

RFP Contract No: _____

DEVELOPMENT AGREEMENT dated the _____ day of _____, 200____

BETWEEN:

HER MAJESTY THE QUEEN in Right of the Province of Nova Scotia, as represented in this behalf by the Minister of Health (hereinafter referred to as the “Minister”)

of the First Part

- and -

_____, (hereinafter referred to as the “Service Provider”)
of the Second Part

WHEREAS the Minister circulated a Request for Proposals, No.60131638, issued on or about April 5, 2007, for the development of Long Term Care Facility and Services in _____ (the “Service Area”) and the Service Provider submitted a proposal to the Minister in response to the Request for Proposal:

AND WHEREAS the Minister has issued a Letter of Intent to the Service Provider for the development of _____ Nursing Home Residential Care Facility [as the case may be] (“Facility”);

AND WHEREAS the Service Provider wishes to develop such Facility subject to the terms and conditions set forth in this Agreement;

WITNESSETH that in consideration of the mutual covenants, promises and agreements contained herein, and other good and valuable consideration, the Parties to this Agreement agree as follows:

Article 1 DEFINITIONS

1.1 In this Agreement, the following terms have the meanings set out below:

- (a) “Agreement” means this Agreement, including the Schedules and Appendices to this Agreement, as it or they may be amended or supplemented from time to time;
- (b) “Applicable Law” means, with respect to any Person, property, transaction, event or other matter, any law, rule, statute, regulation, order, judgment, decree, treaty or other requirement having the force of law relating or applicable to such Person, property, transaction, event or other matters. Applicable Law also includes, where appropriate, any interpretation of the

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law (or any part) by any Person with jurisdiction over it, or charged with its administration or interpretation, subject to applicable appeal processes;

- (c) “Approved Budget” means the total combined budget for the Protected and Unprotected Envelopes;
- (d) “Authorized Accommodation Charge” means the portion of the Accommodation Charge for long term care that a Resident is approved to pay in accordance with the Resident Charge Policy of the Policy Manual;
- (e) “Beds” mean the Nursing Home Beds and Residential Care Facility Beds, as the case may be, that are being approved for the Service Provider pursuant to this Agreement;
- (f) “Business Day” means any day except Saturday, Sunday or other day on which the Nova Scotia Provincial Government is not open for business;
- (g) “Confidential Information” has the meaning set forth in Section 5.1;
- (h) “Day” means a calendar day;
- (i) “Department” means the Nova Scotia Department of Health;
- (j) “Development” means the purchase for a site, construction, and all other work to be performed and steps taken by or on behalf of the Service Provider to complete the Facility (including the furnishing, fittings, and equipment thereof). Such that it is capable of being licensed to provide the Services;
- (k) “Facility” means a Nursing Home or Residential Care Facility, as the case may be as defined by the *Homes for Special Care Act*, for which the Beds are being approved and for greater certainty, includes the Beds and the common areas and common elements which will be used for the Beds developed by the Service Provider pursuant to this Agreement, but excludes any other part of a building which will be used for purposes not directly related to the Beds approved pursuant to this Agreement, (for example, assisted living or i.e. commercial purposes), and includes furnishings, fittings and equipment;
- (l) “Force Majeure” has the meaning set forth in Section 8.5;
- (m) “License” means a license issued pursuant to Section 5 of the *Homes for Special Care Act*;

- (n) “Key Development Project Personnel” means those individuals identified in the Service Provider’s Proposal as Project Manager, Resident Care Advisor, Administrator/Operations Advisor and Financial Advisor for the purposes of the Development and only during the design and construction phase.
- (o) “Licensing Inspection” has the meaning set forth in Section 3.4;
- (p) “Minister” means the Minister of Health or a representative thereof;
- (q) “Occupancy” means the admission of the first person as a Resident of the Facility and the commencement of the delivery of Services;
- (r) “Occupancy Date” means March 31, 2010;
- (s) “Party” means a Party to this Agreement, and any references to a Party includes the successor and permitted assigns;
- (t) “Per Diem” means the Total Annual Costs for the Department and services prorated to a daily cost;
- (u) “Person” is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, a joint venture, an unincorporated organization, an association, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity;
- (v) “Policy Manual” includes the Long Term Care Policy Manual, revised December 1, 2006, and policies of the Department of Health, and listed in Schedule “D”, as amended from time to time attached hereto;
- (w) “Pre-licensing Inspection” means the review to be conducted by the Minister as specified in Section 3.1;
- (x) “Proposal” means the Service Provider’s Proposal, entitled “_____”, attached to and incorporated into this Agreement as Schedule “B”;
- (y) “Request for Proposals” means the Request for Proposal entitled “Request for Proposals, No. 60131638 for long term care facilities and services for the Nova Scotia Department of Health, issued on or about April 5, 2007,

attached to and incorporated into this Agreement as Schedule “A” and including any Addendums to the Request for Proposals;

