

**CONTRACT WITH
TAKARE PLC**



1 DEFINITIONS

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

- (a) "The Agreement" means this Agreement and Schedule hereto;
- (b) "Clause" means a clause of this Agreement;
- (c) "The Schedule" means the Schedule annexed and signed as relative hereto;
- (d) "The Health Board" means the Lanarkshire Health Board of 14 Beckford Street, Hamilton, ML3 0TA;
- (e) "The Operator" means Takare Homes Ltd a company incorporated under the Companies Act (Registration No 2741070) and having its Registered Office at Takare House, Whitechapel Way, Priorslee, Telford TF2 9SP.
- (f) "The Nursing Home" means the Nursing Home to be constructed by the Operator upon subjects at Hattonrigg Road, Bellshill including the fixtures, fittings furniture and equipment therein and the curtilage thereof;
- (g) "Medical Consultant" means a Medical Consultant of the Health Board;
- (h) "residents" means National Health Service patients admitted to the Nursing Home by the direction of the Health Board and occupying beds contracted to the Health Board in terms of the Agreement.
- (i) "beds" means beds and associated rooms contracted to the Health Board by this Agreement for the exclusive use of NHS patients;
- (j) "The 1938 Act" means the Nursing Home Registration (Scotland) Act 1938 as amended and the Regulations made thereunder;
- (k) "The Certificate of Registration" means the Certificate of Registration document issued by the Health Board in terms of the 1938 Act;

- (i) "The Matron" means the Matron (a female) or the Principal Nursing Officer (if male) in charge of the Nursing Home. Any notice, information or communication given or made to the Matron shall be deemed to have been made or given to the Operator;
- (m) "Authorised Officer" means the person designated by the Health Board as its duly authorised representative. Any notice, information or communication given or made to the Authorised Officer shall be deemed to have been given or made to the Health Board;
- (n) "The Commencement Date" means the 1st February 1993;
- (o) "Insured Risks" means such of the following risks, namely:
 - (i) Loss or damage by fire, lightning, explosion, aircraft or other aerial devices (other than such aircraft or other aerial devices as are hostile) or articles dropped therefrom, earthquake, riot and civil commotion and malicious damage, storm or tempest, bursting or overflowing of water, apparatus or pipes, flood and impact by road vehicles;
 - (ii) Employers' liability;
 - (iii) Public liability;
 - (iv) Contents insurance which shall include not only the Operators' fixtures and fittings within the Nursing Home but also all items of residents' personal property subject to a limit of £500 and other such risks as are from time to time included in any policy of insurance affected as a consequence of the Agreement;
- (p) "The Insurers" means such UK insurance office or underwriter of repute as is approved of in writing by the Health Board;
- (q) "Reinstatement Value" means the cost which would be incurred (including fees and the cost of shoring up, demolition and site clearance) in reinstating the Nursing Home in accordance with the requirements of the Agreement as reasonably determined by the Operator who shall be obliged to take account of any reasonable representations made by the Health Board;

- (r) "The Contract Price" means the weekly fee payable in respect of each bed exclusive of Value Added Tax by the Health Board to the Operator in terms of Clause 30 hereof;
- (s) "The Index" means the General Index of Retail Prices published monthly by the General Statistical Office of Great Britain or any Government index replacing it.

2 INTERPRETATION

- 2.1 In the Agreement unless there is something in the subjects or context inconsistent therein:
- (a) words importing the masculine include the feminine and words importing the neuter include the masculine and feminine;
 - (b) words importing the singular include the plural and vice versa;
 - (c) any reference to an Act of Parliament includes any modification, extension or re-enactment thereof for the time being in force and all future instruments, and all instruments orders, regulations, permissions and directions for the time being made or given thereunder or deriving validity therefrom;
 - (d) any covenant whether positive or negative shall be deemed to extend to an obligation to procure compliance by third parties therewith;
 - (e) reference to the Health Board and the Operator shall where appropriate include their respective successors in title;
 - (f) reference to Registration of the Nursing Home in terms of the 1938 Act shall be deemed to include conditional and provisional registration in terms of the 1938 Act;
 - (g) the marginal headings shall be ignored.

3 CONTRACT PERIOD

This Agreement shall, unless previously terminated by one or more of the events set out in Clause 29, be for a fixed period of ten (10) years from the Commencement Date and shall continue thereafter unless and until terminated by either party giving to the other not less than one year's previous notice in writing to expire on the tenth or any subsequent anniversary of the Commencement Date subject always, in the event of the Agreement continuing after the expiry of the ten years thereof, to the Health Board being entitled to reduce the number of beds contracted in terms of this Agreement to such number as it shall, at its sole discretion, determine subject to a minimum period of notice in writing of at least one year.

4 CONTRACTED BEDS

4.1 Following completion of construction of the nursing home fit for occupation and as long as this Agreement shall continue in force and the proper payments are made to the Operator by the Health Board, the Operator shall hold available within the completed Nursing Home ninety (90) beds which shall be occupied and paid for by the Health Board in terms of this Agreement.

4.2 The Operator shall maintain the Nursing Home to a standard and condition acceptable to the Health Board acting reasonably.

4.3 During the period the Agreement remains in force the Operator undertakes not without the prior consent of the Health Board (which consent shall not be unreasonably withheld or delayed) to sell, dispone, transfer or in any way alienate its interest as proprietor of the nursing home provided that nothing in this clause shall prevent or restrict the Operator's right to charge its interest in the nursing home provided the chargee's right to sell, dispone or transfer the Operator's interest in the nursing home in terms of its security shall be subject to the terms of the Agreement.

5 ADMISSION POLICY

5.1 The admission of residents to the beds may only be made by the Medical Consultant responsible for the clinical care of the residents. The Matron shall be consulted by the Medical Consultant prior to admission of residents.

- 5.2 Beds will be allocated for highly dependent psychogeriatric residents (being the clinical designation of such residents) requiring nursing care. The Operator shall be obliged to admit and provide care for the full range of such residents being the underlying responsibility of the Health Board and as deemed by the Medical Consultant as being appropriate for the type of care provided.
- 5.3 The Health Board may seek to modify or amend the clinical designation of the beds as distinct from that designated in Clause 5.2 hereof and the Operator's Agreement to such modification shall not be unreasonably withheld. Should there be any change in the clinical designation of the beds, the financial consequences will be as set out in Clause 30.5.
- 5.4 The Health Board will ensure the provision of Resident Information Booklets and their issue to residents and/or their representatives on admission or in advance if prior notice of residents admission is received by the Health Board.

