to and including the 2019 amendments.

## **Age-Related Residential Care Services Agreement**

between

**XXX DHB**

XXX DHB Address

Ph:

Fax:

Contact:

<<CONTRACTDEPUTY\_NAME>>

AND

**<<PROVIDER\_NAME>>**

**<<TRADING\_AS>>**

**For the Provision of Age-Related Residential Care**

<<PROVIDER\_ADDRESS>>

<<PROVIDER\_ADDRESS2>>

<<PROVIDER\_CITY>>

Ph: <<PROVIDER\_PHONE>>

Fax: <<PROVIDER\_FAX>>

Contact:

<<PRVDRCONTACT\_NAME>>

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## **PART 1: HEAD AGREEMENT**

### **SECTION A: GENERAL TERMS AND CONDITIONS**

#### **A1. AGREEMENT AND TERM**

A1.1 This Agreement records the Parties' agreement that:

- a. you will provide, at the Facility, the category or categories of Age-Related Residential Care Services ("Services") specified in clause C1.1 to each Resident at the Facility on the terms and conditions set out in this Agreement, which you and we enter into under section 25 of the NZPHD Act;
- b. we will pay you for the Services that you provide to Residents for whom we are liable to make payments under the Residential Care and Disability Support Services Act ("Subsidised Residents"); and
- c. you may charge Residents for whom we are not liable to make payments under the Residential Care and Disability Support Services Act ("Non-Subsidised Residents") for the Services you provide to the Resident, provided that you charge no more than the Maximum Contribution.

A1.2 To avoid doubt, the Services you provide to Residents are contracted care services as defined in the Residential Care and Disability Support Services Act.

A1.3 This Agreement means Part 1 (the head agreement) together with Part 2 (the specifications). If there is any conflict between Part 1 and Part 2, the terms of Part 2 will prevail.

A1.4 Expressions used in this Agreement are defined in clauses A31.7 and A31.8.

A1.5 This Agreement applies only to you, the Facility, and category or categories of Services specified in clause C1.1. For the avoidance of doubt, this Agreement does not apply to any aged residential hospital specialised services (that is, psychogeriatric services) that you may be providing. Such services are covered by a separate agreement.

A1.6 If you wish to alter the categories of Services specified in clause C1.1, both of us will vary this Agreement, so that:

- a. the categories of Services, in relation to Rest Home services and Hospital services, are the categories for which you are certified to provide health care services at your Facility by the Director-General under the HDSS Act; or
- b. the categories of Services includes Specialist Dementia Services if we are satisfied you are able to provide such Services,

provided you first comply with clause A1.7.

A1.7 Before this Agreement is varied under clause A1.6 you must, as applicable:

- a. provide us, in relation to Rest Home services and Hospital services, with evidence that you are certified by the Director-General under the HDSS Act to provide Rest Home Services and Hospital services at your Facility; or
- b. satisfy us that you are able to provide Specialist Dementia Services at your Facility in accordance with Section E and all other appropriate clinical standards.

A1.8 This Agreement shall commence on the Commencement Date and, subject to any rights of review, amendment, variation or termination will apply until terminated in accordance with its terms.

## **A2. SERVICE PROVISION**

A2.1 You must provide the Services for which you receive payment under this Agreement:

- a. in a prompt, efficient, professional and ethical manner;
- b. in accordance with all relevant law; and
- c. in accordance with the service specifications set out in Section D and Section E,

from the Commencement Date without material interruption until this Agreement is terminated in accordance with the terms of this Agreement.

A2.2 You must use your best endeavours to provide the Services in a manner that is consistent with any relevant health strategy, disability strategy and any strategy for the development and use of nationally consistent standards, quality assurance programmes and performance monitoring determined by the Minister of Health under section 8 or section 9 of the NZPHD Act, except to the extent that any such strategy is inconsistent with this Agreement.

## **A3. MĀORI HEALTH**

A3.1 You must ensure that the specific needs of Residents who identify themselves as Māori (“Māori Residents”) are met in a manner that respects and acknowledges their individual values and beliefs. This requires you to:

- a. identify and respond to the cultural values and beliefs of Māori Residents and their whānau;
- b. identify and eliminate barriers to Māori Residents that are within your control;
- c. recognise and support the importance of whānau and their involvement with Māori Residents;
- d. acknowledge and meet the right of Māori Residents to practice their cultural values and beliefs while receiving the Services; and
- e. consult Tangata Whenua in order to meet the needs of Māori Residents during the provision of the Services.

A3.2 You must develop policies and procedures (“Māori Health Plan”) to guide staff in order to ensure that the specific needs of Māori Residents are met. The Māori Health Plan must include, but is not limited to, a description of how you will achieve the requirements set out in clause A3.1.

**A4. DEVELOPMENT OF POLICIES ETC**

A4.1 Where you are required to develop a written policy, procedure, programme, protocol, guideline, information, system or plan in order to meet any provision under this Agreement, you will:

- a. develop such a document;
- b. demonstrate systems for reviewing and updating all such documents regularly;
- c. demonstrate implementation;
- d. demonstrate that staff are adequately informed of the content and the intent of these documents; and
- e. provide us with a copy of the relevant document on request.

**A5. YOUR ENTITLEMENT TO CLAIM RESIDENTIAL CARE SUBSIDY**

A5.1 We will pay you a Residential Care Subsidy for each Subsidised Resident.

A5.2 To avoid doubt, we will not pay you a Residential Care Subsidy in respect of:

- a. Persons who are admitted to your Facility only because of short-term acute illness;
- b. Persons for whom funding is provided for their primary care needs under another DHB or Ministry contract or notice, including arrangements relating to psychogeriatric care, palliative care, convalescent care, intellectual disability services, physical disability services or mental health.

A5.3 You must notify us and our Payment Agent if, in respect of a Person who has been a Subsidised Resident:

- a. you no longer provide Services to that Person; or
- b. the Person has or will become a Non-Subsidised Resident.

A5.4 You must notify us under clause A5.2 as soon as possible, and not more than 2 Working Days, after becoming aware of either of the circumstances in clause A5.3.

**A5A. INFORMATION FOR POTENTIAL NEW RESIDENTS**

A5A.1 On request by a Person who has been Positively Needs Assessed, we or our NASC Service:

- a. will provide a list of providers who are party to an agreement with us for the provision of Age-Related Residential Care Services and who provide the category of services for which the Person has been Positively Needs Assessed, at a facility in the region where the Person wishes to receive the services; and

- b. may, if we or our NASC Service reasonably believes there may be issues relating to your Facility or the Services provided by you that may influence the Person's choice of provider, provide the Person with information about you.

A5A.2 If we or our NASC Service has, or intends to, provide Persons with information about you in accordance with subclause A5A.1(b), we or our NASC Service will inform you of that fact and of the information that we or our NASC Service has provided or intends to provide as soon as reasonably possible (and, if reasonably possible, before that information is provided to any Person).

## **A6. PAYMENTS**

A6.1 We will pay you a Residential Care Subsidy for each Subsidised Resident in accordance with the terms of this Agreement.

A6.2 Our liability to pay a Residential Care Subsidy for Services you provide to a Subsidised Resident arises on the date determined under the Residential Care and Disability Support Services Act.

A6.3 To avoid doubt, you may charge each Non-Subsidised Resident to whom you provide Services in accordance with this Agreement, provided that you charge no more than the Maximum Contribution for those Services.

## **A6A. REPAYMENTS TO RESIDENTS**

A6A.1 If:

- a. we are liable under the Residential Care and Disability Support Services Act to pay you a Residential Care Subsidy for Services you provide to a Subsidised Resident; and
- b. our liability to pay arises in respect of days for which the Subsidised Resident (or someone on behalf of the Subsidised Resident) has paid you for Services provided to the Subsidised Resident;

you must pay to the Subsidised Resident the amount that the Subsidised Resident paid to you for each day in respect of which we are liable to pay for the Services.

A6A.2 Any amount owed in accordance with clause A6A.1 must be paid no later than 20 Working Days after the day on which we make the first payment to you for Services provided to the Subsidised Resident.

A6A.3 If you owe an amount to or in respect of a Resident, including because the Resident paid you for the provision of Services in advance and was subsequently discharged or transferred from your Facility or died, you must pay that amount to the Resident (or his or her estate).

A6A.4 Any amount owed in accordance with clause A6A.3 must be paid:

- a. if the amount is owed because the Resident paid you for the provision of Services in advance and was subsequently discharged or transferred from your Facility or died, no later than 20 Working Days after the date of discharge, transfer, or death; and

- b. in all other cases, no later than 20 Working Days after the day on which the amount became owed to the Resident.

#### **A7. PAYMENT DURING TEMPORARY ABSENCE**

A7.1 Where a Subsidised Resident leaves your Facility temporarily, as long as the Person's bed is held for that Subsidised Resident during his or her absence, and is not used by another Subsidised Resident, we will continue to make payments for that Subsidised Resident on the following basis:

- a. Hospitalisation: Where a Subsidised Resident is admitted to hospital for treatment or to undergo an assessment, we will continue to make payments in full for up to 21 days (or for any longer period that the NASC Service may recommend) in any one of our financial years;
- b. Temporary Absences: Where a Subsidised Resident is away from your Facility with family/whānau or friends, we will continue to make payments in full for up to 14 days at any one time, and up to 28 days in total (or a greater number of days in total, if you obtain our agreement in advance) in any one of our financial years.

#### **A8. PAYMENT FOR DAYS OF ADMISSION, DISCHARGE, TRANSFER OR DEATH**

A8.1 Where a Subsidised Resident is admitted to, or discharged or transferred from, your Facility at any time on a particular day, we will pay you, in respect of that Subsidised Resident, for the full day on which that admission, discharge, or transfer occurred.

A8.2 Upon the death of a Subsidised Resident, we will pay you for the day of that Subsidised Resident's death and for the following day:

- a. the Residential Care Subsidy that would have been paid to you by us if that Subsidised Resident was living; and
- b. the amount of New Zealand superannuation (as that term is defined in the New Zealand Superannuation and Retirement Income Act 2001) that would have been payable by the Subsidised Resident to you if the Subsidised Resident was living (in full or partial fulfilment of the Subsidised Resident's obligation to pay for the Services in accordance with item c of clause C3.1), if the department responsible for paying the superannuation to the Subsidised Resident does not do so for that day.

#### **A9. OVERPAYMENTS**

A9.1 If we overpay you for the Services, as soon as you become aware of such overpayment you must immediately notify us of that overpayment.

A9.2 You must repay the overpayment to us within 10 Working Days of:

- a. you notifying us under clause A9.1; or
- b. us notifying you of any overpayment that we become aware of,

by the day before the next payment is due to you under this Agreement after either such notification, whichever is the later.

A9.3 If you do not repay the overpayment in accordance with clause A9.2, then we may deduct the amount of any overpayment from any later payments due to be made to you under this Agreement.

**A10. SET-OFF**

A10.1 Where you owe us any amount under this Agreement, including:

- a. in the case of overpayment under clause A9; and
- b. where you are obliged to indemnify us under clause A28,

we may set that amount off against any amount that we owe you, provided that we give you 20 Working Days' notice of our intention to do so.

**A11. WITHHOLDING OF PAYMENTS**

A11.1 Where you:

- a. breach clause A5.3, clause A15.2, or clause A15.6; or
- b. have not completed a compliance requirement contained in a notice of default given under clause A16.3(b) or in a notice given under clause A16.4; or
- c. fail to meet your obligations in terms of clause A22,

we may withhold some or all of the next payment or payments due until you have remedied the breach, or otherwise complied with the relevant obligation, or until any costs incurred by us have been met, whichever is later.

A11.2 Where you have failed to comply with any obligations under this Agreement not referred to in clause A11.1, and that failure is material, we may withhold 5% of the next payment or payments due until you comply with the relevant obligation or until any costs incurred by us have been met, whichever is later.

A11.3 Subject to clause A11.4, we will give 20 Working Days' notice of our intention to withhold payments under clause A11.1 and/or A11.2, during which notice period you may remedy your non-compliance.

A11.4 We may withhold payment under clause A11.1(c) without notice.

**A12. INSPECTION OF RECORDS UNDER HEALTH ACT 1956**

A12.1 Where we exercise powers under section 22G of the Health Act 1956, or any enactment that replaces that section and, following inspection under that section, we are unable to verify any of your claims for payment under this Agreement, we may:

- a. require you to report at such intervals and on such financial matters as we may specify;
- b. withhold payments under this Agreement from you until satisfied of the veracity of any of your claims for payment; and



- c. take such further action as we consider necessary in the circumstances.

### **A13. CHARGES TO RESIDENTS**

A13.1 Subject to clauses A13.2 and A14.2, you may not charge any Resident or any other Person for any Services in respect of which you receive payments under this Agreement, except for the amount a Resident is liable to pay under clause C3.1 and the Residential Care and Disability Support Services Act.

A13.2 Subject to clauses A13.3 to A13.7, clause A13.1 does not prevent you from providing or charging any Resident for any Additional Services, provided that:

- a. you do not require, as a condition of admission to or residence in your Facility, that a Resident or a potential Resident agree to receive and pay for any Additional Services; and
- b. the Resident has a choice whether or not to receive any individual Additional Services; and
- c. the Resident is able, at any time, to decide to receive or cease to receive and pay for any Additional Service other than Premium Room Services; and
- d. the Resident is able to decide to cease to receive and pay for any Premium Room Services in accordance with clause A13.5; and
- e. full details of the Resident's rights to receive and not receive Additional Services, and of each Additional Service and the charge for each Additional Service, are set out in the Admission Agreement; and
- f. if the Resident chooses to receive one or more Additional Services, which could include Premium Room Services, the Admission Agreement expressly records that the Resident acknowledges that he or she was offered a choice whether or not to receive the Additional Services, and chose to receive and pay for the Additional Services; and
- g. you do not charge the Resident or any other Person any more than the agreed charges specified in the Admission Agreement.

A13.3 You do not need to comply with clauses A13.2(a) and (b) in respect of Premium Room Services that you provide to a Resident, and may charge the Resident for those services, provided that:

- a. on the date of admission of the Resident:
  - i. there is not a Standard Room or a Premium Room for which Premium Room Services are not charged available to the Resident at your Facility from which the category of Services required by the Resident is able to be provided; and
  - ii. the occupancy level of rooms at your Facility from which the category of Services required by the Resident is able to be provided is 90% or more; and
  - iii. you have identified another facility that is located 10 kilometres or less from your Facility that has a Standard Room or a Premium Room for which Premium Room Services are not charged available for the Resident from which the category of Services required by the Resident is able to be provided; and

- iv. the Resident decides not to be admitted to the room described in subclause (iii); and
- b. if the Resident decides to be admitted to a Premium Room and pay for Premium Room Services at your Facility, the Admission Agreement with the Resident expressly records:
  - i. that the Resident acknowledges that he or she has chosen not to accept a Standard Room or a Premium Room for which Premium Room Services are not charged at another facility, which must be identified in the Admission Agreement, and has agreed to receive and pay for Premium Room Services at your Facility; and
  - ii. the Resident's rights and obligations in respect of the Premium Room Services, the charge for the Premium Room Services, and the Resident's right to cease receiving and paying for Premium Room Services, including details of notice requirements.

A13.4 We agree:

- a. to avoid doubt, a room from which the category of Services required by the Resident can be provided for the purposes of clause A13.3 includes a room from which more than one category of Services can be provided (a "dual service room"); and
- b. a room that is in a retirement village that is registered under the Retirement Villages Act 2003, and for which there must be an Occupation Right Agreement in place between you and the Resident, is not a room at your Facility for the purposes of clause A13.3(a)(ii).