- (z) “Resident” means a person who is admitted to a Facility in accordance with the Facility Placement Policy of the Policy Manual;
- (aa) “Service Agreement” has the meaning set forth in Section 2.1(b) (Development of Facility and Beds)
- (bb) “Service Provider’s Personnel” means the Controlling Shareholders (if any), directors, officers, employees, agents or other representatives of the Service Provider and any team members and affiliates and their shareholders, directors, officers, employees, agents or other representatives. For the purposes of Article 7** (Liability and Indemnification) only, “Service Provider’s Personnel” shall, in addition to the foregoing, include the contractors and subcontractors for the construction and their respective shareholders, directors, officers, employees, agents or other representatives;
- (cc) “Services” means accommodation; programs; goods; social work; physical and occupational therapy; and in the case of Nursing Homes, personal and skilled nursing care and for Residential Care Facilities, personal and supervisory care;
- (dd) “Site” means the Site approved by the Minister on which the Facility to be developed under this Agreement will be situated;
- (ee) “Step” means the sequential increments of Schedule “A”, Part 2 - Development and Approval Process - Facility;
- (ff) “Subcontractor” means a supplier (other than a general contractor or construction manager) who or which supplies equipment, other goods or services for the construction pursuant to a contract with the general contractor (if any) or the proponent, if the proponent has obtained a construction manager pursuant to Section 2.4(3);
- (gg) “Submission Reports” means those submissions referenced in the Facility Development Approval Process, New Facilities – attached hereto as Appendix “F” of Schedule “A”;
- (hh) “Term” means the term of this Agreement as set forth in Section 8.1 (Term), together with any extensions or renewals thereof;

Headings and Division

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- 1.2 The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only, and are not intended to effect the construction or interpretation of this Agreement.

Calculation of Time

- 1.3 Unless otherwise specified, time periods within or following which any payment is to be made or any act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends.

1.4 **Number and Gender**

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 **Including**

The word “including” when following any general term or statement to the specific matter immediately following the word “including” or to similar matters, and the general term or statement will be construed as referring to all matters that reasonably could fall with the broadest possible scope of the general term or statement.

1.6 **Statute**

Unless otherwise specified, each reference to a statute is deemed to be a reference to that statute, an amended or re-enacted from time to time, and each reference to a statute is a Nova Scotia statute.

Schedules and Appendices

- 1.7 The following Schedules and Appendices are incorporated into and form part of this Agreement:

- (a) Schedule A - Request for Proposals entitled “Long Term Care Facilities and Services for the Department of Health No. 60131638.” [and Appendices]

Appendix A - New Bed Requirements by Community

Appendix B - Requirements

Appendix C - Program Requirements

Appendix D - Dependent Facility Application Form

Appendix E - Forms of Contract

Appendix F - Facility Development Approval Process, New Facilities - RFP.

Appendix "A" ("Appendix FA") – Project Accounting System
Appendix "B" ("Appendix FB")– Project Costs and Per Diem
Appendix "C" ("Appendix FC")– Space Summary Table
Appendix "D" ("Appendix FD")– Space and Design Check List
Appendix "E" ("Appendix FE")– Space Summary Table Comparison
Appendix "F" ("Appendix FF")– Capital Project Status Report
Appendix "G" ("Appendix FG")– Pre-licensing Check List
Appendix "H" ("Appendix FH")– Submission Transmittal Form
Appendix "I" ("Appendix FI")– Minister's Response Timelines **

Appendix G - Résumé Template
Appendix H - Design Firm/Design Lead Profiles
Appendix I - Detailed RFP Evaluation Weights
Appendix J - Design Firm/Design Lead Profiles
Appendix K - Response Guidelines
Appendix L - Mandatory (PIF) Requirements Checklist
Appendix M - Summary of Abbreviations/Acronyms
Appendix N - Facilities and Accommodation Maximum Allowable Per Diem Rates

- (b) Schedule B - Service Provider's Proposal entitled, " _____" ;
- (c) Schedule "C" - Policy Inventory - Long Term Care

Department of Health

1.8 Any reference in this Agreement or the Schedules or Appendices attached hereto, to the Department, is, for the purposes of this Agreement, a reference to the Minister.