6 QUALITY OF GENERAL CARE

- 6.1 The primary concern of the Health Board being to ensure that the quality of care and accommodation provided to residents is of a high standard the Operator will be required to meet the standards and quality of care specified in the Agreement and in the Certificate of Registration, the 1938 Act as amended from time to time and the Health Board's Model Guidelines for Nursing Homes a copy of which is annexed to this Agreement. The Operator will be required to meet the appropriate service levels set out in the Health Board's Local Health Charter a copy of which is annexed to this Agreement.

7 ACCOMMODATION

- 7.1 The Operator shall provide in the Nursing Home a homely, domestic environment which is comfortable, allows privacy and is maintained in a clean and tidy manner, therefore enabling residents to retain their individuality and self-respect. The Accommodation shall be furnished and equipped to a high standard appropriate to the needs and care requirements of the residents.

- 7.2 The Operator shall be obliged to:
- (a) undertake positive measures to encourage residents to bring in personal belongings and furnishings into the house;
 - (b) provide acceptable floor coverings throughout the Nursing Home;
 - (c) provide more than one sitting area and there will be positive separation of smoking and non-smoking areas.
 - (d) provide ample storage as well as sufficient space to allow staff to fulfil their caring duties;
- 7.3 The grounds attached to the building shall provide facilities for residents and their relatives in a safe environment. The Operator shall not make any amendment to the layout of the grounds without the Health Board's prior consent, such consent not to be unreasonably withheld or delayed.
- 7.4 Part of the garden will be available to residents who can participate in gardening.

8 PHILOSOPHY AND STANDARDS OF CARE

- 8.1 The philosophy of care for residents is based on the provision of support and care in a domestic environment where residents have the opportunity to take part in the life of the local community if they so desire. The Operator shall ensure that there is easy access to the Nursing Home for relatives and friends of residents. The philosophy recognises the uniqueness of each individual and his/her needs and the right of each individual to participate in decisions about their care. In a relationship based on partnership staff in the Nursing Home shall provide a programme of care which shall maximise the abilities of each resident and their quality of living.

9 STANDARDS OF SERVICES

- 9.1 During the continuance in force of this Agreement the Operator shall provide the services at the Nursing Home to the reasonable satisfaction of the Health Board;
- 9.2 The organisation of the Nursing Home and the attitude of the staff shall reflect the individual needs of the residents aiming to help them achieve personal dignity and allow, wherever possible, the right of choice especially with regard to the pattern of their daily lives including times of awakening, retiring and taking meals.
- 9.3 The operator shall provide residents with all meals which will ensure that each individual resident's dietary and nutritional needs are met. Cycles of menus will be agreed from time to time with the Health Board. The Operator will ensure that necessary assistance in the feeding of patients is provided where appropriate.
- 9.4 Residents and/or representatives will be consulted on all matters affecting their health and welfare and wherever possible will be allowed to manage their own affairs.
- 9.5 The pattern of the residents' day will generally reflect the needs of the residents and not the Nursing Home.
- 9.6 Each resident and his/her relative or representative will be consulted on his/her programme of care and the organisation of his/her day. As a matter of choice each resident will be able to participate in the structured programme of daily activity and wherever possible will participate in the designing of such activities. Activities will be offered outside the home.
- 9.7 Residents will have access at all reasonable times to a telephone in order to maintain contact with friends and relatives.
- 9.8 The Operator will provide regular occupational and leisure activities (including music sessions, handicrafts, social contacts and excursions) for all residents who wish to participate.
- 9.9 The Operator will ensure the provision of a full resident's personalised clothing launderette service.

- 9.10 Residents shall wear clothes provided by themselves or their relatives. The Operator shall advise the residents and/or their representatives that the clothing shall be of a quality acceptable to the Health Board and appropriate to the needs of the individual residents. The Operator will be responsible for ensuring that residents maintain sufficient items of clothing to enable them to have the choice of what they shall wear and they shall whenever possible participate in the selection and purchase of their own clothing. If a resident has insufficient funds the Operator will use reasonable endeavours to provide that resident with personalised clothes at no expense to the resident.
- 9.11 The Operator in the absence of a curator bonis or suitable relative will be responsible for the management of the residents' personal funds in compliance with the Health Board's Standing Financial Instructions which shall be provided to the Operator and in accordance with the recommendations of the Report on the Management of residents' funds (The Incapax Report). The Operator shall be obliged to keep detailed records in the manner required by the Health Board of any use made of residents' funds and shall be obliged to exhibit these records to the Health Board on request.

10 NURSING CARE

- 10.1 The nursing services will be provided by the Operator and led by a nurse who has been registered at First Level with the United Kingdom Central Council for Nursing, Midwifery and Health Visiting for no less than 5 years on the appropriate part of the register, 3 of which within the last five years shall have been spent in the appropriate clinical area.
- The nurse in charge will be employed for no less than 35 hours per week.
- 10.2 The nursing service will be delivered using the primary nursing system ie named nurse/key worker system. Each primary nurse will have been registered at First Level for no less than 18 months on the appropriate part of the register with no less than 1 year's relevant experience. Primary nurses may be supported by associates who are registered at First and Second Level with the United Kingdom Central Council for Nursing, Midwifery and Health Visiting or Care Assistants according to the statutory minimum staffing notification.
- 10.3 The Health Board Corporate Nursing Strategy where applicable to the nursing home environment including Nursing Practice Standards, a copy of which is annexed to this Agreement will apply and the Operator's nursing staff will prepare service specification nursing standards which each primary nurse will use to audit his/her service through peer reviews.