A13.5 If a Resident decides to receive Premium Room Services at your Facility:

- a. the Resident may, every 2 months after the date of admission (a "notice date"), give notice that he or she no longer wishes to receive the Premium Room Services, and the notice will come into effect 3 months after the date on which it is given;
- b. the Resident may give notice before a notice date, but the notice will be deemed to be given on the next notice date;
- c. on the date that a notice given by the Resident takes effect:
  - i. if a Standard Room or a Premium Room for which Premium Room Services are not charged is available at your Facility, and the category of Services required by the Resident is able to be provided from that room, you must move the Resident to that room, unless you agree that the Resident may remain in his or her Premium Room but will cease paying for Premium Room Services on the date the notice takes effect;
  - ii. if a Standard Room or a Premium Room for which Premium Room Services are not charged (and from which the category of Services required by the Resident is able to be provided) is not available at your Facility, you must allow the Resident to remain in his or her Premium Room without paying any Premium Room Service charges until such a room becomes available at your Facility; and
  - iii. in either case, you must ensure that the Resident is given at least 3 days' notice that he or she is being moved to a Standard Room or a Premium Room for which

Premium Room Services are not charged, which may be given during the 3 month notice period referred to in subclause (a).

A13.6 If a Resident wishes to be admitted to a Standard Room at your Facility but a Standard Room or a Premium Room for which Premium Room Services are not charged is not available, and the conditions set out in clause A13.3(a) are not met or you do not wish to rely on clause A13.3(a), you:

- a. must admit the Resident to a Premium Room at your Facility; and
- b. must not charge the Resident for Premium Room Services; and
- c. may move the Resident to a Standard Room or a Premium Room for which Premium Room Services are not charged when such a room becomes available at your Facility, provided that you give the Resident at least 3 days' notice that he or she is being moved to the room; and
- d. may not require the Resident to move to another facility even if a Standard Room or a Premium Room for which Premium Room Services are not charged becomes available at that facility.

A13.7 Clauses A13.3 to A13.6 apply only in respect of:

- a. Subsidised Residents who were admitted to your facility on or after 1 July 2014; and
- b. Non-Subsidised Residents who were admitted to your facility on or after 1 July 2017.

A13.8 If you are contacted by a facility that is located 10 kilometres or less from your Facility for the purposes of determining whether there is a Standard Room or a Premium Room for which Premium Room Services are not charged available at your Facility for a potential Resident as described in clause A13.3(a)(iii), you must, if you have such a room available for the potential Resident from which the category of Services required by the potential Resident can be provided, advise the facility:

- a. that you have a Standard Room or a Premium Room for which Premium Room Services are not charged available; and
- b. whether you have offered that room to the potential Resident.

#### **A14. NO OTHER BENEFIT FOR SERVICES**

A14.1 To avoid doubt but subject to clause A14.2, if you are party to any other arrangement (for example, a Licence-to-Occupy or similar arrangement) that results in you effectively receiving payment, benefit, or value, whether from a Subsidised Resident or any other Person, for the supply of Services, or any component of them, to a Subsidised Resident, whether or not the arrangement was entered into before you commenced receiving payment under this Agreement in respect of that Subsidised Resident, you must either alter the arrangement so that you do not receive any such payment, benefit or value, or terminate the arrangement.

A14.2 Subject to clause A14.3, if you are a party to an Occupation Right Agreement with a Non-Subsidised Resident, you must pay to the Resident 18% of the maximum price inclusive of GST for Rest Home services specified in clause C2.1 and may charge the Resident the charges for accommodation specified in the Occupation Right Agreement.

A14.3 You may, but are not required to, comply with clause A14.2 in respect of any arrangement between you and a Non-Subsidised Resident who is party to an Occupation Right Agreement with you, provided that that arrangement complied with this Agreement on 30 June 2013.

#### **A14A. AUDIT UNDER THE HEALTH AND DISABILITY SERVICES (SAFETY) ACT 2001**

A14A.1 You acknowledge that we may participate and assist in the carrying out and implementation of certification decisions and audits made and conducted under the HDSS Act.

A14A.2 Clauses A16.3 and A16.4 apply, with all necessary modifications, to audit reports and certification decisions made under the HDSS Act as if they were Final Audit Reports made under clause A16.2.

A14A.3 Without limiting clause A14A.2, a requirement or condition contained in an audit report or certification decision shall be deemed to be a compliance requirement (as defined in clause A16.2) of a Final Audit Report, for the purposes of clauses A16.3 and A16.4, except to the extent that the requirement or condition does not relate to an obligation under this Agreement.

A14A.4 Our rights under clauses A16.3 and A16.4 in relation to any audit report or certification decision are not limited or affected by any action we may take under clause A14A.1 for the purposes of assisting and implementing certification decisions and audits made under the HDSS Act.

#### **A15. AUDIT ACCESS AND PROCESS**

A15.1 Record keeping

- a. You must keep and preserve Records and protect the security of them in accordance with your statutory obligations and make them available to us in accordance with our reasonable instructions and our rights to access such Records.
- b. In the event of your ceasing to provide the Services you must:
  - i. transfer Records relating to Residents to the new provider of services to those Residents; and
  - ii. where a new provider is providing services at your Facility, transfer all relevant Records to the new provider of services at your Facility; and
  - iii. preserve Records not transferred to another provider.

A15.2 Access for Audit

- a. You must co-operate with us fully and allow us, or our authorised agents, access to:
  - i. your premises;

- ii. all premises where your Records are kept;
  - iii. Residents and their families/whānau and nominated representatives (if any);
  - iv. staff, sub-contractors, or other personnel used by you in providing the Services,  
for the purposes of and during the course of carrying out:
  - v. any Audit of your Services at your Facility; or
  - vi. any Audit of another provider who provided services to Residents to whom you provide Services, or in respect of whom you hold relevant Records.
- b. You must ensure that any sub-contracting or agency agreements you may enter into in relation to the Services include a provision to the effect that the sub-contractor or agent must co-operate fully with us.
  - c. You must ensure that the people appointed by us to carry out the Audit have the access referred to in this clause A15.2, during the hours they are entitled to audit.
  - d. For the purposes of clause A15.2(a)(iii), within 3 Working Days after receiving notice of an Audit under clause A15.3(a), or immediately in the case of an Audit under clause A15.3(b), you must provide to us, in writing, the names and addresses of all Residents' families/whānau and nominated representatives (where you have obtained such information in accordance with clause D13).
  - e. We will ensure that the exercise of access under this clause will not unreasonably disrupt the provision of the Services to Residents.

#### A15.3 Notice of Audits

- a. Subject to clause A15.3(b), we will give you 10 Working Days prior notice of any Audit unless we agree to greater notice.
- b. If we believe that delay will prejudice the interests of any Person, we may carry out an Audit without prior warning. If we exercise our rights under this clause, we will give you notice on our arrival at your premises of the scope of Audit to be carried out.
- c. The notice of the Audit that we will give you will include:
  - i. details of the issue or issues to be audited; and
  - ii. details of the scope of the Audit, including reference to your obligation or obligations under this Agreement that relate to the issue or issues to be audited, and the approach we will take to carry out the Audit.
- b. d. We may also, during the course of an Audit commenced under clause A15.3(b), expand the scope of the Audit to matters not referred to in the notice if desirable, in the opinion of the Auditor carrying out the Audit, to assess whether you comply with your obligations under this Agreement.

#### A15.4 Times for Audits

- a. Subject to clause A15.4(b), an Audit may be carried out between 9am and 5pm on any Working Day and at any other time by agreement.
- b. We may carry out an Audit under clause A15.3(b) at any time on any day where reasonably necessary having regard to the scope of that Audit.

#### A15.5 Appointment of Auditors

- a. We may appoint our staff or third parties who, in our opinion, are appropriately qualified to audit, on our behalf, and at our cost, in relation to any of the matters contained in this Agreement. Each Person so appointed is an Auditor.
- b. We will give you prior written notice of the names of the people to be appointed.
- c. You may object to such appointments where any or all of those people appointed (whether our staff or third parties) have a demonstrable conflict of interest, by advising us of the claimed conflict of interest and providing the evidence which supports your claim.
- d. In relation to an Audit under clause A15.3(a), if we receive advice from you under clause A15.5(c) within 5 Working Days of us sending the notification of an Audit that is to be conducted under clause A15.3(a), we will review the information provided and, if we agree that there is a conflict of interest, we will appoint a replacement Auditor.
- e. If we receive advice from you under clause A15.5(c) either:
  - i. in relation to an Audit under clause A15.3(a), after the period specified in clause A15.5(d); or
  - ii. in relation to an Audit under clause A15.3(b),

we may conduct the Audit up to and including the preparation of the Draft Audit Report while we review the information provided. If we agree that there is a conflict of interest, we will appoint a replacement Auditor to verify the Draft Audit Report before we prepare the Final Audit Report.

#### A15.6 Audit process

- a. In carrying out any Audit we may:
  - i. have access to Health Information about any past or current Resident;
  - ii. observe the provision or delivery of the Services;
  - iii. interview and/or survey Residents and/or their families/whānau (including, without limitation, either in writing or by way of an interview); and
  - iv. interview and/or survey any staff, sub-contractors or other personnel used by you in providing the Services (including, without limitation, either in writing or by way of an interview),

in accordance with the Privacy Act 1993 and any code of practice issued under that Act covering Health Information held by health providers.

- b. Each Auditor may take copies of any parts of the Records for the purposes of the Audit in accordance with the Privacy Act 1993 and any code of practice issued under that Act covering Health Information held by health providers.
- c. You must allow each Auditor to use any photocopier at your Facility, but you are not required to supply paper. If there is no photocopier at your Facility, we may remove the relevant Records from your Facility for the purposes of copying such Records, and we will return those Records on the same day or, if that is not practicable, within 24 hours or a timeframe agreed between both of us.
- d. For the purposes of clause A15.6(a)(iv), during the course of an Audit you must provide opportunities for the Auditors to interview staff, sub-contractors or other personnel used by you in providing the Services, in private, without you or the Manager being present. At the request of a staff member, sub-contractor or other Person being interviewed, a support person (excluding you or the Manager) may be present at any interview.
- e. On the completion of the Site Visit, the Auditor must discuss the preliminary findings of the Audit with you.

## **A16. AUDIT REPORTING AND COMPLETION**

### A16.1 Draft Audit Report

- a. We will submit a Draft Audit Report to you within 15 Working Days of the Site Visit.
- b. To the extent that we wish to incorporate in the Draft Audit Report any information provided in interviews conducted under clause A15.6(a)(iii) and (iv) and identify the Person or Persons who provided that information, we will do so only with the prior consent of the Persons concerned.
- c. The Draft Audit Report must:
  - i. indicate whether or not you comply with your obligations under this Agreement;
  - ii. indicate the actions you will be expected to take (if any) to comply with your obligations under this Agreement (“draft requirements”);
  - iii. indicate the timeframe within which you will be expected to complete the draft requirements;
  - iv. describe the actions (if any) that we expect will be required to verify that you have met the draft requirements. This may include a follow up visit or verification audit by an Auditor.
- b. d. If you disagree with any of the findings, draft requirements, actions, or timeframes indicated in the Draft Audit Report, you may respond to us within a timeframe set by us

(which will not be less than 10 Working Days from the day we send you the Draft Audit Report), indicating why you do not agree with the Draft Audit Report.

#### A16.2 Final Audit Report

- a. We will prepare a Final Audit Report that takes into account your comments (if any) on the Draft Audit Report.
- b. The Final Audit Report must:
  - i. reflect comments you have made (if any) on the Draft Audit Report, either by amending the Report or by including those comments in the Final Audit Report;
  - ii. state whether or not you comply with your obligations under this Agreement;
  - iii. specify the actions that you must take (if any), to comply with your obligations under this Agreement (“compliance requirements”);
  - iv. specify the timeframe within which you must complete the compliance requirements;
  - v. specify the actions required to verify that you have met the compliance requirements. This may include a follow up visit or verification audit by an Auditor.
- c. We must send you the Final Audit Report within 20 Working Days after the end of the timeframe set by us in accordance with clause A16.1(d).

#### A16.3 Provider in default

- a. You are in default if you have not completed a compliance requirement specified in the Final Audit Report within the timeframe set in accordance with clause A16.2(b).
- b. Where you are in default, we may give you notice of default, and such notice shall state:
  - i. where the compliance requirement was to be completed within 2 Working Days, that you have a further period of not less than 2 Working Days from the date of notice of the default to comply with the relevant compliance requirement;
  - ii. where the compliance requirement was to be completed within 2 to 10 Working Days, that you have a further period of not less than 10 Working Days from the date of the notice of default to comply with the relevant compliance requirement; or
  - iii. in all other cases, that you have a further 20 Working Days from the date of the notice of default to comply with the compliance requirements.
- c. If, by the end of any period stated under A16.3(b), you have not completed the compliance requirement(s) in question, we may:
  - i. vary the compliance requirement;
  - ii. extend the timeframe to complete the compliance requirement;
  - iii. withhold payment in accordance with clause A11; or



- iv. terminate this Agreement in accordance with clause A24.
- b. d. When we are satisfied that you have completed all compliance requirements, we will notify you in writing that you are compliant.

#### A16.4 Material or repeated failure

If in our opinion, based on reasonable grounds:

- a. your non-compliance with your obligations under this Agreement, as stated in a Final Audit Report, is material; or
- b. on the basis of a Final Audit Report and any previous Final Audit Report relating to any previous Audit of your Facility, you have repeatedly failed to comply with your obligations under this Agreement,

we may give you a single period of not less than 20 Working Days to complete any or all compliance requirements specified under clause A16.2(b)(iii), and if by the end of that period, you have not completed the relevant compliance requirements, clause A16.3 shall not apply and, despite clause A17.4, we may terminate this Agreement under clause A24.

#### A16.5 Advice to Family/Whānau

We may advise a Resident's family/whānau or nominated representative about the progress of an Audit at any time during the course of or following the Audit where we have serious concerns (based on reasonable grounds) about the health and safety of that Resident.

#### A16.6 An Audit is completed when we notify you that you are compliant.

#### A16.7 Release of Final Audit Report

- a. Subject to the Privacy Act 1993 and any code of practice issued under that Act, you must make the Final Audit Report available to any Person for reading on request.
- b. If a Person requests a copy of the Final Audit Report, you may require that Person to pay reasonable costs for copying.

#### A16.8 We retain the right to conduct an Audit after this Agreement ends, but only in respect of Services provided prior to termination, or following termination in accordance with clause A25.1(b).

### **A17. AUDIT REVIEW**

#### A17.1 If you dispute any element of the Final Audit Report, you may apply to us for a review of the Audit.

#### A17.2 We will review the Audit only if we receive an application for review under clause A17.1 no later than 10 Working Days after the Final Audit Report is sent to you.

#### A17.3 Audit Review Process

- a. We will notify you that the application for review has been received.

- b. We will request information in relation to the issues raised by you from the Auditors who carried out the Audit.
- c. A suitably qualified Person we have appointed to be responsible to us for the audit review process will review all information relating to the Audit.
- d. Following our review, we will discuss our response to the issues raised with you.
- e. Both of us must use our best endeavours to resolve the issues raised by you.
- f. If we agree with any issues raised by you, we will amend the Final Audit Report accordingly.
- g. If you and we are unable to resolve any issue raised within 20 Working Days from the date that we receive your application for review, then either of us may require mediation under clause A26.1(b) and clause A26 will apply accordingly.

A17.4 You must comply with all your obligations, including any compliance requirements issued under clause A16.2(b), while the review process is carried out, but we will not terminate this Agreement under clause A16.3(c) until the review is complete.