Article 2 DEVELOPMENT OF NURSING HOME BEDS AND RESIDENTIAL CARE FACILITY BEDS

2.1 Development of Facility and Beds

- (a) The Service Provider shall cause the Development of a Facility at the sole cost of the Service Provider in accordance with all Applicable Law, this Agreement and the Schedules and Appendices to this Agreement.
- (b) The Service Provider shall operate and provide Services for x number of Beds in the Facility pursuant to a Service Agreement between the Minister and Service Provider.

2.2 Conflict

In the event there is any conflict between the terms of:

- (a) Applicable Law;
- (b) this Agreement; or
- (c) the Schedules to this Agreement,

the terms of the Applicable Law or the document that is higher on the list takes precedence.

2.3 Mortgage

The Service Provider must, for the purposes of the Development, obtain mortgage financing in accordance with Schedule “A”.

2.4 Approval Process:

- (a) The Service Provider shall complete Appendix “F” of Schedule “A” and provide the information and Submission Reports to the Minister as provided for in Appendix “F”.
- (b) The Minister shall review the Submission Reports and shall provide a response to the Service Provider for each Submission Report, as outlined in Appendix “I” - Minister’s Response Timelines.

- (c) Where the Minister's response is "approved with comments" or "not approved," the Minister shall provide in writing, comments or reasons for rejection.
- (d) The Service Provider shall not proceed to the next Step of Schedule "F" , until approval has been received from the Minister for each previous Step. In the event the Service Provider proceeds to the next Step without having received the Minister's approval, the Service Provider will be required to meet the requirements for Ministerial Approval for any such Step, at the Service Provider's sole cost.
- (e) Where the Service Provider is required to make changes and must re-submit the Submission Report, a new date and time for the Minister's response will be in effect in accordance with Section 2.4(b).
- (f) For each Day the Minister exceeds the response timelines in Appendix FI, of Appendix F, in Schedule "A", the Occupancy Date shall be extended by a Day. The Service Provider shall be responsible for demonstrating that the delay in meeting the Occupancy Date is a direct result of the Minister exceeding the response timelines.

2.5 **Inspection During Development**

The Minister shall be entitled, without notice to the Service Provider, at any time and from time to time on any Business Day before the Development has been completed to enter upon the Site and inspect the Site, the Facility and progress of the Development, provided that the Minister shall not unduly interfere with or cause the delay of the Development during the course of such an inspection.

2.6 **Timing**

(a) **Milestone**

The Service Provider shall carry out and complete the Development and shall ensure that Occupancy has been attained by the Occupancy Date. The Minister may, at any time, in the Minister's sole and absolute determination, extend the Occupancy Date or any or all of the deadlines set forth in this Agreement.

(b) **Progress Reports**

The Service Provider shall submit to the Minister any information relating to the Development which the Minister may request during and in connection with the Development.

(c) **Delays**(i) **Notification**

The Service Provider shall notify the Minister in writing promptly if any Submission Report is overdue under the terms of this Agreement or upon becoming aware of any actual or threatened occurrence or condition which would reasonably be expected to cause a delay in meeting the Occupancy Date set forth in the Agreement; and

(ii) **Responsibility**

In the event of a delay, the Service Provider will use its best efforts to perform its obligations under this Agreement, including rearranging and rescheduling the work on the Development so as to minimize the ultimate delay in completion of the Development (in a timely manner utilizing to such and all resources reasonably required in the circumstances, including obtaining supplies or services from other sources if the same are reasonably available. The Service Provider shall be responsible for the care, maintenance and protection of the Development in the event of a shutdown.

2.7 **Change**

The Service Provider shall not implement any change which affects the Development in any material respect without the prior written approval of the Minister.

The Service Provider need not obtain approval of the Minister, but shall notify the Minister of a change if the change contemplated:

- (a) will not cause any delay in meeting the Occupancy Date; and
- (b) will not result in any non-compliance of the Development with this Agreement, the Schedules, or any Applicable Law.