- 10.4 The Operator shall be responsible for providing at its cost all nursing equipment and all supplies required by residents which can be requisitioned and applied by nursing staff in accordance with the guidelines issued by the United Kingdom Central Council of Nursing and Midwifery and Health Visiting entitled "Administration of Medicines - UKCC Advice Paper" issued April 1986 as may be amended from time to time. The Operator's obligation in this regard shall include the provision of supplies required to manage incontinence and promote continence.
- 10.5 The Health Board at its expense will provide specialist nursing services, eg. Infection control advice, diabetic sister for individual elderly people at the request of the Matron or the Medical Consultant. The Operator's staff will require to be appropriately trained in Control of Infection procedures in accordance with the Rules and Policies of the Health Board.
- 10.6 Confidentiality of nursing records will require appropriate arrangements to be made by the Operator and will be retained with the medical records. The Operator shall retain Nursing staff records and duty rotas for a minimum of 5 years.
- 10.7 A record of all accidents whether to residents or staff will be maintained by the Matron or appropriate deputy. This record will be open to inspection by officers of the Health Board authorised in writing by its General Manager.
- 10.8 The Operator shall provide reasonable access for Health Board students to gain clinical experience as part of student nurse education programmes. The cost of such secondments will be borne by the Health Board.
- 10.9 A care plan for each resident shall be prepared by the Matron in consultation with the Medical Consultant and will be held available for inspection by the Health Board. The care plan shall describe the assessment, planning, implementation and evaluation of nursing care.

11 MEDICAL CARE

- 11.1 The Health Board at its expense will be required to arrange the resident's dental and ophthalmic care together with speech therapy and physiotherapy services.
- 11.2 The Health Board at its expense will provide all necessary drugs, medicines and other medical supplies required for the care of residents as prescribed by or directed in writing to be administered by medical staff responsible for the clinical care of the residents.
- 11.3 The Operator will arrange for providing general medical treatment through a registered General Practitioner contracted to the nursing home. Where a referral to another clinical facility (eg an acute hospital) is required the responsible Medical Officer (ie the General Practitioner or the Medical Consultant) will observe the Board's normal procedures for such incidents.
- 11.4 The Operator will provide at the Nursing Home secure means of retaining and maintaining the resident's Health Board medical records relative to the immediate treatment of the residents within the Nursing Home. The Operator will, on discharge of the resident for whatever reason, be responsible for the immediate return of the resident's Health Board medical records held by it by recorded delivery post or approved Courier Services, to the Medical Consultant. The Operator will complete on the discharge/death of any patient the appropriate notification form as specified by the Health Board and return it to the Health Board in the required format and timescale.
- 11.5 Copies of all correspondence, communications, nursing and other professional notes relevant to the residents' clinical care will be retained in the residents' Health Board medical records. No alterations to existing Health Board medical records by the Operator or his staff are permitted.
- 11.6 It is recognised that residents may seek to discharge themselves from the Nursing Home. The Operator is required to follow the Health Board's operational policies in such an eventuality.
- 11.7 The Medical Consultant responsible for clinical care will decide after consultation with the Matron whether in each case care in the Nursing Home remains appropriate.

12 REMEDIAL CARE

- 12.1 The Operator will provide at its cost chiropody services as required and occupational therapy. (The latter extending to not less than 12 hours per week for each 30 bed unit).
- 12.2 By agreement between the Health Board and the Operator services and treatment to be provided by the Operator may be provided by the Health Board and vice versa in each case on the basis that the weekly fee calculated as provided in Clause 30 below shall be adjusted as may be agreed.

13 STAFFING AND MANAGEMENT ARRANGEMENTS

- 13.1 The Operator will provide at its expense professional, ancillary and other staff as specified in the Schedule unless otherwise agreed in writing. Without prejudice to the generality of the foregoing obligations the Operator shall be obliged to ensure that during staff holidays and absences for any reason replacement staff are available to maintain the staffing levels as specified in the Schedule or otherwise agreed in writing.
- 13.2 The Operator shall employ in and about the provision of the services only such persons as are careful, skilled and experienced in their several trades and callings. The Operator will ensure that all staff undergo a formal period of induction training and that the Operator has an ongoing commitment to staff training and that the requirements relating thereto as detailed in the services are fully met. In addition the Operator will provide appropriate training at its own expense for staff to reflect additional/changed skills requirements brought about by alterations to this Agreement and/or changes in legislation and shall allow upon request by the Health Board Health Board staff to attend at the Nursing Home for work experience training.
- 13.3 The Health Board shall allow the Operator's staff to attend courses and lectures at the Health Board's facilities upon payment by the Operator to the Health Board of the appropriate fee levied in respect of such courses and lectures.

- 13.4 The Operator shall ensure that every person employed by it in and about the provision of the services is at all times properly and sufficiently trained and instructed with regard to:-
- (a) the task or tasks that person has to perform;
 - (b) all relevant rules, procedures, policies, regulations, legislation as applies to the operation of this Agreement;
 - (c) the special vulnerability of the Nursing Home to fire. The Operator shall instruct staff to take every precaution to obviate fire risks. Particular emphasis shall be placed on risks of spontaneous combustion, careless disposal of matches, cigarettes and conformity with the non-smoking areas identified within the Nursing Home. The Operator will require to ensure that all staff attend fire lectures and drills twice yearly. The Operator will require to maintain a register of fire lectures/drills and associated attendance;
 - (d) the need for all staff to observe the highest standards of hygiene, courtesy and consideration;
 - (e) the control of infection procedures. The Operator will bear the cost of such training and will maintain a record of staff so trained;
 - (f) the responsibility to recognise situations which involve an actual or potential danger of personal injury to any person(s) within the Nursing Home (for example, defective flooring, electrical equipment or fittings) and forthwith to report such situations to the Matron for action;
- 13.5 The Operator shall in respect of all persons employed or seeking to be employed by it (whether in and about the provision of the services or otherwise) comply with each and every provision of law which prohibits discrimination in relation to employment on the grounds of sex, colour, disablement, race, ethnic or natural origin or religion;
- 13.6 The Health Board may make reasonable representations to the Operator to take disciplinary action against or to remove from work in or about the provision of the service any person employed by the Operator.
- 13.7 The Operator shall be entirely responsible for the employment and conditions of service of the Operator's staff.

- 13.8 The weekly fee for the beds contracted to the Health Board in terms of this Agreement as specified in Clause 30 hereof is calculated upon the basis of the staffing specified in the Schedule.
- 13.9 The Operator will at his sole expense provide facilities in the Nursing Home for training of the Operator's staff and will allow the Health Board's staff to attend at the Nursing Home for work experience training as agreed with the Matron.
- 13.10 The Operator's staff are subject to the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 - ie offences must be disclosed.
- 13.11 Any clinical or other research will require the approval of the Health Board.