A17.5 Where you have complied with any compliance requirements in the Final Audit Report issued under clause A16.2(b) ("the original requirements"), which are amended or removed under clause A17.3(f) ("the amended requirements"), we will reimburse you an amount equal to our assessment of the difference between the reasonable costs of complying with the original requirements and the amended requirements.

## **A18. FINANCIAL MANAGEMENT AND AUDIT**

A18.1 You must operate sound financial management systems and procedures.

A18.2 Where we have serious concerns (based on reasonable grounds) that you are not operating sound financial management systems and procedures, without limiting any of our other rights in this Agreement, we may:

- a. request that you provide, to an independent auditor appointed by us at our cost, within 30 days of our request:
  - i. your financial statements (as that term is defined in section 6 of the Financial Reporting Act 2013), or accounting information relating to your current financial position, including access to your expenditure and revenue transactions;
  - ii. your financial statements or accounts for your most recent complete financial year (audited or otherwise, as required by us); and/or
  - iii. a solvency certificate from a Chartered Accountant; and
- b. arrange for that independent auditor to audit:
  - i. the correctness of the information you give us under clause A18.2(a);

- ii. your calculations of the cost of providing the Services; and
- iii. your financial position.

A18.3 The independent auditor:

- a. must not disclose details of your costs of providing the Services; but
- b. may advise us if he or she considers that your financial position may prejudice, or otherwise affect, your ability to carry out your obligations under this Agreement.

A18.4 If the independent auditor so advises us under clause A18.3(b), we may carry out an Audit.

## **A19. INFORMATION REPORTING REQUIREMENTS**

A19.1 You must comply with the information reporting requirements set out in Section B.

## **A20. UNCONTROLLABLE EVENTS**

A20.1 If either you or we are affected (“the Affected Person”) by an Uncontrollable Event, the Affected Person will not be in default under the terms of this Agreement if the default is caused by that Uncontrollable Event. The Affected Person must:

- a. promptly give written notice to the other specifying:
  - i. the cause and extent of the Affected Person’s inability to perform any of the Affected Person’s obligations; and
  - ii. the likely duration of the non-performance;
- b. in the meantime take all reasonable steps to remedy or reduce the impact of the Uncontrollable Event.

A20.2 Neither of us is obliged to settle any strike, lock-out or other industrial disturbance.

A20.3 Performance of any obligation affected by an Uncontrollable Event must be resumed as soon as is reasonably possible after the Uncontrollable Event ends or its impact is reduced.

A20.4 Without limiting clause A22, if you are unable to provide any Services as the result of an Uncontrollable Event we may make alternative arrangements suitable to us for the supply of those Services during the period that you are unable to supply them after we consult with you.

## **A21. REVIEW**

A21.1 Each year there will be a single national review of all agreements between DHBs and providers for the provision of Age-Related Residential Care Services. The review will be carried out on behalf of all DHBs by us, or by one or more DHBs that may include us.

A21.2 Review Process

- a. The review will be carried out in a manner which enables meaningful participation by you and provider representative groups.

- b. You and provider representative groups will be notified in writing of the timeframe and process for the review and the issues that will be addressed in the review.
- c. We will ensure that you and provider representative groups have the opportunity to comment on issues raised by us and also to raise any other matters that affect providers on a national basis relating to the provision of Age-Related Residential Care Services during the course of the review, including, for example, the price we pay for the services. However, the review will not address any matter that has been addressed as a potential Variation Event under clause A23 in the same financial year as the review.
- d. You may appoint another Person or a provider representative group, to provide comments and otherwise participate in the review on your behalf.

A21.3 We will consider in good faith all comments received from you and provider representative groups, and prepare a report summarising those comments and our views on the issues.

A21.4 Any variation to this Agreement made as a result of a review under this clause A21 must be in writing and signed by both of us.

**A22. YOUR FAILURE TO MEET OBLIGATIONS**

A22.1 Where:

- a. you have, in our opinion (such opinion based on reasonable grounds), committed a breach of your obligations under this Agreement; and
- b. such breach, in our opinion, requires urgent action to protect the health and safety of Residents,

we may, unless such breach is due to an Uncontrollable Event:

- c. withhold some or all of our payments to you in accordance with clause A11 until you have remedied the breach or until we are satisfied on reasonable grounds that you have taken appropriate steps to ensure that a breach of that nature will not happen again; and
- d. ourselves take action to remedy the breach, and recover the reasonable costs (including reasonable legal expenses if any) from you, including by deducting such costs and expenses from payments due under this Agreement in accordance with clause A11.

A22.2 Temporary Manager

- a. Without limiting our rights under clause A22.1(d) we may appoint as Temporary Manager for your Facility a Person who is appropriately qualified and experienced in terms of clause D17.3(d)(i) and/or clause D17.4(b)(i) (as applicable). Such Temporary Manager will take over management of the provision of Services, in substitution for and on behalf of you and the Manager for the purpose of remedying the breach referred to in clause A22.1(b).
- b. Where a Temporary Manager is so appointed, you must:
  - i. allow the Temporary Manager access to your Facility;

- ii ensure that the Temporary Manager is able to carry out his or her duties without disturbance or disruption; and
  - iii. comply with any direction or instruction given by the Temporary Manager.
- c. Without limiting clause A22.1(d), you will be liable for the reasonable costs of the Temporary Manager managing provision of the Services.
- d. Without limiting clause A28, you must indemnify us for all claims, damages, penalties or losses including reasonable costs (but excluding indirect or consequential losses) arising under clause A22 from actions taken by us, including actions taken by the Temporary Manager, except arising from the negligence or fraud of the Temporary Manager or us or from actions taken by the Temporary Manager for purposes other than the purpose of remedying the breach referred to in clause A22.1(b).

### A22.3 Removal of Residents

Without limiting our rights under clause A22.1(d), we may, if the circumstances outlined in clause A22.1(a) and (b) apply, enter your Facility for the purpose of facilitating the departure of any Resident from your Facility. In this case you must:

- a. allow us to enter your Facility;
- b. assist us to communicate with all Residents and their families/whānau or nominated representatives;
- c. help us facilitate the departure of Residents.

A22.4 For the avoidance of doubt, we may exercise our rights under this clause A22, including our right to appoint a Temporary Manager under clause A22.2, and to enter your premises and remove Residents under clause A22.3 at any time during the course of an Audit or an Audit Review carried out under this Agreement.

A22.5 You may initiate dispute resolution under clause A26 in respect of any action taken by us under this clause A22, but we are not required to delay or suspend any such action under this clause while dispute resolution is proceeding.

## **A23. VARIATIONS TO THIS AGREEMENT**

A23.1 This Agreement may be varied at any time by agreement between both of us and also on the occurrence of any of the following Variation Events:

- a. where either of us consider that changes occurring as a result of:
  - i. any change in the law;
  - ii. significant changes in the health sector environment or costs that are beyond the control of either of us,
- b. will have an impact on the provision of Services, including the costs of providing Services, of 1.35% or more of Funding;

- c. an Uncontrollable Event (in that case clause A20 will apply in addition to provisions of this clause).

A23.2 If you or another provider invoke this clause A23 in relation to a potential Variation Event, the procedure in this clause A23 will be carried out as a national process on behalf of all DHBs by us, or by one or more DHBs that may include us. As part of the national process, we will take all reasonable steps to notify all other providers of Age-Related Residential Care Services and provider representative groups of the potential Variation Event and invite them to participate in the national process.

A23.3 On the notification of a potential Variation Event by either of us:

- a. the party notifying of the potential Variation Event will provide the other party with sufficient information to demonstrate why the notifying party considers the potential Variation Event has or will have an impact on the provision of Services, including the cost of providing Services, of 1.35% or more of Funding; and
- b. within 15 Working Days of the notification we will hold a meeting with the party notifying of the potential Variation Event to seek to agree on:
  - i. a process to identify and quantify the impact or potential impact of the potential Variation Event;
  - ii. the provision of expert advice, if necessary, to assist both of us in identifying and quantifying the impact or potential impact of the potential Variation Event; and
- b. iii a timeframe for completing the identification and quantification of the impact or potential impact of the potential Variation Event with the objective that it is no later than 6 months from the date of the notification of the potential Variation Event; ac. both of us will act in good faith and use best endeavours to identify and quantify the impact or potential impact of the potential Variation Event within the timeframe.

A23.4 Where we both agree there is an impact on the provision of Services, including the costs of providing Services, of 1.35% or more of Funding resulting from the Variation Event, both of us will then seek to agree a variation to this Agreement, which may include, without limitation:

- a. reconfiguration of any Services; or
- b. adjustment to prices or payments in respect of any Services.

A23.5 Where both of us are unable to agree that there is an impact, or potential impact, on the provision of Services, including the costs of providing Services, of 1.35% or more of Funding, resulting from the Variation Event, then the matter may be referred to dispute resolution under clause A26. Where it is determined through the dispute resolution procedure that there is an impact, or potential impact, on the provision of Services, including the costs of providing Services, of 1.35% or more of Funding, resulting from the Variation Event, the parties shall seek to agree a variation to this Agreement in accordance with clause A23.4.

A23.6 Each of us must negotiate in good faith to reach prompt agreement on any issues, proposed amendments or any alternative proposal.

A23.7 If neither of us can agree on any variation to this Agreement in accordance with clause A23.4 or A23.5 within 2 months of agreement under clause A23.4, or determination under clause A23.5, then either of us may terminate this Agreement by giving 12 weeks' written notice.

A23.8 Despite anything in this Agreement to the contrary, we may vary this Agreement at any time on written notice:

- a. if it is necessary to vary this Agreement to comply with a change in the law; or
- b. if it is necessary to vary this Agreement to comply with a Crown Direction; or
- c. if the Crown Funding Agreement in place between us and the Ministry is varied or amended, and the effect of any such variation or amendment (as the case may be) is that this Agreement must be varied so that we can comply with our obligations under our Crown Funding Agreement,

from the date that change, variation, or amendment (as the case may be) has effect.

A23.9 Any variation to this Agreement must be in writing and, except for a variation made under clause A23.8, signed by both of us.

A23.10 The procedure in this clause A23 (except for clause A23.8):

- a. may be utilised only once in a financial year in respect of a specific Variation Event; and
- b. will not be utilised in a financial year when the subject matter of the Variation Event has been addressed in a review carried out under clause A21 in that financial year.

A23.11 In this clause A23 "Funding" means the total amount paid by DHBs and Subsidised Residents for Age-Related Residential Care Services provided to Subsidised Residents by the providers affected by the Variation Event.

## **A24. TERMINATION OF THIS AGREEMENT**

A24.1 We may terminate this Agreement by giving you notice in writing if any of the following events occur:

- a. any licence, registration or certification relating to you, or any facility at which you provide Services, is cancelled, revoked, expires, or is subject to a closing or cessation order; or
- b. you are convicted of any dishonesty offence relating to any claim for payment from any party (not limited to us or our predecessors) whether claimed pursuant to this Agreement or otherwise; or
- c. you have failed to carry out any of your obligations under this Agreement and the failure is material; or
- d. you have failed to carry out any of your obligations under this Agreement, other than in relation to the completion of compliance requirements, and you do not remedy the failure within 20 Working Days of receiving notice of default from us; or

- e. clause A16.3(c) applies (which relates to non-completion of compliance requirements); or
- f. clause A16.4 applies (which relates to material or repeated failure); or
- g. you are placed in liquidation or a receiver is appointed.

A24.2 For the purposes of clause A24.1(c), a material failure includes, but is not limited to, a breach of any of the following clauses:

- a. clause A5.3 (notification of change in relation to Subsidised Residents);
- b. clause A15.2 (Access for Audit); or
- c. clause A15.6 (Audit Process).

A24.3 Before giving notice under clause A24.1(c), we will consider any other options available to us under this Agreement for responding to your material breach of your obligations. To avoid doubt, we may in our sole discretion give notice under clause A24.1(c) instead of pursuing any other option available to us under this Agreement.

A24.4 Termination under clause A24.1 takes effect on the day that we give you notice under that clause, or any later date specified in that notice.

A24.5 Your obligations under clause A25.1(b)(ii) and (iii) also apply from the date we give you notice of termination under clause A24.1.

A24.6 If we give you notice of termination of this Agreement under clause A24.1, we may appoint a Temporary Manager to take over management of the provision of Services in substitution for and on behalf of you and the Manager, for the purpose of facilitating the departure of all Residents from your Facility, whether that occurs before or after termination.

A24.7 Clauses A22.2 and A22.4 apply, with all necessary modifications, in relation to a Temporary Manager appointed under clause A24.6.

A24.8 Either of us may terminate this Agreement by giving 12 weeks' notice in writing to the other, unless a shorter notice period is agreed by both of us.

A24.9 Where either of us has given notice in writing under clause A24.8, both of us will use our best endeavours to ensure that, where necessary, both of us have facilitated the departure of any Residents prior to the expiry of a 12 week period specified in the notice or as otherwise agreed between both of us.

A24.10 If we default in any of our obligations and we fail to remedy the default within 20 Working Days of your giving us written notice of the default you may do any one or more of the following:

- a. seek specific performance of this Agreement; or
- b. seek damages from us; or
- c. seek default interest (calculated at the bill rate plus 2 percent per annum. The bill rate means the average rate per annum (expressed as a percentage) as quoted on Reuters



page BKBM (or any successor page displaying substantially the same information) under the heading "FRA" for bank accepted bills having a term of 3 months as fixed at 10.45am on the date the default interest under this clause A24.10 is first payable).

A24.11 Nothing in clause A24.10 affects any other rights you may have against us in law or equity.

## **A25. CONSEQUENCES OF TERMINATION**

A25.1 Immediately following termination of this Agreement:

- a. we will:
  - i. continue making further payments to you under this Agreement in relation to Services provided under clause A25.1(b)(i), except where you do not comply with your obligations under clause A25.1(b)(ii) or (iii), but otherwise we will cease making payments to you under this Agreement;
  - ii. inform the Residents and, as far as practicable, each Resident's family/whānau or nominated representative, of the termination of this Agreement;
  - iii. where necessary, facilitate the departure of the Residents from your Facility as soon as practicable; and
- b. you will:
  - i. continue to provide Services to each Resident until each Resident leaves your Facility;
  - ii. help us facilitate the departure of the Residents;
  - iii. co-operate with us and our agents accordingly, including allowing us to enter your Facility, communicate with Residents and, as far as practicable, supplying us with contact details for Residents' families/whānau.

A25.2 Any termination of this Agreement will not affect:

- a. the rights or obligations of either of us that arose before this Agreement was terminated; or
- b. the operation of any clauses in this Agreement that are expressed or implied to have effect after this Agreement ends.

## **A26. DISPUTE RESOLUTION**

A26.1 If either of us has any dispute with the other under this Agreement then:

- a. both of us will use our best endeavours and act in good faith to settle the dispute by agreement; and
- b. if the dispute is not settled by agreement within 20 Working Days, then, unless both of us agree otherwise, either of us may (by written notice to the other) require that the dispute be submitted for mediation by a single mediator agreed by both of us, or if both of us cannot agree on a mediator, a mediator nominated by the Resolution Institute or, if the Resolution

Institute no longer exists or is unable to nominate a mediator, the President of the New Zealand Law Society. In the event of any such submission to mediation:

- i. the mediator will not be deemed to be acting as an expert or an arbitrator;
  - ii. the mediator will determine the procedure and timetable for the mediation;
  - iii. the cost of the mediation will be shared equally between both of us (unless otherwise agreed).
- b. c. subject to clause A26.2, if the dispute is not settled by mediation in accordance with clause A26.1(b), then either of us may initiate proceedings in the District Court.