Where the change contemplated is required by Applicable Law, the Service Provider shall notify the Minister.

2.8 **Signage**

The Service Provider shall erect signs on the Site using the template to be provided by the Minister, at such time and in such location as the Minister determines in his sole discretion,

upon giving advance notice to the Service Provider, provided that a sign shall not be placed in a position that impedes the Development.

Article 3 LICENSING

3.1 Pre-licensing Inspection

The Service Provider shall notify the Minister in writing, by submitting the Pre-licensing Check List Submission Report, 20 Business Days prior to the date on which the Service Provider reasonably expects Occupancy to be attainable. Once the Service Provider has notified the Minister in writing, the Minister shall arrange a time and date with the Service Provider for a Pre-licensing Inspection by the Minister, which date for the Pre-licensing Inspection shall be within 20 Business Days prior to the date on which the Service Provider reasonably believes the Facility is able to be occupied. The Minister shall be entitled at the time and on the date set for the Pre-licensing Inspection to enter upon the Site (including the Facility) to conduct the Pre-licensing Inspection.

3.2 Postponement

If it is readily apparent to the Minister and, in the sole and absolute determination of the Minister, a substantial amount of further work is required on the Development in order to attain Licensing or the Pre-licensing Check List Submission, Step 8 of Appendix "F" Schedule "A" is incomplete, the Minister shall be entitled, at the Minister's option, not to conduct or to complete the Pre-licensing Inspection at such time and the Minister need not provide or impose conditions on the Service Provider specifying the work necessary to be performed on the Development in order to attain Licensing. In such event, the Minister shall notify the Service Provider that the Minister will not conduct or complete the Pre-licensing Inspection at such time, and will, if requested, give reasons for the decision. The Service Provider shall perform such further work on the Development as is necessary in order to attain Licensing and a new time and date for the Pre-licensing Inspection shall be arranged in accordance with Section 3.1.

3.3 Conditions

The Minister shall be entitled to impose on the Service Provider conditions for the approval of the Facility for Licensing requiring the Service Provider to repair, improve or modify any aspect of the Facility (for greater certainty, including the common areas and common elements which will be used, at least in part, for the Beds being developed by the Service Provider pursuant to this Agreement but not including any other part of the building which will not be used for the Beds being developed by the Service Provider pursuant to this Agreement. Such conditions shall be in writing. The Service Provider shall complete all

such repairs, improvements or modifications within the time period specified by the Minister. For greater certainty, the Minister's approval of the Facility for Licensing shall be conditional on completion of such repairs, improvements or modifications to the satisfaction of the Minister.

3.4 **Licensing Inspection**

Upon the Service Provider providing notice to the Minister that all conditions as outlined in Section 3.3 have been met, the Minister shall conduct a Licensing Inspection within 10 Business Days of receiving such notice.

3.5 **Licensing Approval**

Within ten (10) Business Days following completion of a Licensing Inspection, the Minister shall notify the Service Provider, in writing, whether the Minister will License or does not approve the Facility for Licensing, together with the reasons for not approving the Facility. If the Minister does not approve the Facility for Licensing (whether after the first or any subsequent Licensing Inspection), the Service Provider shall satisfy any conditions for Licensing imposed by the Minister pursuant to Section 3.3 (Conditions) and address any other issues raised by the Minister in such notice to the satisfaction of the Minister. In such case, the Minister may arrange and conduct one or more subsequent Licensing Inspection in accordance with Section 3.4.

3.6 **Licensing**

In the event the Minister approves the Facility for Licensing, the Minister shall provide the Service Provider with a License.

3.7 **Occupancy**

Upon receipt of a License from the Minister, the Service Provider shall be eligible for Occupancy.

Article 4 SERVICE AGREEMENT CONTINUING OBLIGATION

4.1 The Service Provider shall execute and deliver to the Minister a Service Agreement relating to, among other things, the operation of the Facility (the "Service Agreement") in or substantially in the form of the agreement to be provided by the Minister. The Service Agreement and each and every subsequent Service Agreement entered into between the Service Provider and the Minister shall contain, among other things, an express continuing obligation on the Minister to provide the Service Provider with an Approved Budget and

funding conditions as outlined in the Service Agreement. The Service Provider acknowledges and agrees that the Service Agreement and each and every subsequent Service Agreement shall contain an express continuing obligation on the Service Provider to operate the Facility and provide Services to the Residents.