14 CONTROL AND SUPERVISION OF STAFF

- 14.1 The Operator shall appoint the Matron. The Matron shall be the duly authorised representative of the Operator at the Nursing Home for all purposes connected with this Agreement.
- 14.2 The Operator shall prior to the Commencement Date give notice in writing to the Health Board of the identity of the person it wishes to appoint as Matron and of any subsequent appointment. A curriculum vitae and two suitable references shall accompany such notice in respect of any person it is proposed should be so appointed. Any appointment shall be subject to Health Board approval such approval not to be unreasonably withheld or delayed.
- 14.3 The Operator shall ensure that the Matron or competent Deputy duly authorised to act on her behalf is present at the Nursing Home and available to the Health Board at all times.
- 14.4 The Matron or Deputy shall consult with the Health Board with regard to the provision of the services.
- 14.5 If the Operator at any time becomes aware of any act or omission or proposed act or omission by the Health Board which prevents or hinders or may prevent or hinder the Operator from providing the services, the Matron or Deputy shall forthwith inform the Health Board in writing of that fact.

- 14.6 The Operator's staff engaged in and about the provision of the services, shall be under the control and direction of the Matron.
- 14.7 The Operator shall require its staff at all times to be properly and presentably dressed in uniforms or other appropriate work wear.
- 14.8 The Operator shall provide and shall require its staff to wear at all times at the Nursing Home a personal identification badge.

15 EQUIPMENT AND MATERIALS

- 15.1 With the exception of drugs, medicines and other medical supplies as referred to in Clause 11.2, the Operator will provide at his expense all consumable disposable and other supplies or equipment required to meet the residents' needs including incontinence aids required to provide the services.
- 15.2 The Operator shall maintain all equipment in a safe, serviceable and clean condition.
- 15.3 The Operator shall ensure that all equipment and materials provided by it when first acquired conform to the latest relevant British Standards Specification or comparable standard where such a standard exists. The Operator shall, upon request, furnish the Health Board with appropriate documentation to prove that such equipment and materials comply with this condition.

16.1 MANAGEMENT INFORMATION

- 16.1 Regular reports will be required by the Health Board. The format of the report will be agreed between the Operator and the Health Board prior to residents being admitted to the Nursing Home.

- 16.2 The Operator will return to the Health Board each month no later than five days after the month end the following information :-

Occupied bed days (midnight bed count)

- (i) Actual number of bed days
- (ii) Number remaining at midnight on the last day of the month
 - (a) this month
 - (b) last month

In-Patients

- (i) Admissions
 - (ii) Discharges
 - (iii) Deaths
 - (iv) Transfers (temporary transfer to another Hospital)
 - (v) Turnover interval between admissions
 - (vi) Such other information as may reasonably be required from time to time
- 16.3 The Operator will provide to the Health Board reports showing details of staff in post, staff turnover rates and sickness and other absence rates. Such reports shall be provided monthly for the first three months following the Commencement Date and quarterly thereafter.
- 16.4 The Operator will notify the Health Board of all accidents and other incidents relating to resident care in a format agreed with the Health Board. A register of such accidents and untoward incidents will be maintained and held available to inspection by any officer authorised in writing by the Health Board.

In maintaining information systems the Operator will comply fully with the requirements of the Data Protection Act.

17 INSPECTION OF NURSING HOMES

- 17.1 Inspection of the Nursing Home will be undertaken by the Health Board in terms of the 1938 Act.
- 17.2 In addition the Health Board its General Manager or any representative(s) nominated in writing by him may at any time visit and inspect the Nursing Home without restriction on time or frequency always providing residents privacy is maintained. Access will also be provided at the request of the Health Board to the Mental Welfare Commission, Scottish Hospital Advisory Service and the Lanarkshire Local Health Council.

18 COMPLAINTS

- 18.1 Complaints by the Operator relating to residents will in the first instance be referred to the Medical Consultant. In the absence of agreement they will then be referred to the Health Board's General Manager.
- 18.2 The Operator will provide the system stipulated by the Health Board for dealing with any complaint and suggestions which complies with the Hospital Complaints Procedure Act 1985.
- 18.3 Formal complaint made to the Operator by the residents or their representatives shall be immediately notified to the Health Board staff delegated with responsibility for receiving such complaints and dealing with the same and the Operator shall be obliged to investigate such complaints. Complaints made by the residents or their representatives shall be dealt with in the following manner, namely-
 - (i) Any complaint made in respect of matters affecting the residents care within the Nursing Home shall if justified be remedied in the manner and within the period reasonably determined by the Health Board. In the event of any complaint being made in respect of any other matter within the Nursing Home this shall be dealt with by agreement between the Health Board and the Operator.
 - (ii) Any complaint relating to the professional conduct of the nurses at the Nursing Home shall be notified immediately by the Operator to the Health Board's Chief Area Nursing Officer.

- (iii) Complaints relating to a General Practitioner acting under the National Health Service will be referred timeously by the Operator to the Chief Administrative Medical Officer of the Health Board.
- (iv) Complaints relating to the professional conduct by a doctor or paramedical staff will be referred immediately in the first instance by the Operator to the Health Board's Chief Administrative Medical Officer and then if considered appropriate by the said Chief Administrative Medical Officer to the General Medical Council or other appropriate professional body.
- (v) Complaints relating to the professional conduct by a dentist will be referred in the first instance by the Operator to the Health Board's Chief Administrative Dental Officer and then if considered appropriate by the said Chief Administrative Dental Officer to the General Dental Council.

19 EVALUATION AND MONITORING

- 19.1 For monitoring purposes the delegated Health Board staff (hereinafter referred to as "the monitoring staff") shall reserve the right to visit the Nursing Home without advance notice (it being expressly declared that any inspection carried out in terms of this Clause shall be entirely separate from the Health Board's statutory function and duty in terms of the 1938 Act). The Health Board will respect the residents' rights of privacy and self-determination. Subject always to the Health Board's right to terminate the Agreement in terms of Clause 29 thereof the monitoring staff may discuss all findings with the Operator. A plan may thereafter be agreed between the monitoring staff and the Operator agreeing the steps to be taken to remedy any matter which the monitoring staff consider requires to be amended.
- 19.2 The Operator will be invited to attend meetings convened by the Health Board to discuss reports prepared by the monitoring staff (hereinafter referred to as the "monitoring reports"). Copies of monitoring reports will be provided to the Operator within one week of final copies of the same being available.