A26.2 Neither of us will initiate any court proceedings during this dispute resolution process, unless proceedings are necessary for preserving the party's rights.

A26.3 Both of us will continue to comply with all our obligations in this Agreement until the dispute is resolved.

A26.4 Except where expressly provided for, this clause A26 will not apply to any dispute concerning:

- a. any variation or review of any part of this Agreement; or
- b. whether or not a Person is a Subsidised Resident.

## **A27. INSURANCE**

A27.1 You must have comprehensive insurance covering your business throughout the term of this Agreement. You must notify us on request of the insurance cover in place.

## **A28. INDEMNITY**

A28.1 You must indemnify us for all claims, damages, penalties or losses including reasonable costs (but excluding indirect or consequential losses) caused by:

- a. a failure by you to comply with any obligations under this Agreement; or
- b. any act or omission by you or by any Person for whom you are responsible, where that act or omission occurs in the course of you performing (or failing to perform) an obligation in this Agreement.

## **A29. WARRANTY**

A29.1 Each party warrants that all material information given to the other is correct, to the best of its knowledge and belief.

## **A30. ASSIGNMENT AND TRANSFER**

A30.1 You must not assign this Agreement without our prior written consent, such consent not to be unreasonably withheld. For the avoidance of doubt, we may not withhold consent solely on the basis that we consider there is an oversupply of beds in the territorial local authority area.

A30.2 Sale or Transfer of Facility

Where you intend to sell, transfer or otherwise dispose of your Facility to which this Agreement relates you must:

- a. notify us in writing of such an intention at least 30 days prior to the date of the intended transfer or disposal of your Facility; and
- b. advise any proposed purchaser or transferee of the Facility that this Agreement will only apply to that Person if we consent to the assignment of this Agreement in accordance with clause A30.

A30.3 You acknowledge that failure to comply with clause A30.2(a) constitutes good reason to withhold consent for the purposes of clause A30.1.

A30.4 We may assign or transfer this Agreement to any other DHB or the Ministry at any time without your prior consent.

### **A31. MISCELLANEOUS**

#### A31.1 Entire Agreement

This Agreement sets out the entire agreement and understanding between us and supersedes all prior oral or written agreements or arrangements relating to its subject matter.

#### A31.2 Governing Law

This Agreement is governed by New Zealand law.

#### A31.3 Contract and Commercial Law Act 2017 (Contractual privity)

No non-party may enforce any of the provisions in this Agreement.

#### A31.4 Waiver

Any waiver by either you or us must be in writing and duly signed. Each waiver may only be relied on for the specific purpose for which it is given. A failure of either you or us to exercise, or a delay in exercising, any right given to it under this Agreement does not of itself mean that the right has been waived.

#### A31.5 Notices

- a. Any notice must be in writing and may be served personally or sent by security or registered mail, or by email or by facsimile transmission.
- b. Notices given:
  - i. personally are served upon delivery;
  - ii. by fastpost are served 3 days after posting;
  - iii. by email are served on the Working Day on which the email is sent or, if sent after 5pm in the place of receipt or on a non-Working Day, on the next Working Day;

- iv. by facsimile are served at the time specified in the facsimile confirmation report of the sending facsimile machine that evidences transmission to the facsimile number of the party receiving notice.
- c. A notice may be given by an authorised officer, employee or agent of the party giving the notice.
- d. The address, email, and facsimile number for each of us shall be as specified in this Agreement or such other address or number as is from time to time notified in writing to the other party.

#### A31.6 Relationship of Both of Us

Nothing in this Agreement constitutes a partnership or joint venture between both of us or makes you an employee, agent or trustee of ourselves.

#### A31.7 Construction

In this Agreement, unless the context otherwise requires:

- a. “we”, “us” and “our” means <<insert DHB name>>, including its permitted consultants, subcontractors, agents, employees, and assignees (as the context permits).
- b. “you” and “your” means the provider named in this Agreement, including its permitted subcontractors, agents, employees, and assignees (as the context permits).
- c. “both of us”, “each of us”, “either of us” and “neither of us” refers to the parties.
- d. words referring to the singular include the plural and the reverse;
- e. everything expressed or implied in this Agreement that involves more than one Person binds and benefits those people jointly and severally;
- f. “including” and similar words do not imply any limitation;
- g. clause headings are for reference purposes only;
- h. a reference to a statute includes:
  - i. all regulations under that statute; and
  - ii. all amendments to that statute; and
  - iii. any statute substituting for it that incorporates any of its provisions
- i. all periods of time or notice exclude the days on which they are given and include the days on which they expire.

#### A31.8 Definitions

In this Agreement, unless the context otherwise requires, the following expressions shall have the following meanings:

<b>Expression</b>	<b>Meaning</b>
Additional Services	Services that are not covered by this Agreement.
Admission Agreement	A written agreement between you and a Resident entered into in accordance with clause D13.1.
Age-Related Residential Care Services	Age-related residential care services provided in accordance with this Agreement, including 24 hour provision of hotel services and personal care, in the following categories: <ul style="list-style-type: none"> <li>• Continuing Care (Hospital) (being “hospital care” as defined in section 4 of the HDSS Act);</li> <li>• Specialist Dementia Services; and</li> <li>• Rest Home Care (in both cases being “rest home care” as defined by section 6(2) of the HDSS Act).</li> </ul>
Agreement	This agreement, including Part 1 and Part 2, and any variation made to this agreement from time to time.
Approved Service Standard	A standard approved by the Minister of Health from time to time under section 13 of the HDSS Act. As at the date of the most recent variation of this Agreement the Approved Service Standards are the Health and Disability Services Standards NZS 8134:2008, comprising: <ul style="list-style-type: none"> <li>• Health and Disability Services (General) Standard, NZS 8134.0:2008;</li> <li>• Health and Disability Services (Core) Standards, NZS 8134.1:2008;</li> <li>• Health and Disability Services (Restraint Minimisation and Safe Practice) Standards, NZS 8134.2:2008;</li> <li>• Health and Disability Services (Infection Prevention and Control) Standards, NZS 8134.3:2008.</li> </ul>
Audit	The audit, inspection, monitoring, investigation, evaluation, or review of the provision of the Services and level of compliance with the terms of this Agreement, undertaken in accordance with clauses A15 to A17.
Auditor	A Person appointed by us under clause A15.5 to carry out an Audit.
Care Giver	A Person (but not including a Registered Nurse or an

	Enrolled Nurse) who provides day-to-day care of Residents.
Care Plan	The plan relating to the care of a Resident developed in accordance with clause D16.
Care Staff	A Registered Nurse, Enrolled Nurse or Care Giver, including a Registered Nurse, Enrolled Nurse or Care Giver who is engaged by you on a casual basis or who is from an agency, bureau, or other similar organisation.
Commencement Date	The date specified in clause C1.1.
Continuing Care (Hospital)	Continuing care (hospital) services provided in accordance with this Agreement.
Crown Direction	Any direction given to us by: <ul style="list-style-type: none"> <li>a. a Minister or Ministers under section 103, section 107, or otherwise of the Crown Entities Act 2004; or</li> <li>b. the Minister of Health under section 32, section 33, section 33B, or otherwise of the NZPHD Act.</li> </ul>
Crown Funding Agreement	The agreement between us and the Ministry entered into under section 10 of the NZPHD Act.
Dementia Unit	The part of your Facility where you provide (in accordance with Section E) Specialist Dementia Services and where you are certified to provide Rest Home Care under the HDSS Act.
DHB	A District Health Board established under section 19 of the NZPHD Act.
Director-General	The Director-General of the Ministry.
Emergency Admission	An admission for which the Facility has received less than 2 Working Days' notice of the Resident's admission.
Enrolled Nurse	A nurse who is registered under the HPCA Act with the relevant Responsible Authority and who is authorised to practise as an enrolled nurse.
Facility	Place (including your Rest Home, Hospital, and/or Dementia Unit, as the case may be) specified in clause C1.1 where you provide Services to Residents.
General Practitioner	Person registered as a general practitioner with the Medical Council of New Zealand.

HDSS Act	Health and Disability Services (Safety) Act 2001.
Health Information	<p>The following information or classes of information about an identifiable individual:</p> <p>information about the health of that individual, including his or her medical history;</p> <p>information about any disabilities that individual has, or has had;</p> <p>information about any health services or disability services that are being provided, or have been provided, to that individual;</p> <p>information provided by that individual in connection with the donation, by that individual, of any body part or any bodily substance of that individual or derived from the testing or examination of any body part, or any bodily substance of that individual; or</p> <p>information about that individual that is collected before or in the course of, and incidental to, the provision of any health service or disability service to that individual.</p>
Health Practitioner	A Person (including a General Practitioner, a Nurse Practitioner, and a Medical Practitioner) who is registered under the HPCA Act with the relevant Responsible Authority.
HPCA Act	Health Practitioners Competence Assurance Act 2003.
Hospital	The part of your Facility where you provide (in accordance with Section D) Continuing Care (Hospital) services in accordance with this Agreement and where you are certified to provide hospital care under the HDSS Act.
interRAI	The interRAI Long Term Care Facilities Assessment Tool used to assess Residents' needs and inform Residents' Care Plans.
interRAI NZ	The interRAI New Zealand Governance Group, a representative governance body appointed by the Director-General that includes DHB and aged care provider representatives.
Manager	An individual who is appointed as manager of your Facility and who is responsible for the day to day activities of the Facility.

Maximum Contribution	The weekly amount, inclusive of goods and services tax, that is set by notice in the <i>Gazette</i> under section 53 of the Residential Care and Disability Support Services Act as the maximum contribution applying to the region in which your Facility is located, and is the maximum that any Resident may be required to pay for Services provided by you in accordance with this Agreement.
Means Assessment	A means assessment carried out in accordance with the Residential Care and Disability Support Services Act.
Medical Practitioner	General Practitioner or Person registered as having a particular vocational registration with the Medical Council of New Zealand.
Ministry	The Ministry of Health.
Needs Assessment	A needs assessment carried out in accordance with the Residential Care and Disability Support Services Act.
NASC Service	A needs assessment and service co-ordination agency authorised by us to provide the following services in respect of an individual's care under this Agreement: <ul style="list-style-type: none"> <li>• Needs Assessment; and</li> <li>• service co-ordination.</li> </ul>
Non-Subsidised Resident	A Resident for whom we are not liable to make payments to you under the Residential Care and Disability Support Services Act.
Nurse Practitioner	A person registered under the HPCA Act with the relevant Responsible Authority as a nurse practitioner with prescribing rights and who has a specialist area of practice relevant to the needs of Residents.
NZPHD Act	New Zealand Public Health and Disability Act 2000.
Occupation Right Agreement	Occupation Right Agreement has the same meaning as in the Retirement Villages Act 2003.
On-call	A staff member or other Person designated by you who is available to attend to the needs of any Resident within 20 minutes after being notified.
On Duty	A staff member who is working in your Facility and is able to attend immediately to the needs of any Resident.
Payment Agent	Sector Operations, a business unit of the Ministry, or any



	other person we advise you is acting as our payment agent under this Agreement.
Person	Includes a corporation, incorporated society or other body corporate, firm, government authority, partnership, trust, joint venture, association, state or agency of a state, department or ministry of Government and a body or other organisation, in each case whether or not having a separate legal identity.
Positively Needs Assessed	A Person who has been needs assessed as requiring long-term residential care indefinitely under the Residential Care and Disability Support Services Act.
Premium Room	A room with additional features of a permanent or fixed nature, which constitute Premium Room Services under this Agreement
Premium Room Services	The services constituted by the additional features of a permanent or fixed nature in a Premium Room, and which are Additional Services under this Agreement.
Records	<p>All written and electronically stored material and all records and information held by you or on your behalf or by your employees, subcontractors, or agents, which are relevant to the provision of the Services, and, for the avoidance of doubt, includes information about you and your Residents on interRAI and Records transferred to you by other providers relating to services provided:</p> <ul style="list-style-type: none"> <li>• at your Facility by a previous provider; and</li> <li>• to Residents at another facility.</li> </ul>
Registered Nurse	A nurse who is registered under the HPCA Act with the relevant Responsible Authority and who is authorised to practise in general nursing.
Resident	A Person residing in your Facility to whom you are providing Services under this Agreement, and who is a resident assessed as requiring care for the purposes of the Residential Care and Disability Support Services Act. A Resident is either a Subsidised Resident or <u>a</u> Non-Subsidised Resident.
Residential Care and Disability Support Services Act	Residential Care and Disability Support Services Act 2018.
Residential Care Subsidy	Item a of clause C3.1, being the daily amount payable by us

to you in respect of a Subsidised Resident for the Services provided by you to that Subsidised Resident under this Agreement.

Responsible Authority	Authority appointed by or under the HPCA Act.
Rest Home	The part of your Facility where you provide (in accordance with Section D) Rest Home Care in accordance with this Agreement and where you are certified to provide rest home care under the HDSS Act.
Rest Home Care	Rest home services provided in accordance with this Agreement.
Services	Age-Related Residential Care Services, including 24-hour provision of hotel services and personal care, provided in accordance with Section D and Section E
Site Visit	Attendance by an Auditor at a Provider's Facility.
Specialist Dementia Services	Services provided in accordance with Section E (which relates to specialist care provided to Residents affected by dementia).
Specialist Medical Services	Services that are listed in the <u>Specialist Medical and Surgical Services – Tier Level One Service Specification</u> (as updated from time-to-time), which is available on the Ministry's nationwide services framework library, and any document that replaces those service specifications.
Standard Outage	A scheduled outage that allows the DHBs hosting interRAI to carry out maintenance of the interRAI system, and that will usually take place on the 2 <sup>nd</sup> and 4 <sup>th</sup> Tuesday of each month between 7pm and 10pm (or at such other time advised by the DHBs hosting interRAI).
Standard Room	A room without the additional features of a permanent or fixed nature that constitute a Premium Room under this Agreement.
Subsidised Resident	A Resident for whom we are liable to make payments to you under the Residential Care and Disability Support Services Act.
Temporary Manager	A manager of your Facility appointed by us in accordance with clause A22.2 or clause A24.6.
Uncontrollable Event	An event that is beyond the reasonable control of either of us but does not include:

- a. any risk or event that the party claiming to have been affected by such a risk or event could have prevented or overcome by taking reasonable care including having in a place a reasonable risk management process; or
- b. a lack of funds for any reason, other than where we have failed to make a due payment.

Working Day

Any day of the week other than:

- a. Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, the recognised anniversary of the province where the Facility is located, Waitangi Day, the Monday after Anzac Day (if Anzac Day falls on a Saturday or a Sunday), and the Monday after Waitangi Day (if Waitangi Day falls on a Saturday or a Sunday); and
- b. a public holiday day in the period beginning on 25 December in any year and ending with 4 January in the following year.

## **SECTION B: INFORMATION AND REPORTING REQUIREMENTS**

### **B1. REPORTING REQUIREMENTS**

B1.1 You must comply with the reporting requirements set out in clauses D22 and E5.

### **B2. REPORTING INTERVALS AND TIMELINESS**

B2.1 Where a reporting requirement detailed in clauses D22 and E5 is specified as quarterly, you must report to us or our representative in accordance with the following timetable:

Quarter	Due date for Report
1 January to 31 March	20 April
1 April to 30 June	20 July
1 July to 30 September	20 October
1 October to 31 December	20 February

B2.2 Where a reporting requirement detailed in clauses D22 and E5 is specified as annual, you must report by 20 February in respect of the immediately preceding calendar year.