4.2 **Funding Conditions**

- (a) The Minister will confirm the Approved Budget for the Service Provider in accordance with what the Service Provider proposal in Schedule “B”, subject to:
 - (i) an executed Service Agreement; and
 - (ii) the issuance of a License to the Service Provider pursuant to Section 3.3.
- (b) Upon the conditions of Section 4.2(a) being met, the Service Provider shall receive Annual Funding from the Minister and may levy the Authorized Accommodation Charge. In the event the Service Provider meets the requirements of Section 4.2(a) (i) and (ii) prior to the Occupancy Date, the Service Provider shall be entitled to receive the Annual Funding and levy the Authorized Accommodation Charge at the earlier date.
- (c) In the event the Service Provider receives an extended Occupancy Date pursuant to Section 2.4(f), the Minister agrees to commence the Annual Funding on the Occupancy Date. For greater certainty, this section only comes into effect where the Occupancy Date delay is equal to the number of days the Minister exceeded the Response Timelines.

Article 5 REPRESENTATIONS, WARRANTIES AND COVENANTS

Representations and Warranties

5.1 The Service Provider hereby represents and warrants to the Minister as follows:

(a) **Status**

The Service Provider is a corporation incorporated and validly subsisting on the laws of its incorporation. The Service Provider has the necessary corporate power and authority to own its property and assets and carry on its business in the Province of Nova Scotia. No act or processing has been taken by or against the operation in connection with the dissolution, liquidation, winding-up, bankruptcy or reorganization of the operator.

(b) **Due Authorization**

The Service Provider has the full power and authority to enter into this Agreement and all other agreements and instruments to be executed by it as contemplated herein (including the Service Agreement), and to carry out its obligations under this Agreement as such other agreements and instruments, and the Service Provider has taken all necessary action to authorize the execution, delivery and performance of its obligations under this Agreement and such other agreements and instruments, and the Service Provider has taken all necessary action to authorize the execution, delivery and performance of its obligations under this Agreement and such other agreements and instruments.

(c) **Enforceability**

The Service Provider holds, or will hold by the time the Service Provider is required, all permits, licenses, consents, intellectual property rights, registrations and authorizations required to conduct its affairs and to perform its obligations under this Agreement and such other agreements and instruments referred to in Section 4.1(b). This Agreement constitutes a legal, valid and binding obligation of the Service Provider enforceable against the Service Provider in accordance with its terms, subject to limitations on enforcement imposed by bankruptcy, insolvency, reorganization or other laws affecting creditors rights generally and subject to general principles of equity.

(d) **No Legal Bar**

The execution, delivery and performance by the Service Provider of this Agreement and such other agreements and instruments referred to in Section 4.1(2):

- (i) do not and will not conflict with, result in a breach or violation of or constitute a default under any Applicable Law or any agreement, instrument or other document to which the Service Provider is a party or by which the Service Provider or any of its property or assets are bound, except for violations which do not relate to the Site, the Facility or the Development or will not, in the aggregate, have a material adverse effect on the present or future business, operations, property, prospects or condition (financial or otherwise) of the Service Provider; and
- (ii) do not and will not conflict with, result in a breach or violation of, or constitute a default under, its constituting documents or bylaws or any unanimous shareholders agreement between the shareholders of the Service Provider.

(e) **Full Disclosure**

All written statements made or furnished by or on behalf of the Service Provider to the Minister in connection with the transactions contemplated by this Agreement, were, as of the time such statements were made, true in all material respects and remain true in all material respects on the date hereof, and such statements do not contain any untrue statement of a material fact or omit a material fact necessary to make such statements not misleading, in all such statements, taken as a whole, do not contain any untrue statement of a material fact or omit a material fact necessary to make such statements or the statements contained herein not misleading. All expressions of expectation, intention, belief and opinion contained therein were honestly made on reasonable grounds after due and careful inquiry by the Service Provider (and any other person who furnished such material). There is no fact which the Service Provider has not disclosed to the Minister in writing which adversely or materially affects, or so far as the Service Provider can now reasonably foresee, will adversely and materially affect its business, operations, property, prospects, liabilities or condition (financial or otherwise), or its ability to perform its obligations under this Agreement or to operate the Beds and the Facility in accordance with the Service Agreement.