20 DISCLAIMERS

Residents or their representatives shall not be required or requested to sign any disclaimer notices or acceptance notices which in any way conflict with the terms and conditions expressed or implied within this Agreement or which seek to affect the residents' statutory rights.

21 RESIDENT TRANSFERS

- 21.1 If for any reason it is considered by the Medical Consultant to be in a resident's best interest to transfer a resident to a National Health Service Hospital or other appropriate facility then such a transfer will be arranged by the Medical Consultant.
- 21.2 The Medical Consultant will decide which mode of transport is appropriate. Ambulance transport where deemed clinically necessary by the Medical Consultant will be the responsibility of the Health Board. Other transport will be the responsibility of the Operator. The resident will be accompanied during such transfer and until admission by appropriate nursing personnel able to provide the National Health Service Hospital or other facility with details of the resident's medical history and treatment. The resident's medical and nursing records must accompany the resident.
- 21.3 Responsibility of arranging appropriate and timeous transport other than ambulance transport will lie with the Operator.

22 CONFIDENTIALITY

- 22.1 The Operator and the Operator's staff shall regard as strictly confidential and shall not disclose to any person other than a person authorised by the Health Board, either at any time during the continuance in force of this Agreement or at any time after the termination of this Agreement, any information acquired by the Operator or the Operator's staff from any source in or in relation to the Health Board or any resident including but not limited to any information regarding the provision of the services in terms of this Agreement concerning the Health Board or, the Health Board's staff or procedures or, the identity of any resident or the medical condition of or the treatment received by any resident and the Operator shall not use any such information other than as specifically required for purposes of performing its obligations as provided in this Agreement.
- 22.2 The Operator's staff individually shall be bound by their contract of employment to maintain the confidentiality of information such as that described in Clause 22.1.

23 CHAPLAINCY SERVICES

- 23.1 Arrangements will be made for residents who require to worship within and outwith the Nursing Home. Arrangements will be made by the Operator, in conjunction with the Health Board as appropriate, for all residents who require to receive pastoral care, and this will include the admission to the Nursing Home of Clergy holding Health Board contracts for the provision of Chaplaincy Services.

24 FUNERAL ARRANGEMENTS

- 24.1 The Operator will assist relatives of deceased residents with funeral arrangements and if there are no other financial means available to the deceased resident the Operator will procure financial assistance to ensure that proper arrangements are made.

25 INDEMNITY

- 25.1 Except as may otherwise be expressly stipulated herein, the Health Board shall not be liable to the Operator or to any resident or to any third party for any loss, cost, expense, penalty or damage incurred or suffered by any individual person or entity, including but not limited to any personal injury or death or damage to property, whatsoever and howsoever arising directly out of, or in consequence of, or in connection with treatment or care of any resident or the provision of or the management and operation of the Nursing Home or the terms and conditions of this Agreement, but always excluding any claim or action howsoever arising as a direct result of the fault or negligence whether by act or omission of the Health Board or its employees or agents acting in the course of their employment with the Health Board.
- 25.2 The Operator shall fully indemnify the Health Board in respect of any and all liability including but not limited to any loss, cost, expense, penalty or damage, be it direct or consequential, in respect of any claim or action howsoever arising in relation to the care or treatment of any resident, the provision of or management and operation of the Nursing Home or the terms and conditions of this Agreement, including but not limited to claims or actions made or raised by or on behalf of residents or their relatives, or employees of the Operator or the Health Board or any other third party, always excluding any claim or action howsoever arising as a direct result of the fault or negligence whether by act or omission of the Health Board or its employees or agents acting in the course of their employment with the Health Board.

- 25.3 The Operator shall be obliged to effect with the insurers insurance in respect of the indemnity provided in this clause and that for an amount determined in the first instance by the Operator and approved by the Health Board such approval not to be unreasonably withheld or delayed and shall be obliged to maintain the said insurance after the termination of the Agreement (at the expiry of the Agreement or sooner termination for a period of not less than five years).
- 25.4 The provisions of this Clause 25 shall survive the termination of the Agreement with regard to any matter in respect of which the Health Board has excluded liability or in respect of which the Operator has an obligation to indemnify the Health Board pursuant to this Clause 25, which arose, occurred or began during the term of the Agreement irrespective of when any claim is made or intimated relating to such matter, whether such claim or intimation is made before or after the termination of the Agreement.

26 DEFAULT

- 26.1 In the event of a resident being referred back to the Health Board for further care and treatment outside the Nursing Home which arises as a direct result of fault or negligence on the part of the Operator or the Operator's staff then the Health Board will not be liable to pay the Operator the Contract Price in respect of the resident's bed if it remains unoccupied for the period during which the resident is receiving alternative care outside the Nursing Home as deemed necessary by the clinically responsible medical practitioner.
- 26.2 In respect of the provisions of Clause 26.1 where material fault or negligence is on the part of the Operator or the Operator's staff then in addition to the provisions of Clause 26.1 the Health Board shall be entitled to recover such costs from the Operator as it is legally liable to pay in respect of treating the resident referred from the Nursing Home and in fulfilling its statutory obligations but not the cost of care or treatment provided by the National Health Service. The Health Board's remedy is without prejudice to its right to be indemnified in terms of Clause 25.