B2.3 Where this Agreement:

- a. commences; or
- b. terminates; or
- c. is varied,

part way through a quarter, the report will be for that part of the quarter that falls within the duration of this Agreement.

B2.4 You must notify us if you anticipate that the information will be delayed. We may deem such delay to be a material failure for the purposes of clause A11.2.

B2.5 Without limiting clause A11.2, failure to submit reports in accordance with this Section B and clauses D22 and E5 is deemed to be a material failure for the purposes of clause A11.2.

### **B3. ACCURACY, CONSISTENCY AND COMPLETENESS**

B3.1 The information that you provide must, in all cases, be an accurate, consistent and complete representation of the facts. The information must identify any material inaccuracies or inconsistencies you know about.

### **B4. READABILITY AND AVAILABILITY**

B4.1 You must provide all information in readable format. With each information requirement for a specific piece of information, we or our representative will supply you with a template, which describes the method, medium, format, nature, frequency or level of detail required with which you must comply.

B4.2 If no specific template is supplied by us, you will supply the information on paper as typed text or in an electronic format using file formats supported by the Microsoft Office (Word, Excel, Access) suite of desktop tools.

B4.3 Both of us may mutually agree to alternative formats other than those specified in clause B4.2 during the term of this Agreement. Such an agreement will be confirmed in writing at least one month before the alternative arrangement is implemented.

#### **B5. FORWARDING YOUR COMPLETED REPORT**

B5.1 You will forward all reports as required by us under this Agreement to us or our representative at the address specified in the reporting template referred to in clause B4.1.

#### **B6. AUDITABILITY AND ACCESSIBILITY**

B6.1 The information supplied under this Agreement may be verified by an Audit.

B6.2 You acknowledge that the information that you provide to us must be auditable. All information you provide to us or other agencies under this Agreement must therefore be produced through a documented process. This documentation shall include:

- a. the definition of data needed to provide information;
- b. the source of data needed to provide information;
- c. each Person responsible for the capture of this data;
- d. a description of manual and automated procedures and processes used to transform this data into the information you provide;
- e. the procedures that describe how you accurately record client ethnicity; and
- f. the procedures that describe how you ensure the security of information according to the Privacy Act 1993 and any code of practice issued under that Act covering Health Information held by health providers.

B6.3 You must make available to us the documentation referred to in this clause B6, if so requested by us.

B6.4 You must take all care to ensure that in the event of ceasing to provide the Services, your Records are properly preserved and accessible by us.

B6.5 You must pay the costs associated with the provision of information under this Agreement.

#### **B7. AUTHENTICITY**

B7.1 You must provide sufficient identification with the information sent to us, to satisfy us, or any other agency receiving information from you under this Agreement that the information received was sent by you. Unless stated differently in this Agreement, this identification should as a minimum include:

- a. the services the information relates to (if applicable);

- b. the date or period the information relates to;
- c. the date the information was provided.

**B8. AD-HOC INFORMATION REQUIREMENTS**

- B8.1 We may request from you additional information in relation to you in general or the Services specified in this Agreement. In the request, we will detail the reasons for the request and the intended usage of the required information.
- B8.2 You must endeavour to provide us with every reasonable assistance in obtaining the required information.

## PART 2: SPECIFICATIONS

### SECTION C: PROVIDER SPECIFIC PAYMENTS

#### C1. SERVICE DETAILS

C1.1 This Agreement applies in respect of the following details:

Provider Legal Entity Name	«PROVIDER_NAME»
Provider Legal Entity Number	«PROVIDER_NUMBER»
Facility Name and Physical Address	[insert Facility name and address]
Service Category Name	
Service Category ID	
Commencement Date	

#### C2. PRICE

C2.1 The maximum prices that apply to the Services are as follows:

Service Category ID	Service Category Name	Bed Day Price (excl. GST)	GST Rate (%)	Payment Type
«Service_ID1»	«Service_name»	«Unit_rate»	«GST_Rate»	CCPS
«Service_ID11»	«Service_name1»	«Unit_rate1»	«GST_Rate1»	CCPS
«Service_ID12»	«Service_name2»	«Unit_rate2»	«GST_Rate2»	CCPS

#### C3. CALCULATION OF RESIDENTIAL CARE SUBSIDY

C3.1 The Residential Care Subsidy payable by us in respect of each Subsidised Resident is calculated using the following formula:

$$a = (b - c) \times d$$

Where:

- a is the Residential Care Subsidy
- b is the maximum daily price payable under clause C2 per Subsidised Resident per day for the Services
- c is the amount a Subsidised Resident must pay per day for the Services, as assessed in accordance with the Residential Care and Disability Support Services Act

- d is the number of days that the Services are provided by you to the Subsidised Resident during the period for which payment is made.

#### **C4. PAYMENT PROCESS**

C4.1 For the purposes of this clause C4, unless the context indicates otherwise, the following expressions shall have the following meanings:

Expression	Meaning
BCTI	Buyer Created Tax Invoice
Payment Fortnight	The fortnight following a Service Fortnight
PPS	Proposed Payment Schedule
Service Fortnight	The fortnight during which you have performed Services and in respect of which you are entitled to payment under this Agreement

C4.2 We will pay you as follows:

- a. We will provide you, by post or facsimile, with a PPS not later than 2 Working Days prior to the end of the Service Fortnight.
- b. If you do not receive the PPS by the last Working Day of the Service Fortnight, you must notify our Payment Agent immediately. We will send you a copy of the relevant PPS within 1 Working Day of receiving such notice from you.
- c. The PPS will specify the Subsidised Residents in respect of whom we anticipate we must make payment to you, and the applicable Residential Care Subsidy per Subsidised Resident based on the previous Service Fortnight's payment to you.
- d. You shall complete the PPS and the documentation that accompanies the PPS in accordance with the instructions accompanying the PPS.
- e. You must verify by signature that the contents of the PPS and the documentation that accompanies the PPS are correct and return the PPS and the documentation to us within 5 Working Days of receipt of the PPS.
- f. We will send a BCTI to you following receipt of the verified PPS and documentation that accompanies the PPS.
- g. We will pay you in accordance with the BCTI not later than 10 Working Days after we receive the verified PPS.
- h. If we do not receive the PPS and documentation that accompanies the PPS in accordance with clause C4.2(e), we will not pay for the Service Fortnight until the fortnight following the Payment Fortnight, provided that we receive the PPS and documentation that accompanies the PPS that complies with clause C4.2(e) for the relevant Service Fortnight not later than 15 Working Days after the PPS was sent.



C4.3 Despite clause C4.2, if we notify you in writing that you are not required to provide a PPS for a particular Service Fortnight, we will pay you the amount specified in the previous BCTI that we sent to you as payment for the relevant Service Fortnight.

## **SECTION D: SERVICE SPECIFICATIONS – GENERAL**

### **D1. COMPLIANCE WITH LEGISLATION AND STANDARDS**

D1.1 You must comply with all relevant legislation, including, but not limited to:

- a. Care and Support Workers (Pay Equity) Settlement Act 2017;
- b. Food Act 2014;
- c. Health Act 1956;
- d. Health and Disability Commissioner Act 1994;
- e. HDSS Act;
- f. Health and Safety at Work Act 2015;
- g. HPCA Act;
- h. Medicines Act 1981;
- i. NZPHD Act;
- j. Privacy Act 1993;
- k. Residential Care and Disability Support Services Act 2018; and
- l. Smoke-free Environments Act 1990.

D1.2 You must comply with any legislation that supersedes, substitutes or amends the legislation listed in clause D1.1.

D1.3 You must comply with all Approved Service Standards.

### **D2. INTERPRETATION**

D2.1 Where in Section D and Section E the term “access” is used, in relation to your obligations, it means to arrange or facilitate a Resident obtaining or receiving goods or services, from another Person, which are not part of the Services (including, without limitation, the goods and services referred to in clauses D14 and D20). You may not charge a Resident for such arranging or facilitating, but you are not required by this Agreement to meet the costs of that other Person.

D2.2 Where in Section D and Section E the term “provision” or “provide” is used in relation to your obligations, it means that you must meet the costs of the goods or services provided and may not charge the Resident for such goods or services.

D2.3 Where any reference is made in Section D and Section E to prescription of, or prescribing by, a General Practitioner, a Registered Nurse (such as a Nurse Practitioner) may exercise such prescribing powers if legally authorised to do so.

### **D3. SERVICE PHILOSOPHY**

D3.1 You shall ensure that each Resident has access to a typical range of life experiences and choices. In providing the Services you must:

- a. be Resident centred;
- b. promote each Resident's independence and quality of life;
- c. be comprehensive and multidisciplinary;
- d. centrally involve Residents in decisions that affect their lives;
- e. actively encourage Residents to maximise their potential for self-help and involvement in the wider community;
- f. respect the rights of each Resident;
- g. ensure a culturally appropriate service;
- h. acknowledge, value and encourage the involvement of families/whānau in the provision of care;
- i. ensure the needs of each Resident are met in a caring, comfortable, safe environment that maximises individuality, privacy and health potential; and
- j. ensure that people who are dying are supported in an environment that provides comfort, privacy and dignity for both the Resident and their family/whānau.

### **D4. SERVICE OBJECTIVES**

D4.1 The Services will:

- a. be relevant to the health, support and care needs of each Resident, recognising their cultural and/or spiritual values, individual preferences and chosen lifestyles;
- b. provide a homelike and safe environment for each Resident;
- c. facilitate and assist the meeting of each Resident's social, spiritual, cultural and recreational needs;
- d. provide the opportunity for each Resident wherever possible, or the Resident's family/whānau or nominated representative (if any), to be involved in decisions affecting the Resident's life; and
- e. acknowledge the significance of each Resident's family/whānau and chosen support networks.

### **D5. PROVIDER POLICIES**

D5.1 You must develop and document a philosophy to guide the provision of the Services.

- D5.2 Your philosophy must be available to Residents and their families/whānau, Persons who are prospective Residents and their families/whānau, any service that refers prospective Residents to you, and Persons engaged to deliver the Services.
- D5.3 Your philosophy must be in a form that meets the communication needs and capabilities of each of the Persons or groups of Persons listed in clause D5.2.
- D5.4 You must develop and document policies, procedures, protocols, and guidelines for all elements of the Services that you must provide under this Agreement. Such policies shall include, but are not restricted to, policies relating to:
- a. assessing, managing and monitoring each Resident's behavioural problems;
  - b. clinical procedures relevant to the needs identified in the individual Resident's Care Plan;
  - c. complaints procedure;
  - d. continence management;
  - e. health education and disease prevention;
  - f. management of challenging behaviour;
  - g. medication management;
  - h. pain management;
  - i. personal grooming;
  - j. personal hygiene;
  - k. preservation of privacy and dignity;
  - l. providing culturally safe care;
  - m. recognition of people's rights;
  - n. restraint including strategies to minimise the use of restraint;
  - o. resuscitative status;
  - p. sexuality and intimacy;
  - q. spirituality and counselling including availability of chaplaincy;
  - r. skin management;
  - s. transportation of Residents;
  - t. wound care;
  - u. oral hygiene.

**D6. CODE OF RESIDENTS' RIGHTS**

- D6.1 You must have a Code of Residents' Rights. Such a code must be consistent with the Code of Health and Disability Services Consumers' Rights.
- D6.2 The Code of Residents' Rights must include Residents' rights and responsibilities, information about your complaints system, including how to make a complaint, the role of independent advocacy services and the Health and Disability Commissioner.

**D7. CLINICAL RECORD SYSTEM**

- D7.1 You must ensure that each Care Staff member maintains a written record of progress for each Resident under their care. You must ensure that all Care Staff entries are legible, dated, and signed by the relevant Care Staff member, indicating their designation.

**D8. ATTENDANCE BY GENERAL PRACTITIONER OR OTHER HEALTH PRACTITIONER**

- D8.1 If a General Practitioner or other Health Practitioner has cause to visit a Resident, you shall ensure that the General Practitioner or other Health Practitioner enters findings, and any treatment given to or ordered for the Resident, into the relevant clinical records maintained on site at the time of the attendance. You must ensure that all such entries are legible, dated, and signed by the General Practitioner or other Health Practitioner.

**D9. HANDOVER REPORT**

- D9.1 You must ensure that at the commencement of a shift, each Care Staff member who will be responsible for providing care to a particular Resident receives a report on the status of, and care required for, that Resident.
- D9.2 The report referred to in clause D9.1 must:
- a. be based on the Resident's Care Plan developed in accordance with clause D16.3; and
  - b. be available to all Care Staff.

**D10. DEATH/TANGIHANGA**

- D10.1 You must develop and implement policies and procedures to follow in the event of the death of a Resident, which include but are not limited to policies regarding:
- a. immediate action;
  - b. appropriate and culturally sensitive procedures for notification of next of kin or nominated representative;
  - c. any necessary certification and documentation;
  - d. culturally appropriate arrangements in relation to the care of the deceased, until responsibility is accepted by the family/whānau or a duly authorised Person.

## **D11. SERVICE INFORMATION**

D11.1 You must make available, to Residents and their families/whānau or nominated representatives (if any), Persons who are prospective Residents and their families/whānau or nominated representatives (if any), and any service who refers prospective Residents to providers, information regarding the Services that you must provide under the terms of this Agreement.

D11.2 The information shall include, but is not limited to, the following:

- a. the services that you offer;
- b. the location of those services;
- c. the hours the services are available;
- d. how a Resident may have access to those services (for example, whether a referral is necessary);
- e. residents' rights and responsibilities, including a copy of the Code of Health and Disability Services Consumers' Rights;
- f. availability of cultural support;
- g. after-hours or emergency contacts if necessary or appropriate; and
- h. any other information that is important for Persons who wish to receive your services.

D11.3 The information must be presented in a manner appropriate to the communication needs and capabilities of the Persons or groups referred to in clause D11.1.

## **D12. ADVICE TO RESIDENTS**

D12.1 You must advise each Non-Subsidised Resident in writing that:

- a. if the Non-Subsidised Resident wishes to become a Subsidised Resident, the Resident must have a Means Assessment to determine whether the DHB is liable to pay for Services provided to the Resident;
- b. a Means Assessment may take some time to arrange, and the conclusion of such assessment may be that the DHB is not liable to pay for such Services; and
- c. the DHB is not liable to pay a Residential Care Subsidy in respect of the Resident unless a Means Assessment determines that the DHB is liable to pay for the Services.

D12.2 You must obtain written acknowledgement from each Non-Subsidised Resident that he or she has been advised in writing of the matters referred to in this clause D12.

D12.3 As soon as practicable after you become aware that the DHB may be liable to pay for Services being provided to a Non-Subsidised Resident, you must advise the following Persons of that fact:

- a. the Non-Subsidised Resident; and
- b. the NASC Service.

D12.4 You must ensure every Resident:

- a. is advised of the right, under the Residential Care and Disability Support Services Act, to apply for a review of his or her Means Assessment; and
- b. is notified whenever we notify you that:
  - i. a change has been made to the tests used in Means Assessments (such as an increase to applicable asset thresholds, or a change to the personal allowance) that might mean that if a Resident's Means Assessment was reviewed, the result would be different from the result of the Resident's latest Means Assessment; or
  - ii. there has been an increase to the Maximum Contribution.

D12.5 When you make a notification under clause D12.4(b) you must also remind the Resident of his or her right to apply for a review of his or her Means Assessment.

### **D13. ADMISSION AGREEMENT**

D13.1 You must ensure that each Resident, or their nominated representative, signs an Admission Agreement, either on the day that the Resident commences receiving Services at your Facility, or, in the case of an Emergency Admission, as soon as is reasonably practicable but no later than 10 Working Days after the Resident is admitted. You must not charge the Resident or any other Person for preparing or providing an Admission Agreement.