5.2 **Covenants**

In addition to any other covenants and agreements of the Service Provider in this Agreement the Service Provider agrees and covenants with the Minister that the Service Provider shall not develop the Beds in any location other than the Site which has been approved by the Minister. The Service Provider shall not sell, assign, convey or otherwise dispose of the Service Provider's interest in the Site without the prior written consent of the Minister.

Article 6 CONFIDENTIALITY6.1 **Service Provider**

The Service Provider, its contractors, consultants, employees, servants, agents, subcontractors or students shall treat as confidential and not make public or divulge, during as well as after, the term of this Agreement, any information or material related to the work herein described including information obtained through contact with personnel of the Province or other persons without having obtained the Province's consent thereto in writing.

6.2 **Minister**

The Minister agrees to treat as confidential all information provided to the Minister by the Service Provider in accordance with the *Freedom of Information and Protection of Privacy Act* of Nova Scotia.

Article 7 CONFLICT OF INTEREST

7.1 General

The Service Provider shall not, and shall cause the Service Provider's Personnel not to, engage in any activity where such activity could create a conflict of interest (actual or potentially in the sole and absolute determination of the Minister) in connection with the transactions contemplated by this Agreement (including the development of Beds). The Service Provider acknowledges and agrees that it shall be a conflict of interest for it or any of the Service Provider's Personnel to use confidential information of Her Majesty the Queen in Right of the Province of Nova Scotia (including the confidential information) relevant to the development of Beds where the Minister has not specifically authorized such use.

7.2 Disclosure

The Service Provider shall disclose to the Minister without delay any actual or potential situation that may be reasonably interpreted as being either a conflict of interest or a potential conflict of interest on the part of the Service Provider or any of the Service Provider's Personnel.

7.3 Use of Information

During the term and after the termination or expiry of this Agreement, the Service Provider shall not, and shall cause the Service Provider's Personnel not to, directly or indirectly use for personal or any other type of gain any information obtained in connection with the transactions contemplated by this Agreement.

7.4 Service Provider's Personnel

The Service Provider shall make all reasonable efforts to ensure that the Service Provider's Personnel do not violate this Article 7. Such efforts shall include, but shall not be limited to, bringing prohibitions under this Article to the attention of all such persons.

Article 8 LIABILITY AND INDEMNIFICATION

8.1 Limitation of Liability

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The Minister and the Minister's officers, employees, volunteers, agents and other representatives and successors and assigns shall not be liable to the Service Provider or the Service Provider's Personnel for any losses, expenses, costs, claims, damages (including incidental, indirect and consequential damages) and liabilities arising in connection with or as a result of:

- (a) anything done or omitted to be done by the Service Provider or the Service Provider's Personnel in carrying out the Development or otherwise in the performance of the Agreement or the obligations under the Development summary;
- (b) the selection of the Site, or the Development ,or any other matter on which the Minister may be required or requested to give consent or approval, notwithstanding any consent to or approval of any of the foregoing by the Minister; or
- (c) termination of this Agreement pursuant to Section 9.2 (Termination by Minister) or Section 10.6 (Severability).

8.2 **Indemnification by Service Provider**

The Service Provider shall indemnify and save harmless the Minister and the Minister's officers, employees, volunteers, agents and other representatives, successors and assigns (collectively, the "Indemnified Parties") from any and all losses, damages (including incidental, indirect and consequential damages), liabilities, judgments, claims, demands, causes of action, suits, actions or other proceedings of any kind or nature and expenses (including legal fees on a solicitor and solicitor's own client basis) which the indemnified parties, or any of them, may suffer or incur arising in connection with or as a result of being done or omitted to be done by the Service Provider or the Service Provider's Personnel in carrying out the Development or otherwise in the performance of this Agreement or the obligations under the Schedules to the Agreement or otherwise in connection with this Agreement, or the Schedules, including any breach by the Service Provider of its obligations under, or its representations, warranties and covenants set forth in this Agreement, or the Schedules. This indemnity will survive completion of this Agreement.

Article 9 **TERM AND TERMINATION**

9.1 **Term**

The Term of this Agreement shall commence on the date of execution of this Agreement and, subject to earlier termination pursuant to Section 9.2 (Termination by Minister) continue until Licensing.