27 INSURANCE

- 27.1 The Operator shall effect with the insurers insurance against the insured risks. The Operator shall effect such insurance as from the Commencement Date and shall exhibit a copy of the insurance policy or other reasonable evidence to the Health Board within one month from the Commencement Date. In addition the Operator shall exhibit proof of payment of premium under said policy for each year of the Agreement.
- 27.2 The insurance which shall be effected by the Operator in respect of claims for personal injury or the death of any person under a contract of service with the Operator and arising out of and in the course of such persons employment shall comply with the Employers Liability (Compulsory Insurance) Act 1969.
- 27.3 For public liability and all other claims the extent of insurance cover shall be FIVE MILLION POUNDS (£5,000,000) Sterling or such greater sum as the Operator may determine in respect of any one incident. The Operator undertakes to retain the insurance referred to herein and continue making payments of the premiums in respect thereof for such period as any claim for any incidences which arose, occurred or began during the subsistence of the Agreement irrespective of when any claim is made or intimated related to such incidence, whether such claim or intimation is made by a resident, his executor or family member or a third party before or after the termination of the Agreement.
- 27.4 The Operator shall effect with the insurer insurance of the Nursing Home for such amount as in the opinion of the Operator, taking account of any representation made by the Health Board shall reasonably represent the full reinstatement value of the said Nursing Home and relative offices and any addition thereto from time to time.
- 27.5 Nothing shall be done or omitted whereby any policy or policies of insurance for the time being in force in respect of the insured risks may become void or voidable and the Operator will at all times comply with the requirements of the insurers and will indemnify the Health Board against all expense and loss arising from a breach of this obligation.

- 27.6 In the event of the Nursing Home being destroyed or damaged to an extent where the Operator is unable to fulfil in whole or in part the obligations incumbent upon it in terms of the Agreement (the reasonable determination of the extent of such damage or destruction lying with the Health Board), the Operator shall be obliged to obtain suitable alternative accommodation for the residents affected and for the continued use of such alternative accommodation for as long as may be necessary. The Operator shall be obliged to effect with the insurers at its sole expense for the benefit of the Health Board, insurance cover in respect of any additional accommodation costs over and above the weekly fee payable by the Health Board in terms of Condition 30 hereof which might be incurred as a result of residents being relocated in alternative accommodation as specified herein.
- 27.7 In the event of the Nursing Home or any part thereof being destroyed or damaged by any of the insured risks the Operator shall be obliged to apply all monies recovered under the policy of insurance to reinstating the Nursing Home. The Operator shall be obliged to apply for any consents or approvals (the Operator's application in this regard being subject to prior approval by the Health Board such approval not to be unreasonably withheld or delayed) required to rebuild or repair the Nursing Home from the relevant planning authority within three months of the date any such damage or destruction occurred and to reinstate the Nursing Home within a period of eighteen months from the date of receiving any such consents or approvals as required from the Planning Authority.
- 27.8 In the event of the Nursing Home or any part thereof being destroyed or damaged by any of the insured risks and the insurance money under any insurance against the same effected thereon by the Operator being wholly or partially irrecoverable by reason solely or in part of any act of negligence or default of the Operator then and in any such case the Operator shall make good any deficiency in the insurance monies recovered from his own funds to repair or reinstate the Nursing Home.
- 27.9 The Health Board's interest shall be noted upon any policy or policies of insurance effected by the Operator in terms of this Agreement to the effect that the insurers shall notify the Health Board:-
- (a) In the event of any claim being submitted by the Operator to the Insurance Company for any loss in respect of which insurance has been effected in terms of the Agreement;
 - (b) In the event that any monies are to be paid by the Insurance Company to the Operator for any loss in respect of which a claim is made in terms of sub clause (a) hereof; and
 - (c) In the event that any policies are permitted by the Operator to lapse.

27.10 If the Nursing Home or any part thereof is destroyed or damaged so as to make the beds contained therein or any number of them unfit for occupation and use by residents and the Health Board releases the Operator from the obligation contained in Clause 27.6 hereof of finding alternative accommodation for any residents as may be required it is expressly stated that this Agreement shall not be terminated by rei interitus in consequence of such damage or destruction but shall be suspended and the weekly fee payable by the Health Board to the Operator in accordance with Clause 30 hereof in respect of any such beds which are unfit for use and occupation shall be suspended and no payment shall be made by the Health Board to the Operator in respect thereof until such beds are rendered fit for occupation and use. In the event however that the Operator requests the Health Board to release him from the obligation contained in Clause 27.6 hereof of finding alternative accommodation for any residents in the circumstances described the Operator shall be obliged to make payment to the Health Board of any cost incurred by the Health Board in itself arranging reasonable and suitable alternative accommodation for residents over and above the weekly fee payable by the Health Board to the Operator in accordance with Clause 30 hereof as at the date of any damage or destruction occurring to the Nursing Home.

27.11 The Health Board will be entitled to review the minimum levels of insurance at five yearly intervals from the Commencement Date and require reasonable increases of the minimum levels of insurance required to be provided by the Operator in terms of Clause 27

28 ASSIGNATION

28.1 The Operator shall not transfer, assign or sub-contract the Agreement or any part thereof without first obtaining the Health Board's consent (except where the proposed assignee or transferee is a Company constituted pursuant to voluntary liquidation of the Contractor for amalgamation or reconstruction). In the event that the Operator wishes to transfer, assign or sub-contract the Agreement or any part thereof it shall be obliged to give written notice (hereinafter referred to as "the Operator's Notice") to the Health Board of its intention so to do and the Operator shall specify in the Operator's Notice the following information in regard to the proposed assignee, transferee or sub-contractor, namely:-

- (a) the name and address;
- (b) the financial standing including such appropriate financial reports as may be requested by the Health Board; and
- (c) any other information which may reasonably be requested by the Health Board.