D13.2 A copy of any or all Admission Agreements between you and your Residents must be made available to us on request and without charge.

D13.3 The Admission Agreement must contain:

- a. advice that explains that the Resident has the right under the Residential Care and Disability Support Services Act to apply for a review of the Resident's Means Assessment;
- b. a list of items that are excluded from the Services as set out in clause D14;
- c. an itemised list of each Additional Service offered by you which is not part of the Services under this Agreement and the charge for each Additional Service;
- d. if the Resident is a Subsidised Resident, a statement of the right of the Resident to:
  - i. be admitted to and reside in your Facility without being required to receive and pay for any Additional Service;
  - ii. decide whether to receive any individual Additional Service;
  - iii. at any time decide to receive or cease to receive any individual Additional Service;
- da. a statement of the right of the Resident to be repaid any amounts that the Resident (or someone on behalf of the Resident) paid for Services for which we are liable to pay under the Residential Care and Disability Support Services Act, and that any such amounts will

be paid to the Resident no later than 20 Working Days after we make the first payment to you for the Services;

- db. a statement of the right of the Resident to be repaid any amounts that the Resident is owed by you, including because the Resident paid for the provision of services in advance and subsequently left the Facility, and that such amounts will be paid within 20 Working Days of the amount being owed;
- e. the extent of your liability for damage or loss of the Resident's personal belongings, including clothing;
- f. provisions relating to the following topics:
  - i. staffing of the Facility;
  - ii. safety and personal security of Residents;
  - iii. fire protection and emergency management;
  - iv. communication with Residents for whom English is a second language or whose ability to communicate is limited;
- g. a provision which informs the Resident that the contact details of the Resident's family/whānau members or nominated representatives provided to you by the Resident under clause D13.4, may be provided to us for the purposes of this Agreement, including, without limitation:
  - i. during the course of or following an Audit; or
  - ii. if this Agreement is varied or terminated under clauses A16, A23 or A24; or
  - iii. when we take action under clause A22,and otherwise as permitted by the Privacy Act 1993 and any code of practice issued under that Act covering Health Information held by providers;
- h. the procedure that a Resident must follow if he or she wishes to make a complaint about you or any of the services received by the Resident;
- i. a description of transportation policies, procedures and costs in clause D20.2;
- j. information relating to the Resident's rights in respect of the room where that Resident will live, including when that Resident is temporarily absent from the Facility;
- k. information about when you may require the Resident to leave your Facility.

D13.4 You must use your best endeavours to obtain from the Resident the names of members of that Resident's family/whānau, or a nominated representative, whom we can contact for the purposes referred to in clause D13.3(g).



## **D14. EXCLUSIONS FROM SERVICE**

D14.1 The Services do not include:

- a. specialised assessment and rehabilitation services – including specialist assessment for, and advice on, rehabilitation and specialised assessment (by accredited assessors) for individual customised equipment via ACC or a Ministry-funded environmental support services provider;
- b. customised equipment, accessed through services funded by the relevant DHB or through specialised accredited assessors, such as wheelchairs modified for an individual's use, seating systems for postural support, specialised communication equipment and other customised and personal care and mobility equipment;
- c. the provision of equipment, aids, medical supplies or services that relate to conditions covered by separate funding from us, another DHB, or the Ministry except where these have been specified in Section D or Section E as forming part of the Services;
- d. services such as those provided by dentists, opticians, audiologists, chaplains, hairdressers, dry cleaners, and solicitors;
- e. clothing and personal toiletries, other than ordinary household supplies. However you are responsible for ensuring that these items are purchased by the Resident or their family/whānau or nominated representative as required, and are consistent with the preferences of individual service users;
- f. charges for personal toll calls made by the Residents; or
- g. insurance of the Resident's personal belongings.

D14.2 You must ensure each Resident has access to the items set out in clause D14.1.

D14.3 You may supply the items listed in clause D14.1, if the Resident chooses to obtain the items from you and, where you have supplied such items, may charge for items so supplied.

D14.4 The Resident is responsible for the safety, security, and insurance cover of his or her personal belongings, but you must exercise due care and comply with relevant laws.

## **D15. ACCOMMODATION, FACILITIES AND EQUIPMENT**

D15.1 The buildings, facilities and equipment shall meet the accommodation needs of older people, and reflect the special needs of the Residents.

D15.2 Accommodation

You must provide:

- a. lodging with the use of all furniture, fittings, fixtures, bedding and utensils, except to the extent that Residents choose, with your agreement, to use their own furniture and possessions where they can be reasonably accommodated;

- b. a food service of adequate and nutritious meals, and refreshments and snacks at morning/afternoon tea and supper times, that reflects the nutritional requirements of older people, and as much as possible takes into account the personal likes/dislikes of the Resident, addresses medical/cultural and religious restrictions, and is served at times that reflect community norms;
- c. cleaning services and supplies that maintain the Facility in a clean, hygienic and tidy state;
- d. laundry services: You will take all reasonable care to minimise damage to or loss of personal clothing caused by laundering. Your financial liability is restricted to that agreed with the Resident in the Admission Agreement between the Resident and you;
- e. a garden/outside recreational area that incorporates sheltered seating and is easy to get to. You must maintain the building and outdoor environment in a tidy, usable and safe state; and
- f. the Services in a clean, warm, safe, well-maintained, homelike and comfortable environment that respects the Residents' privacy, individuality and promotes their wellbeing.

#### D15.3 Facilities and Equipment

- a. You must provide communal aids and equipment for personal care or the general mobility needs of Residents who require them, including (but not limited to) urinals, bedpans, wash bowls, walking frames, wheelchairs, commodes, shower/toilet chairs, raised toilet seats, hospital beds, pressure relief (including mattress, heel protectors and seat cushions), lifting aids, and hand rails.
- b. You must at all times have available sufficient clinical equipment for general use to meet the needs of the Resident including, but not limited to:
  - i. scissors and forceps for basic wound care;
  - ii. thermometers;
  - iii. sphygmomanometer;
  - iv. stethoscope;
  - v. weighing scales; and
  - vi. blood glucose testing equipment.
- c. You must at all times have sufficient and safe storage facilities for equipment, aids and supplies including the required storage facilities for all types of medications as required by relevant legislation.
- d. You must ensure that radio, television, newspapers, personal mail inwards and outwards and telephones for calls in private are reasonably available to Residents.

- e. You must have procedures in place that ensure the security and safety of the Residents and enable Residents to enter and leave the Facility as appropriate to their care need level.

#### **D15A USE OF INTERRAI**

D15A.1 You must implement and use interRAI as the primary means of assessing Residents in accordance with the requirements of this Agreement. The Ministry of Health has a national unlimited user licence for the use of interRAI that permits you to access and use interRAI at no cost to you.

D15A.2 For the purposes of this clause and clauses D15B to D15F, "assessing" and "assessment" include "reassessing" and "reassessment".

D15A.3 Both of us will work with each other and with the Ministry and interRAI NZ to ensure the successful use of interRAI to the extent to which it is within each party's capacity, including by collaborating to resolve any problems in a timely manner.

D15A.4 interRAI NZ instructions and protocols

- a. Both of us must observe and comply with all instructions and protocols issued by interRAI NZ that relate to the use of interRAI to provide the Services, including as set out in clauses D15B to D15F.
- b. However, you are not required to comply with any instructions or protocols issued by interRAI NZ if:
  - i. interRAI NZ does not include a member that represents the majority of aged care providers in New Zealand; or
  - ii. the instructions or protocols have not been developed by, and agreed on, by all members of interRAI NZ.

D15A.5 We agree that we are responsible for, and must meet the costs of:

- a. ensuring that the DHBs hosting interRAI provide you with access to the necessary software and updates to the software, and provide you with a help desk service;
- b. providing ongoing training (including resources and services) to support the effective use of interRAI by you; and
- c. providing you with reports as set out in clause D15C.

#### **D15B AVAILABILITY OF INTERRAI**

D15B.1 We will take all reasonable steps to ensure that interRAI is available for use by you 24 hours a day, 7 days per week, 365 days per year, except during a Standard Outage.

D15B.2 We will ensure that you are informed in advance of a Standard Outage of interRAI as soon as reasonably practicable after we become aware that a Standard Outage has been scheduled, and in any case at least 2 Working Days before the Standard Outage is scheduled to take place.

D15B.3 We agree that if a Standard Outage impacts on you, or on your ability to provide the Services, both of us will work with each other, and with interRAI NZ, to resolve that issue.

D15B.4 We will respond to any unplanned outage of interRAI in accordance with any relevant interRAI NZ protocols.

D15B.5 In the event of an outage of interRAI, both of us must complete any assessments that would normally be completed using interRAI as soon as reasonably practicable after the outage ends.

## **D15C REPORTS**

D15C.1 We will provide you with reports that include data about Residents at your Facility, at an individual Resident level and at an aggregated level, as required by interRAI NZ, in the format and at the frequency agreed by DHBs and provider representative groups, and endorsed by interRAI NZ.

## **D15D SECURITY OF INFORMATION**

D15D.1 We will ensure that all information stored on interRAI is stored safely and securely and is protected against unauthorised access, use, or disclosure in accordance with the Privacy Act 1993, the Health Information Privacy Code, and any instructions or protocols issued by interRAI NZ.

D15D.2 If any information about you or Residents at your Facility stored on interRAI is accessed, used, or disclosed in contravention of clause D15D.1, we will immediately inform you and take immediate steps to manage, minimise and resolve the unauthorised access, use or disclosure.

D15D.3 You must ensure that, at your Facility, interRAI is accessed only by Staff authorised to access interRAI, and that your Staff access interRAI and use or disclose information stored on interRAI in accordance with any requirements specified by interRAI NZ.

D15D.4 If information stored on interRAI is accessed, used or disclosed in contravention of clause D15D.3, you must take immediate steps to manage, minimise and resolve the unauthorised access, use or disclosure.

## **D15E CONFIDENTIALITY**

D15E.1 We will not, unless we are required to do so by law (including under the Privacy Act 1993 or the Official Information Act 1982) or unless disclosure is permitted or required by protocols developed by, and agreed on by all members of, interRAI NZ:

- a. disclose any information stored on or derived from interRAI that identifies you, including any information described in clauses D15C.1 and D15D.1 that identifies you; or
- b. make such information publicly available.

D15E.2 However, the information described in clause D15E.1 may be disclosed to, and used by:

- a. auditors in accordance with clause A15.6;
- b. us for the purpose of monitoring your compliance with this Agreement; and

- c. government agencies, including the Ministry of Health, to enable those government agencies to fulfil their regulatory and/or legislative functions.

D15E.3 We agree that if we receive a request under the Official Information Act 1982 for information described in clause D15E.1, we will:

- a. consult with you prior to releasing such information; and
- b. consider whether releasing such information would be likely to unreasonably prejudice your commercial position.

## **D15F COSTS**

D15F.1 You are only responsible for your own costs associated directly or indirectly with your use of interRAI.

D15F.2 We will not carry out a hardware or software upgrade required by interRAI NZ or that we want to implement, unless both of us have agreed on:

- a. the costs that both of us will incur as a result of that upgrade; and
- b. who will bear those costs.

## **D16. INDIVIDUAL SUPPORT AND CARE SERVICES**

D16.1 Home care assessment before admission

We will ensure that each potential Resident who may be admitted to your Facility (either directly from the community or via in-patient care) has been assessed using the interRAI home care assessment tool in the 6 months before the date on which it is intended that the potential Resident will be admitted, unless there are exceptional circumstances.

D16.1A Welcoming and orientating new Residents

- a. You must welcome new Residents and assist new Residents to adapt to their new residence.
- b. You must ensure that:
  - i. Residents are orientated to the physical layout of the Facility in a way that minimises their anxiety;
  - ii. Residents and/or their nominated representative are informed and agree prior to, or on, entry to the Facility of the scope of Services and any liability for payment for items not included in the Services. Such liability must be set out in the Admission Agreement referred to in clause D13; and
  - iii. new Residents and/or their nominated representatives receive a copy of the Facility's Code of Residents' Rights.

D16.2 Assessment on Admission

You must ensure that:

- a. each Resident's health and personal care needs are assessed on admission in order to establish an initial Care Plan to cover a period of up to 21 days, and that Registered Nurse input and agreement is sought and provided in developing and evaluating the initial Care Plan in order to ensure continuity of relevant established support, care and treatments;
- b. each Resident has an interRAI LTCF assessment completed within 21 days of admission to your Facility, in order to inform the Resident's Care Plan developed in accordance with clause D16.3(a); and
- c. the assessment utilises information gained from the Resident, their nominated representative (where applicable), and information provided by the NASC Service and/or previous provider of health and personal care services along with observations and examinations carried out at the Facility.

### D16.3 Care Planning

You must ensure that:

- a. each Resident has a Care Plan that is based on assessments of the Resident carried out using interRAI, and that all staff follow the Care Plan;
- b. at the time of admission an initial Care Plan is developed and documented based on information from the Resident's most recent interRAI home care assessment carried out in accordance with clause D16.1, and on any other information relevant to the initial Care Plan;
- c. each Care Plan is developed, documented, and evaluated by a Registered Nurse, and informed by interRAI, within 21 days of the Resident's admission;
- d. each Resident's Care Plan is reviewed (such review to be informed by interRAI and any other information relevant to the Care Plan) by a Registered Nurse and amended where necessary to ensure it remains relevant to address the Resident's current identified needs and health status;
- e. the Registered Nurse who develops the Resident's Care Plan considers the experiences and choices of each Resident in accordance with clauses D3 and D4;
- f. each Resident and, if applicable, his or her family/whānau or nominated representative, have the opportunity to have input into the Resident's care planning process;
- g. the Care Plan addresses the Resident's current abilities, level of independence, identified needs/deficits and takes into account as far as practicable the Resident's personal preferences and individual habits, routines, and characteristics;
- h. the Care Plan addresses personal care needs, health care needs, rehabilitation/habitation needs, maintenance of function needs and care of the dying;

- i. a Registered Nurse is responsible for ensuring the plan reflects the Resident's assessed physical, psychosocial, spiritual and cultural abilities, deficits, and needs;
- j. each Care Plan focuses on each Resident and states actual or potential problems/deficits, and sets goals for rectifying these and details required interventions;
- k. short-term needs together with planned interventions are documented either by amending the Care Plan or as a separate short-term Care Plan attached to the Care Plan;
- l. care Plans are available to all Care Staff and that they use these Care Plans to guide the care delivery provided according to the relevant staff member's level of responsibility.

D16.3A For the purposes of clauses D16.3(c), (d) and (e), an Enrolled Nurse, under the direction or delegation of a Registered Nurse or Nurse Practitioner may contribute to the development, documenting, evaluation, review and amending of a Resident's Care Plan.

#### D16.4 Evaluation

- a. You must ensure that each Resident's Care Plan is evaluated, reviewed and amended (such process to be informed by interRAI) either when clinically indicated by a change in the Resident's condition or at least every 6 months, whichever is the earlier.
- b. You shall notify a Resident's family/whānau members or nominated representative (if any), with the Resident's consent, as soon as possible, if the Resident's condition changes significantly.

#### D16.4A Re-assessment

- a. You must, using interRAI, re-assess a Resident and provide the re-assessment to the NASC Service if:
  - i. you have identified that there is a significant change in that Resident's level of need and those needs can no longer be met by you; or
  - ii. we request that the Resident be re-assessed.
- b. We will review the re-assessment and:
  - i. will endeavour to provide you with the outcome of our review no later than 5 Working Days after you provide the re-assessment to the NASC Service; and
  - ii. will ensure that in all cases we provide you with the outcome of our review no later than 10 Working Days after you provide the re-assessment to the NASC Service.
- c. If you disagree with our decision on the re-assessment, you must inform us of this and the reasons for your disagreement, and we will decide whether to reconsider our decision, such decision to be final.