- 28.2 The Operator shall demonstrate to the Health Board that it has taken every reasonable step to identify an assignee, transferee or sub-contractor whose financial and professional standing is acceptable to the Board. The Health Board shall be required in determining whether the proposed assignee, transferee or sub-contractor is acceptable to it to base its decision solely upon the financial and professional ability of the proposed assignee, transferee or sub-contractor to fulfil the obligations which would be incumbent upon it in terms of this Agreement to the reasonable satisfaction of the Health Board but subject thereto the Health Board's consent not being unreasonably withheld.
- 28.3 In the event that the Health Board does not agree to the Operator's proposed transfer, assignation or sub-contracting of the Agreement basing its decision upon the information supplied in accordance with sub-clause 1 hereof and the criteria specified in sub-clause 2 hereof it shall be bound so to intimate to the Operator within fourteen (14) days, of the Operator's Notice or within Fourteen (14) days of the last of any information regarding a proposed transferee, assignee or sub-contractor required by the Health Board whichever is the later. In the event that the Health Board so intimates to the Operator the Operator shall be entitled to confirm to the Health Board within fourteen (14) days of the date of intimation of the Health Board's decision upon the Operator's Notice whether the Operator wishes to withdraw the Operator's Notice. In the event that the Operator does not withdraw the Operator's Notice within the aforesaid fourteen (14) days the Health Board shall, subject as aftermentioned be entitled to purchase the Nursing Home from the Operator (hereinafter referred to as "the Option to Purchase") by indicating its intention to do so within sixty (60) days of the Operator's Notice upon the basis specified in sub-clauses 4 and 5 hereof.
- 28.4 In the event of the Health Board exercising the aforementioned option to purchase the Health Board shall be obliged to make payment to the Operator of an amount representing the open market value of the whole subjects, together with the Nursing Home and the fittings and fixtures and equipment in the Nursing Home as a going concern but without the benefit of this Agreement.
- 28.5 The open market value referred to in the foregoing sub-clauses shall be as agreed between the Health Board and the Operator but failing agreement within three months of the Operator's Notice either party shall be entitled at the joint expense of both parties to refer the matter to a valuer acting as an expert who shall have knowledge of the Nursing Home market and experience of commercial valuation of Nursing Homes, such valuer in default of Agreement to be appointed by the President for the time being of the Royal Institution of Chartered Surveyors in Scotland. Such valuer shall not be bound but may at his discretion take representations from both parties and his decision shall be final and binding on both parties.

- 28.6 If the Health Board fails to intimate its intention to exercise the Option to Purchase within the said sixty (60) day period from the date of the Operator's Notice (or any extended period as may be agreed between the parties) or if the Health Board shall fail to make payment of the purchase price within thirty (30) days (or any extended period as may be agreed) after the date upon which the purchase price shall have been agreed or determined in terms aforesaid then the Option to Purchase shall be null and void and the Operator shall be entitled to dispose of the Nursing Home to a third party subject to and with the benefit of this Agreement.
- 28.7 In the event that the Operator does not withdraw the Operator's Notice in terms of Clause 28.3 and the Health Board subsequently intimated to the Operator within 60 days of the Operator's Notice that it does not wish to exercise its Option to Purchase the Nursing Home, the Operator shall be obliged to continue to fulfil the obligations incumbent upon it in terms of this Agreement and continue with the Agreement.

29 TERMINATIONS

- 29.1.1 Subject to the provisions of Clause 29.1.2 the Health Board may terminate this Agreement by giving written notice to that effect to the Operator in the event of a serious or material breach by the Operator of the terms of this Agreement including but not limited to:
- (a) if the Operator shall fail to comply with the obligations incumbent upon it in terms of the Agreement;
 - (b) if the Certificate of Registration of the Nursing Home shall be cancelled or not granted;
 - (c) if the Operator commits a serious or frequent default as specified in Clause 26;
 - (d) if the Operator shall sell, transfer or in any way alienate its interest as proprietor in the subjects or the Nursing Home in contravention of Clause 4.3 hereof.

- 29.1.2 The Health Board shall however before exercising the option available to it in Clause 29.1.1 hereof be obliged to serve a notice in writing upon the Operator specifying the nature of the breach and requiring that steps be taken to remedy the same where possible and that within fourteen days, or such longer period as may in the opinion of the Health Board be reasonable in the circumstances, of the date of said notice. In the event that the Operator fails to remedy the breach as specified in the said notice within the said fourteen day period (or such other reasonable period as aforesaid) the Health Board shall be entitled to terminate the Agreement forthwith. Such right to terminate is without prejudice to the remaining provisions for termination contained herein.
- 29.2 In the event of termination as provided in Clause 29.1 or non-renewal or reduction of beds as provided in Clause 3 unless the Health Board shall exercise the option granted in Clause 29.6 below:
- (a) the Health Board will make arrangements to provide suitable alternative accommodation and care arrangements in respect of the residents as the long term needs of the residents are of paramount importance;
 - (b) the Health Board shall continue to make payment as provided by this Agreement for each resident up to the date upon which that resident is removed from the Nursing Home;
 - (c) the provisions of Clause 29.2 shall survive the termination of the Agreement.
- 29.3 In the event of termination in terms of Clause 29.1 the Health Board's obligation to make payment of the Contract Price shall be reduced but only to the extent to which the Operator is in breach of its obligations contained in the Agreement. In the event of a dispute as to the amount of such reduction the Health Board shall continue to make full payment until the reduction shall be agreed or fixed in terms of Clause 34 provided always that any reduction so agreed or fixed shall be back-dated to the date of breach of its obligations by the Operator.
- 29.4 Termination by the Health Board in terms of Clause 29.1 shall be without prejudice to and under reservation of all and any claims for reimbursement or other claims whatsoever which either party may have arising out of or in consequence of or by reason of or in connection with this Agreement.

- 29.5 For the avoidance of doubt nothing contained in this Agreement shall prevent the Health Board from complying with its statutory obligations or discharging any statutory duty imposed upon it and in the event of any conflict between the terms of the Agreement and any such statutory provision the statutory provision shall have precedence but in the event of any conflict between the terms of this Agreement and any document annexed to it the Agreement shall prevail.
- 29.6 In the event of the occurrence of the contingencies contained in Clause 29.1 the Health Board may, without prejudice to any of its other remedies under this Agreement and without prejudice to any rights of action which shall accrue or shall have already accrued to the Health Board at the Health Board's sole option, intimate within thirty one (31) days of the occurrence of any one of the contingencies contained in Clause 29.1 by written notice to the Operator to that effect its intention to purchase the Nursing Home upon the same terms and conditions as are set out in Clause 28 hereof except that the period for agreeing the price failing which either party shall be entitled to appoint a valuer shall be sixty two (62) days (or any extended period as may be agreed) after the Operator's receipt as aforesaid of notice of material breach from the Health Board.

30 FINANCIAL

- 30.1 The weekly fee for each of the beds (whether occupied or not) payable by the Health Board during the continuance of this Agreement shall be:-
- (a) Until the 30th of September Nineteen Hundred and Ninety Three at the rate of £325 per week
 - (b) From the 1st of October Nineteen Hundred and Ninety Three and each succeeding 1 October for the period of twelve months immediately following at the reviewed rate to be determined in accordance with the formula specified in Clause 30.2 hereof.
- 30.2 The reviewed rate shall be determined as at 1 October each year by varying the rate previously fixed as follows:-
- (a) One half of the previous rate shall be increased in the same proportion as the Index shall have increased during the twelve calendar months ended on the previous 31 July.
 - (b) The other half of the previous rate shall be increased in the same proportion as the National Health Service Pay Scales (or such other Pay Scale as may be substituted therefore) shall have increased during the year ended on the previous 31 July.

30.3 For the purpose of Clause 30.2 (b) the increase in the National Health Service Pay Scales shall be a weighted average calculated as follows:-

- (a) 80% nursing scales taking the average percentage increase at the mean of Scale A, Scale C and Scale E.
- (b) 17% ancillary scales using the average of the top of Scales C/D.
- (c) 3% administration and clerical using the bottom of A & C scale 3 (Higher Clerical)

Reference to the above National Health Service Pay Scales shall include reference to future pay scales within the National Health Service in respect of the jobs details in Clause 30.3(a), (b) and (c).

30.4 In the event of any change after the date of this Agreement in the reference base used to compile the Index the figure taken to be shown in the Index after the change shall be the figure which would have been shown in the Index if the reference base current at date of this Agreement had been retained. If it becomes impossible because of any change after the date of the Agreement in the methods used to compile the Index or for any other reason whatsoever to calculate the weekly fee by reference to the Index a new rate shall be determined with the agreement of both parties failing which or if any dispute or question whatsoever arises between the parties to this Agreement with respect to the amount of the weekly fee or with respect to the construction or effect of this clause the dispute or question shall be determined by a single Arbitrator acceptable to both parties who shall have full power to determine what would have been the increase in the Index had it continued on the basis and giving the information assumed to be available for the operation of this Clause and otherwise in accordance with Clause 34.

- 30.5 If the Operator shall agree to an amendment to the staffing and management levels referred to in Clause 13.1 or if changes occur to dependency levels agreed between the Owner and the Health Board or if there is a change of clinical designation as provided in Clause 5.3 or if any such amendment shall be required as a condition of registration or continued registration of the Nursing Home under the 1938 Act or is required to meet the needs of residents as judged by the Matron and agreed by the Health Board's Chief Area Nursing Officer and such requirement necessitates adjustments to the staffing establishment for the period of more than seven consecutive days the cost of the additional staffing for the first seven days will be met by the Operator and from the eighth day onward the cost shall be met by the Health Board whilst still required in the professional opinion of the Matron and agreed by the Chief Area Nursing Officer and the Medical Consultant responsible for the resident's clinical care then and upon each such amendment there shall be a pro rata adjustment in the calculation determining the weekly fee for each bed. This adjustment shall be by reference to the staffing levels set out in the Schedule and the mechanism for agreeing staff increases as herein specified.
- 30.6 The staffing levels of the Nursing Home upon the basis of which the weekly fee is calculated are as specified in the Schedule.
- 30.7 Without prejudice to the foregoing terms of the Agreement the Health Board shall make payment for each calendar month on the fifteenth day of that month which shall represent one-twelfth of the annual sum.
- 30.8 The first payment in respect of each block of thirty beds shall be calculated from the later of :-
- 30.8.1 the Commencement Date
- 30.8.2 the date of admission to a bed in that block of the first resident.

31 STATUTORY OBLIGATIONS

- 31.1 It is expressly declared that nothing in this Agreement detracts from or is to be seen as preventing the exercise by the Health Board of its Statutory obligations and responsibilities under the 1938 Act or any other Statutory provisions or obligations and that the exercise by the Health Board of its obligations or responsibilities under those provision may not be founded on by the Operator or its successors in any way by breach of Contract, Action or Reparation nor shall it give rise to any other Right of Action on the part of the Operator or its successors excepting any right to appeal or other remedy under the 1938 Act or any other statutory provisions.

31.2 The Contractor shall at all times during the contract period comply in all respects with the requirements and provisions or any enactment of regulations or orders made thereunder or any by-laws of the local authority(s) for the time being in force whatsoever and howsoever affecting the Nursing Home and its operation, the provision of the services, the employment of staff or in relation to any other obligations to be performed by the Operator under this Agreement.

32 GENERAL

32.1 The Operator shall not:-

- (a) Offer or give any gift or consideration of any kind to any person in the Health Board's employ as an inducement for obtaining or execution of any Agreement with the Health Board;
- (b) Enter into an Agreement with the Health Board involving the payment of commission unless particulars of the commission have first been disclosed in writing to the Health Board.

32.2 In the event of a breach of this condition on the part of the Operator the Health Board shall be entitled to terminate the Agreement immediately and to recover from the Operator the amount of any loss resulting from such termination.

33 NOTICES

Any notice to be served under the provisions of this Agreement shall be sufficiently served if delivered or sent by registered recorded delivery or first class post in the case of the Health Board addressed to the General Manager at the address given in this Agreement and in the case of the Operator addressed to the Managing Director at the address given in this Agreement except where in compliance with the 1938 Act the address is required to be that of the nursing home or at such other address as either party may notify in writing to the other for this purpose.

34 ARBITRATION

Any dispute, difference or question between the parties to the Agreement with respect to any matter arising out of or in relation to the Agreement, except as may otherwise be provided for herein, shall be referred to an Arbitrator appointed by agreement between the parties and failing agreement to be appointed by referral of either party to the Chairman for the time being of the Chartered Institute of Arbitrators, the Arbitrator's decision on any referral hereof, which party shall meet the expense of referral, shall be final and binding on both parties.

35 SCOTS LAW

This Agreement shall be considered as an Agreement made in Scotland subject to Scots Law: IN WITNESS WHEREOF these presents typewritten on this and the preceding 30 pages together with the Schedule annexed are executed as follows

At Telford on the 23rd day of November Nineteen hundred and ninety two.

Signed by [Signature]
(PRINT NAME) Mr K G BRADSTAN
DESIGNATION CHAIRMAN

Signed by [Signature]
(PRINT NAME) R J REID
DESIGNATION FINANCE DIRECTOR
On behalf of TAKARE PLC

At Hamilton on the 20th day of November Nineteen hundred and ninety two.

Signed by [Signature]
(PRINT NAME) F. CURRAN, CBE
DESIGNATION General Manager
On behalf of Lanarkshire Health Board