#### D16.5 Support and Care Intervention

- a. Support and care provided by you must be focused on the Resident and delivered in a timely and competent manner. Your routines and practices within the Facility must reflect as much as possible community norms, encourage each Resident's autonomy, respect their dignity and privacy, meet their cultural requirements, and be documented in the Care Plan.
- b. Your staff must be available at all times to meet the needs of each Resident, as identified in the Resident's Care Plan and when necessary.
- c. You must provide the following support and care intervention services to all Residents:
  - i. supervision and/or assistance with activities of daily living and personal care as determined by the individual needs of each Resident;
  - ii. a designated staff member who is skilled in and accountable for assessment, implementation and evaluation of social, diversional and motivational recreation programmes for each Resident;
  - iii. for each Resident, a written and implemented social and recreational programme of activities planned to meet the identified interests, stated preferences and level of ability/disability of the Resident. You must ensure that this activity programme is evaluated and reviewed each time the Care Plan is reviewed.
- d. The programme referred to in clause D16.5(c)(iii) shall include group and individual activities and involvement with the wider community. Information related to the preferred activities and level of involvement will be documented in the Resident's records.
- e. Primary Medical Treatment
  - i. You must contract one or more General Practitioners or Nurse Practitioners to carry out the Services described in clauses D16.5(e)(ii)(1) and (2).
  - ii. You must ensure that:
    1. each Resident is examined by a General Practitioner or Nurse Practitioner within 2 to 5 Working Days of admission, as clinically indicated (as assessed by a Registered Nurse), except where the Resident has been examined by a Medical Practitioner or Nurse Practitioner not more than 2 Working Days prior to admission, and you have a summary of the Medical Practitioner's or Nurse Practitioner's examination notes. After the initial examination, the Resident must be examined not less than once a month and as clinically indicated (as assessed by a Registered Nurse) except where the Resident's medical condition is stable as assessed by the General Practitioner or Nurse Practitioner, in which case the Resident may be examined by a General Practitioner or Nurse Practitioner less frequently than monthly, but at least every 3 months. This exception must be noted and signed in the Resident's medical records by the General Practitioner or Nurse Practitioner;



2. the General Practitioner or Nurse Practitioner reviews each Resident's medication at least every 3 months. The Resident's medication chart must be noted and signed by the General Practitioner or Nurse Practitioner at each review; and
  3. on-call emergency medical services are available to all Residents at all times. All costs of such emergency medical services must be covered by you.
- iii. A Resident may choose to be attended by a General Practitioner or Nurse Practitioner of their own choice who agrees to visit the Facility and maintain the Facility's medical records as prescribed in this contract. If a Resident retains his or her own General Practitioner or Nurse Practitioner, that Resident is responsible for any cost over and above that which you pay per Resident for the General Practitioner or Nurse Practitioner contracted by you.
  - iv. If a Resident initiates a visit from a General Practitioner or Nurse Practitioner without the prior approval of the Registered Nurse or Manager or Clinical Manager, you may require the Resident to bear the full cost of the visit if such a visit is not in accordance with clause D16.5(e)(ii)(1).
  - v. You must provide the treatment programme prescribed by a Medical Practitioner or Nurse Practitioner to assist the Resident to develop and maintain functional ability. This may include such goal and outcome orientated treatment as physiotherapy, respiratory therapy, occupational therapy, speech therapy, dietetics and podiatry. The treatment programme must be reviewed by a Registered Nurse at such regular intervals as are specified by the Medical Practitioner or Nurse Practitioner.
  - vi. Where a Resident requires specialist assessment services (for example, where there has been a marked deterioration in the Resident's functionality or health status) and a General Practitioner or Nurse Practitioner refers a Resident to:
    1. rehabilitation services (for example, assessment, treatment and rehabilitation services); or
    2. mental health services for older people; or
    3. specialist allied health services available through community health providers,you are not required to provide such services, but must ensure that the Resident has access to such services.
  - vii. If you choose to refer a Resident to private therapists, the costs of such private therapists must be met by you.

## **D17. HUMAN RESOURCES**

### **D17.1 You must:**

- a. provide sufficient staff to meet the health and personal care needs of all Residents at all times;

- b. take all reasonable steps to ensure that at all times every Health Practitioner who practises at your Facility, whether as an employee or as a contractor:
  - i. is registered under the HPCA Act with the relevant Responsible Authority;
  - ii. has a current annual practising certificate issued by the relevant Responsible Authority; and
  - iii. does not practise outside his or her scope of practice as set by the relevant Responsible Authority;
- c. take all reasonable steps to ensure that at all times:
  - i. you are aware of every Health Practitioner's scope of practice as set by the relevant Responsible Authority; and
  - ii. you are informed if a Health Practitioner's scope of practice changes; and
- d. inform the relevant Responsible Authority whenever a Health Practitioner employee resigns or is dismissed from his or her employment or under his or her contract for reasons relating to competence.

D17.2 If you receive notification from any Person that may raise a doubt about the safety of the services provided by a Health Practitioner employed or contracted by you, including but not limited to notification from a Responsible Authority that the Responsible Authority has reason to believe that a registered Health Practitioner employed or contracted by you may pose a risk of harm to the public, you must take all action that is appropriate in the circumstances to ensure the care and treatment provided by the Health Practitioner to Residents is safe and is of an appropriate standard.

#### D17.3 Rest Homes

- a. In every Facility where there are:
  - i. 10 or fewer Residents, there must be a Care Staff member On Duty at all times;
  - ii. up to (and including) 30 Residents, there must be one Care Staff member On Duty and one Care Staff member On-call at all times;
  - iii. more than 30 Residents, at least 2 Care Staff members shall be On Duty at all times;
  - iv. more than 60 Residents, at least 3 Care Staff members shall be On Duty at all times.
- b. Despite clause D17.3(a), where (having regard to the layout of the Facility, the health and personal care needs of Residents and the ease with which the Residents can be supervised) the Registered Nurse or Manager at any time considers that additional staff are required to meet the needs of all Residents, you shall ensure that those extra staff are On Duty for the period of time that the Registered Nurse or Manager recommends.

- c. Where you provide more than one category of Services at your Facility one of the staff members may, if qualified, provide On-call assistance in respect of another category of Service, provided that you continue to meet your obligations under clause D17.1.
- d. Manager
  - i. Every Rest Home must engage a Manager who holds a current qualification, or has experience, relevant to both management and the health and personal care of older people, and is able to show evidence of maintaining at least 8 hours annually of professional development activities related to managing a Rest Home; and
  - ii. The role of the Manager includes, but is not limited to, ensuring the Residents of the Home are adequately cared for in respect of their everyday needs, and that services provided to Residents are consistent with obligations under legislation and the terms of this Agreement.

e. Registered Nurse

You must employ, contract or otherwise engage at least one Registered Nurse to be responsible for working with staff and (where that Registered Nurse is not the Manager) the Manager to:

- i. assess each Resident:
    - 1. on admission;
    - 2. when the Resident's health status changes;
    - 3. when the Resident's level of dependency changes; and
    - 4. at each 6 month review date in accordance with clause D16.4(a).
  - ii. develop and/or review Care Plans in consultation with the Resident and family/whānau;
  - iii. advise on care and administration of medication, possible side effects and reported errors/incidents;
  - iv. provide and supervise care;
  - v. act as a resource person and fulfil an education role;
  - vi. monitor the competence of other nursing and Care Staff to ensure safe practice;
  - vii. advise management of the staff's training needs;
  - viii. assist in the development of policies and procedures.
- f. Where there is more than one Registered Nurse in your Facility, the duties and responsibilities assigned to the Registered Nurse may be shared between the Registered Nurses On Duty over a 24 hour period.

g. Care Staff for Rest Homes

You must maintain records that document the hours worked by Care Staff in the Facility. The hours documented in the records must list only the actual hours worked by Care Staff in providing the Services at the Facility for which we are liable to pay you under this Agreement. For the avoidance of doubt, the actual hours worked by Care Staff in providing the Services to Residents in a part of the Facility subject to a Licence-to-Occupy or similar arrangement must be included in the hours worked.

D17.4 Hospitals

a. In every Hospital:

- i. at least one Registered Nurse shall be On Duty at all times;
- ii. the distribution of Care Staff over a 24 hour period shall be in accordance with the needs of the Residents as determined by a Registered Nurse. A minimum of 2 Care Staff are required to be On Duty at all times;
- iii. the layout of the Facility must also be taken into consideration when determining the number and the distribution of Care Staff required to meet the needs of the Residents under clause D17.4(a)(ii).

b. Manager

- i. You must engage as the Manager a Person who holds a current qualification, or has experience, relevant to both management and the health and personal care of older people, and is able to show evidence of maintaining at least 8 hours annually of professional development activities related to managing a Hospital.
- ii. The role of the Manager includes ensuring the Residents of the Hospital are adequately cared for in respect of their everyday needs, and that services provided to Residents are consistent with obligations under legislation and the terms of this Agreement.

ba. Clinical Manager

- i. If the Manager you have engaged under clause D17.4(b)(i) is not a General Practitioner, a Nurse Practitioner or a Registered Nurse who holds a current practising certificate, you must employ a General Practitioner, Nurse Practitioner or Registered Nurse who holds a current practising certificate to the full-time position of Clinical Manager to work with the Manager.
- ii. You must delegate to the Clinical Manager the responsibility for the management of compliance with all clinical requirements for the care of Residents under relevant legislation and this Agreement, including the management of all staff for this purpose.

c. Registered Nurse

Registered Nurses must be employed, contracted or otherwise engaged by you and are responsible for:

- i. the development of an initial Care Plan within 24 hours of admission;
  - ii. the co-ordination and documentation of a comprehensive Care Plan within 3 weeks of admission;
  - iii. ensuring that the Care Plan reflects the assessments and the recommendation of other health professionals where their input is required;
  - iv. on-going re-assessment and review of Care Plans in accordance with clauses D16.3, D16.4, and D16.4A;
  - v. implementation/delegation of nursing tasks;
  - vi. supervision and provision of care according to each Resident's Care Plan;
  - vii. acting as a resource person and fulfilling an education role;
  - viii. monitoring the competence of nursing and Care Staff to ensure safe practice;
  - ix. providing advice and assistance to management on the staff's training needs.
- d. If you provide Continuing Care (Hospital) and Rest Home Care at your Facility and:
- i. you provide Continuing Care (Hospital) to 10 or less Residents; and
  - ii. you provide Rest Home Care to more than 30 but not more than 60 Residents; and
  - iii. those Residents all reside on the same physical level of the Facility,

then clause D17.4(a)(i) and the requirement in clause D17.4(a)(ii) that a minimum of 2 Care Staff be On Duty at all times do not apply for the period between 10:00pm on any day and 7:00am on the next day if, during that period and to the extent permitted by laws relating to the number and qualifications of Registered Nurses on duty at a Facility, there is at least:

- iv. one Care Staff member On Duty in the part of your Facility where you provide Continuing Care (Hospital); and
- v. one Care Staff member On Duty in the part of your Facility where you provide Rest Home Care; and
- vi. one other Care Staff member On Duty who may be On Duty at both the part of your Facility where you provide Continuing Care (Hospital) and the part of your Facility where you provide Rest Home Care,

provided that at least one of the Care Staff members referred to in subparagraph (iv) or (v) is a Registered Nurse.

#### D17.5 Orientation and Competency of Newly Engaged Care Staff

- a. You must ensure that all newly engaged Care Staff receive a planned orientation programme that familiarises them with your philosophy and vision, the physical layout of your Facility, their job description, policies, procedures, protocols and guidelines relevant to their engagement, and non-clinical and clinical emergency protocols.
- b. In relation to Care Staff employed, contracted, or otherwise engaged by you on a short-term basis, you will meet your obligations under clause D17.5(a) if you ensure that such Care Staff are familiar with the physical layout of your Facility, including the location of emergency exits, emergency protocols, and contact details for emergency and senior staff of your Facility.
- c. You shall ensure all staff who will be in direct contact with the Residents have completed education that is related to the care of older people. Those staff who have not completed the training at the time of their appointment must complete appropriate training within 6 months of appointment. The training must address:
  - i. the ageing process, including sensory, physical, psycho-social, spiritual and cultural aspects;
  - ii. practical care skills;
  - iii. awareness of cultural issues;
  - iv. communication, including sensory and cognitive loss and other barriers to communication, and communication aids;
  - v. observation and reporting;
  - vi. promotion of independence and recognition of individuality; and
  - vii. understanding of Residents' rights.
- d. You may arrange the education referred to in clause D17.5(c) at the Facility or externally. Any staff member carrying out tasks, procedures, or treatment must have demonstrated they are competent at performing the task, procedure and treatment, and follow documented policies, and protocols developed by you to ensure safe practice.

#### D17.6 Staff Support and Guidance

- a. Any Registered Nurse or Health Practitioner carrying out a delegated medical task or a specialised procedure or treatment must have demonstrated prior competency in the task, procedure or treatment, and follow documented policies and protocols you have developed to ensure safe practice.
- b. Where certification is required to carry out a particular task or specialised procedure (for example, an I.V. Certificate), Care Staff must have such certification.
- c. Tasks specified in clause D17.6(a) shall be carried out in accordance with the relevant accepted ethical and professional standards.

- d. Strategies and/or protocols shall be operational to ensure that advice and/or support is available to On Duty Staff at all times, should the need arise.
- e. You must implement protocols to guide staff managing clinical and non-clinical emergencies.
- f. You must plan and undertake ongoing staff performance appraisals. Such appraisals must be documented at least annually.

#### D17.7 Ongoing Programme of Staff Development

You must undertake a planned, documented programme of staff development or in-service education, with at least 8 hours of programmes being provided annually, including courses attended other than at the Facility. You must keep a written record of staff attendance at such programmes.

### **D18. SUPPLIES**

#### D.18.1 Emergency Provision of Personal Supplies

You must provide emergency supplies of toothpaste, toothbrush, disposable razors, shampoo, and soap on those occasions when the Resident's own supply is not available.

#### D.18.2 Provision of Pharmaceuticals

- a. Your liability for payment of prescribed medication is limited to the payment of the Government's prescription charge, any manufacturer's surcharge and any package and delivery charge by the Pharmacist.
- b. You are also responsible for:
  - i. discussing with the Resident's General Practitioner or Nurse Practitioner the prescribing of medications that are listed in the pharmaceutical schedule maintained and managed by Pharmac under the NZPHD Act;
  - ii. encouraging the General Practitioner or Nurse Practitioner to prescribe generically to lessen the occasions when a manufacturer's surcharge applies; and
  - iii. informing the Resident in writing that they may be required to pay the cost of any pharmaceutical over and above the charges stated above.

#### D18.3 Provision of Dressing Supplies

- a. You must provide all dressings and supplies used in treatments. These must be of an appropriate standard, as determined by a Registered Nurse, to meet the need of the Resident.
- b. If both of us agree that a Resident needs, for more than one week, wound dressings, the daily cost of which, excluding your staff costs, is more than 20% of the maximum price specified in clause C2.1:

- i. you must pay the full cost of such dressings for the first week of use and an amount equal to 20% of the maximum price specified in clause C2.1 for the second and any subsequent week of use; and
- ii. we will pay the balance of the cost for such dressings, for the second and any subsequent week of use.

#### D18.4 Provision of Continence Supplies

- a. You must provide continence management products that are of an appropriate standard to meet the assessed needs of each Resident, as set out in the Care Plan.
- b. For those Residents identified as requiring specialist continence advice and support, you must obtain appropriate continence management advice, which may be (but is not required to be) from the continence advisory service of the community support services.

### **D19. QUALITY FOCUS AND RISK MANAGEMENT**

#### D19.1 Safety Obligations

- a. You must maximise the safety of Services delivered to Residents through implementing operational management strategies/programmes, which include culturally appropriate care, to minimise risk of unwanted events and enhance quality.
- b. You must protect Residents, visitors and staff from exposure to avoidable and/or preventable risk and harm.

#### D19.2 Safe Practices

You must document and implement policies in relation to:

- a. infection prevention and control;
- b. occupational health and safety;
- c. safe food handling;
- d. safe management and administration of medications;
- e. safe storage and use of chemicals/poisons;
- f. prevention, detection and removal of abuse or neglect of Residents, visitors and/or staff;
- g. fall prevention practices, to reduce the risk that a Resident may fall. The policy must include comment on your following obligations under this Agreement:
  - i. assessment of the Resident's physical mobility and transfer requirements;
  - ii. programmes that promote safe mobility and transfers;
  - iii. the removal of hazards that could cause falls; and



- iv. provision of equipment such as hoists and other relevant aids as required elsewhere in this Agreement.

#### D19.3 Risk Management

- a. You must document and implement policies, processes and procedures for:
  - i. identifying key risks to health and safety;
  - ii. evaluating and prioritising those risks based on their severity, the effectiveness of any controls you have and the probability of occurrence;
  - iii. dealing with those risks and where possible reducing them;
  - iv. minimising the adverse impact of the internal emergencies and external or environmental disasters on Residents, visitors and staff;
  - v. working with the organisations who have responsibility for co-ordinating internal and external (environmental) disaster services;
  - vi. accident and hazard management that safeguard Residents, visitors and staff from avoidable incidents, accidents and hazards.
- b. Each policy, process, or procedure developed under clause D19.3(a) must include definitions of all incidents and accidents, and must clearly outline the responsibilities of all staff, including:
  - i. taking immediate action;
  - ii. reporting, monitoring and corrective action to minimise incidents, accidents and hazards, and improve safety; and
  - iii. debriefing and staff support as necessary.
- c. For the purposes of clause D19.3(a) key risks include, but are not limited to, the following:
  - i. theft/burglary;
  - ii. fire;
  - iii. accidents/incidents;
  - iv. chemicals incidents; and
  - v. disposal of waste.
- d. You must maintain a record of any accidents or incidents, and must notify us immediately of serious accidents or incidents involving or affecting any Resident.

#### D19.4 Quality Improvement Programme

- a. You shall develop and implement a quality improvement programme to enable a high standard of service to be provided in accordance with the Approved Service Standards and

otherwise in accordance with this Agreement, and to ensure the Services are provided so as to achieve the best outcome for Residents.

- b. You must document a quality improvement plan as part of the quality improvement programme and must ensure that such a plan is implemented, evaluated for its effectiveness, and that any necessary corrective action is taken.
- c. The quality improvement plan must include (but is not limited to):
  - i. an explicit quality philosophy;
  - ii. clear quality objectives;
  - iii. quality improvement risk management systems;
  - iv. systems for monitoring audit compliance;
  - v. designated organisational and staff responsibilities;
  - vi. Resident input into Services and into development of the Quality Improvement Plan;
  - vii. how you will address Māori issues including recognition of:
    - 1. the Māori Health Plan set out in clause A3; and
    - 2. how the Māori Health Plan will be put into effect through the provision of the Services.
- d. You are expected to monitor and evaluate the delivery of Services against the quality improvement plan, including standards of service. Such quality monitoring mechanisms must include, but are not limited to, the following:
  - i. Resident feedback surveys;
  - ii. quality review procedures as a demonstrable part of service delivery; and
  - iii. external reviews.

#### D19.5 Quality Assurance Activities

To avoid doubt, it is your responsibility to apply to the Ministry of Health for a quality assurance activity to be protected under the HPCA Act if you would like the protections in that Act to apply to you. Any protected quality assurance activity that we obtain will not cover services provided by you.

#### D19.6 Major Incident and Health Emergency Plan

- a. You must develop and implement a major incident and health emergency plan to ensure that the Services continue to be provided during health, civil defence, or other emergencies.
- b. The plan must:

- i. identify how the Services will be provided in health, civil defence, or other emergencies;
  - ii. identify the needs of all Residents and staff and how those needs will be provided for during a health, civil defence, or other emergency;
  - iii. identify how you will respond to a worst case scenario pandemic event (40% of the population affected with 2% death rate);
  - iv. meet the requirements set out in the most recent version of Part Five (which relates to health) of the national civil defence emergency management plan (or any document that supersedes or replaces that plan) issued by the department responsible for civil defence and other emergencies; and
  - v. be consistent with our pandemic and emergency plans (which are available from us on request).
- c. You must review the major incident and health emergency plan at regular intervals to ensure that it continues to meet the requirements of this clause.
  - d. You must provide us with a copy of your major incident and health emergency plan on request.
  - e. When requested by us, you must participate in processes to ensure that emergency responses are integrated, coordinated and exercised. The level of participation you will be required to provide will be in accordance with the Services you provide and the expected roles and services you would provide in an emergency situation.

## **D20. OTHER SERVICES**

- D20.1 You must ensure that each Resident has access to the services, listed in this clause, as required by the assessed need of each Resident:
- a. NASC Services;
  - b. assessment, treatment and rehabilitation services contracted by us;
  - c. primary care and district nursing services for advice and information sharing;
  - d. laboratory services;
  - e. radiological services;
  - f. dental services;
  - g. Specialist Medical Services;
  - h. podiatry services that are not prescribed by a Medical Practitioner or Nurse Practitioner;
  - i. Māori provider organisations;
  - j. Ministry of Social Development;

- k. social workers;
- l. advocacy services;
- m. supporting voluntary organisations such as Alzheimers New Zealand and Stroke Foundation; and
- n. Socialisation outside your Facility.

D20.2 You must meet the costs of transport, including specialised transport required for clinical reasons, to and from the services in clause D20.1(a) to (h), but are not required to meet the cost of transport to and from the services listed in clause D20.1(i) to (n).

D20.3 You must inform each Resident about any specialist travel and accommodation funding to which that Resident may be entitled, and refer them to us for information about this funding as appropriate.

D20.4 Accompanying Residents

As part of the Services you will:

- a. Use your best endeavours to ensure that Residents are accompanied to such appointments by an appropriate relative or friend; or
- b. If a relative or friend is not available, provide staff to accompany Residents to appointments with the providers referred to in clauses D20.1(a) to D20.1(h), and any other appointments for which the Resident reasonably requires an accompanying Person.

## **D21. DISCHARGE, TRANSFER OR DEATH OF RESIDENTS**

D21.1 On discharge you must ensure that:

- a. appropriate information is supplied to the healthcare facility or principal care giver responsible for the ongoing management of the Resident being discharged prior to or at the time of discharge.
- b. appropriate referrals are made to relevant community services and the Resident's chosen General Practitioner or Nurse Practitioner in the case of discharge home.
- c. family/whānau are involved, unless the Resident requests otherwise.

D21.2 Where a Resident wishes to depart from your Facility, you must:

- a. advise the NASC Service as soon as possible after you become aware that the Resident wishes to depart your Facility, including where the Resident wishes to transfer to another provider's facility; and
- b. facilitate the NASC Service's involvement in that departure.

D21.3 Where you wish to transfer a Resident temporarily to the facility of another Person, the requirements of this Agreement continue to apply to you in respect of that Resident during that Resident's temporary residence elsewhere.

- D21.4 If a Resident wishes to transfer to a new residential care provider of their own volition, you must support the transfer and work with the NASC Service to effect a smooth transfer of the Resident.
- D21.5 You must ensure all relevant information relating to the Resident is made available to the new provider.
- D21.6 You must notify us, the NASC, the Ministry of Social Development (or any other government agency that is, at the relevant time, responsible for administering the Residential Care and Disability Support Services Act), and our Payment Agent, of the death of any Resident within 24 hours of the Resident's death, and comply with your policies and procedures developed under clause D10.
- D21.7 Where Residents are being removed from your Facility in accordance with clause A25.1, you must ensure that clause D21.5 is complied with.

## **D22. REPORTING REQUIREMENTS**

- D22.1 For each quarter, you must provide a report about the number and categories of beds and Residents at your Facility that:
- a. includes the information specified in the template provided to you under clause B4.1, the content of which will be agreed by us and provider representative groups; and
  - b. complies with the information and reporting requirements specified in Section B.
- D22.2 You must give a copy of any information about increases in the number of beds and reconfiguration of the kinds of Services you provide at the Facility (which you are required to give to the Director-General in accordance with any conditions under section 28 of the HDSS Act under which you are certified to provide services) to us at the same time that you are required to give the information to the Director-General.

## **SECTION E: SERVICE SPECIFICATIONS – SPECIALIST DEMENTIA SERVICES**

### **E1. INTRODUCTION**

- E1.1 These specifications are additional requirements for providers who provide Specialist Dementia Services under this Agreement. If you provide Specialist Dementia Services, you must also comply with the specifications set out in Section D.
- E1.2 If there is any conflict between Section D and Section E, Section E prevails.

### **E2. SERVICE OBJECTIVE**

- E2.1 The objective of Specialist Dementia Services is to provide for the safe and therapeutic care of Residents affected by dementia in an environment that enhances those Residents' quality of life and minimises the risks associated with their "confused" states.

### **E3. ACCOMMODATION, FACILITIES AND EQUIPMENT**

- E3.1 You may only admit to your Dementia Unit a Resident who has been assessed by the NASC Service as requiring Specialist Dementia Services.
- E3.2 Your Dementia Unit, and the equipment used in the provision of the Services, shall meet the special accommodation needs of the Residents receiving Specialist Dementia Services and be home-like, comfortable and safe.
- E3.3 For Residents requiring Specialist Dementia Services, you must ensure that:
- a. your Dementia Unit accommodates no more than 20 Residents, or any higher number agreed by both of us in writing from time to time.
  - b. a Resident only shares a room with another Resident if:
    - i. the other Resident is of a similar age and has similar interests;
    - ii. the appropriateness of the arrangement has been carefully evaluated;
    - iii. the Resident, or if applicable the Resident's family/whānau or nominated representative, has agreed prior to the Resident commencing sharing the room; and
    - iv. we agree;
  - c. you record the evaluation and agreements referred to in clause E3.3(b) in writing;
  - d. the living, bathing, toilet and outdoor areas and dining arrangements of Residents receiving Specialist Dementia Services are separate from Residents receiving other Services;
  - e. there are quiet, low-stimulus areas that provide privacy when required, including the Resident's bedroom provided this is a single-occupancy bedroom;
  - f. additional nutritious snacks are available over a 24 hour period.

#### E3.4 Facilities and Equipment

- a. You must identify the risks for the Resident associated with confused states and minimise such risks.
- b. There must be space inside your Dementia Unit to allow maximum freedom of movement while promoting the safety of Residents who are likely to wander.
- c. There must be a safe and secure outdoor area that is easy to get to for the Residents.
- d. Space and seating arrangements must be such that both individual and group activities are encouraged.

### **E4. INDIVIDUAL SUPPORT AND CARE SERVICES**

#### E4.1 Welcoming and Orientating New Residents

You must ensure that:

- a. new Residents are welcomed into your Dementia Unit and assisted to adapt to their new residence with maximum autonomy and independence; and
- b. new Residents and family/whānau are provided with written information on the service philosophy and practices particular to your Dementia Unit including but not limited to:
  - i. the need for a safe environment for self and others;
  - ii. how challenging behaviours are managed;
  - iii. specifically designed and flexible programmes, with emphasis on:
    1. minimising restraint;
    2. behaviour management;
    3. complaint policy.

#### E4.2 Assessments

You must ensure that:

- a. the assessment includes identifying behaviour particular to the Resident and utilisation of any specialist assessment available. This information can be gained from previous caregivers and, where applicable, the Resident's family/whānau or nominated representative; and
- b. each Resident has an individual assessment, using interRAI, to determine his or her individual diversional, motivational and recreational requirements.

#### E4.3 Care Planning

You must ensure that:

- a. staff providing support and care follow the Care Plan for each Resident;
- b. the following are included in each Resident's Care Plan, and are based on the Resident's assessment under clause E4.2:
  - i. a description of the Resident's current abilities, level of independence, identified needs/deficits, habits, routines, and behavioural characteristics;
  - ii. prevention-based strategies for minimising episodes of challenging behaviours;
  - iii. a description of how the behaviour of the Resident is best managed over a 24 hour period; and
  - iv. a description of the activities that meet the Resident's needs in relation to individual diversional, motivational, and recreational therapy during the 24 hour period. These activities must, to the extent clinically appropriate, reflect the Resident's former routines and activities that are still familiar to the Resident.

#### E4.4 Support and Care Intervention

- a. You must ensure that support and care is flexible and individualised, focusing on the promotion of quality of life, and must minimise the need for restrictive practices through the management of challenging behaviour.
- b. You must provide each Resident with appropriate activities which ensure diversion at appropriate times during the day, in accordance with the needs identified in the Care Plan of each Resident, and ensure that staff implement these activities each day.
- c. Your staff must build a supportive relationship with the Residents. The goals of the supportive relationship are to relieve anxiety and maintain a sense of trust, security and self-worth.
- d. You must ensure that involvement of family/whānau and support is promoted at all times.

#### E4.5 Human Resources

- a. You must provide sufficient staff to meet the health and personal care needs of all Residents, at all times.
- b. There must be at least one Care Staff member On Duty in your Dementia Unit at all times. A second staff member must be available at your Facility (or, where you only provide Specialist Dementia Services, at your Dementia Unit) and On-call.



- c. You must employ, contract or otherwise engage:
  - i. a Registered Nurse, or a registered nurse authorised to practice in psychiatric nursing who, in addition to the requirements of clause D17.3(e), has had experience and training in the care of older people with dementia and the ageing process; and
  - ii. a designated Person in respect of each Resident, skilled in assessment, implementation and evaluation of diversional and motivational recreation, such as a diversional therapist.
- d. You must ensure that all staff assigned to work in your Dementia Unit receive a planned orientation programme specific to their area of service. This must include a session on how to implement activities and therapies.
- e. In relation to Care Staff employed, contracted, or otherwise engaged by you on a short-term basis, you will meet your obligations under clause E4.5(d) if you ensure that such Care Staff are familiar with the physical layout of your Dementia Unit, including the location of emergency exits, emergency protocols, and contact details for emergency and senior staff of your Dementia Unit.
- f. You must ensure that each Care Giver directly involved in caring for Residents in your Dementia Unit achieves the following unit standards (or any unit standards registered in accordance with the Education Act 1989 on the national qualification framework in substitution for a listed unit standard) no later than 18 months after their appointment:
  - i. 23920: Describe dementia, support, and safe practice to support people living with dementia in a health or wellbeing setting;
  - ii. 23921: Provide person-centred support to people living with dementia in a health or wellbeing setting;
  - iii. 23922: Manage the effects of providing support for people living with dementia in a health or wellbeing setting; and
  - iv. 23923: Demonstrate knowledge of behaviour presented by people living with dementia in a health or wellbeing setting.
- g. You must maintain records of each Care Giver's achievement of each unit standard.

## **E5. REPORTING REQUIREMENTS**

E5.1 Not applicable.