9.2 **Termination by Minister**

- (a) The Minister, without liability, cost or penalty, may, in the Minister's sole and absolute determination and without prejudice to any other rights or remedies of the Minister under this Agreement or at law or in equity, terminate this Agreement immediately upon giving written notice to the Service Provider if any of the following events or conditions have occurred or exist:
- (i) the Service Provider has failed to comply with Section 2.1;
 - (ii) subject to Section 9.2(b) (Cure), the Minister is of the opinion that there has been a material breach by the Service Provider of any term, warranty, representation, condition, covenant or other provision of this Agreement or, the Schedules to this Agreement;
 - (iii) the Service Provider is adjudged bankrupt or is insolvent according to the provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and the regulations made thereunder, or any bankruptcy, reorganization, arrangement, insolvency, liquidation or winding-up proceedings or any other proceedings for the benefit of creditors generally are instituted by or against the Service Provider (including an assignment, proposal, compromise or arrangement for the benefit of creditors);
 - (iv) a receiver, a receiver and manager, trustee or other official with similar powers is appointed for the Service Provider or all or a substantial part of the property of the Service Provider, or the Service Provider files for the appointment of any such official, prior to Occupancy, provided that at the time the Minister notifies the Service Provider of the termination of this clause, such official (or a replacement thereof) has not sold, assigned or transferred the property of the Service Provider with the consent of the Minister pursuant to Section 10.9 (Assignment) to another person who will assume the obligations of the Service Provider under this Agreement;

- (v) the Service Provider ceases, or notifies the Minister of its intention to cease, carrying on business as presently carried on by it or any steps are taken to dissolve the Service Provider or the Service Provider is not, or ceases to be, qualified under Applicable Law to operate the Facility;
- (vi) the indebtedness of the Service Provider under any financing arrangements for the Development has been declared due and payable by the creditor(s) thereunder prior to the date or dates on which such indebtedness would otherwise have been due thereunder;
- (vii) the financing arrangements made by the Service Provider for the Development are cancelled or no longer available to the Service Provider and have not been replaced in a timely manner by comparable financing arrangements approved by the Minister;
- (viii) the Service Provider has sold, conveyed or disposed of the Service Provider's interest in the Site, except with the prior written consent of the Minister; or
- (ix) the Service Provider has, without the prior written consent of the Minister, changed ownership.

(b) **Occupancy**

In the event the Service Provider, subject to Section 9.5 (Force Majeure) or Section 2.4 (f) (Approval Process) fails to meet the Occupancy Date, in which case:

- (i) the Minister will notify the Service Provider of the default (“Default Notice”) and the period of time, as determined by the Minister at his sole discretion, within which such default must be remedied by the Service Provider. (The “Remedy Period”);
- (ii) the Service provider will either:
 - (A) remedy such default within the Remedy Period; or
 - (B) if such default cannot reasonably be remedied within the Remedy Period, then the Service Provider will promptly notify the Minister in writing that this is the case (together with the reasons therefore) and, within 30 days of the Default Notice, will deliver to the Minister a plan satisfactory to the Minister for rectification of such default, which plan will include a time frame within which such rectification will be achieved;

- (iii) this Agreement will terminate on the last day of the Remedy Period unless:
 - (A) the Service Provider remedies such default to the satisfaction of the Minister; or
 - (B) the Service Provider delivers a rectification plan that is satisfactory to the Minister and remedies such default to the satisfaction of the Minister on or before the date specified in the rectification plan; and
- (iv) The Minister may at his sole discretion, require the Service Provider to pay to the Minister, liquidated damages, in an amount up to and including \$130 per day per Bed, for each day beyond which the Occupancy Date has not been met. The damages payable hereunder are in addition to any other remedies available to the Minister, including termination.

The Service Provider agrees that such damages shall be payable as liquidated damages without proof of specific loss or damage and are payable whether or not the Minister incurs or mitigates his damages.

The Service Provider acknowledges that such liquidated damages are not a penalty but represent a reasonable pre-estimate of the damages that the Minister will suffer as result of the delay in achieving the Occupancy Date. The Service Provider has taken the possibility of these damages into account in the pricing of its Proposal and acknowledges that the Minister has relied on this opportunity to recover such damages in entering into this Agreement.

(c) **Material Breach and Cure**

In the event that the Minister is of the opinion that there has been a material breach by the Service Provider of any term, warranty, representation, condition, covenant or other provision of this Agreement or the Schedules and such breach is not remedied within forty-five (45) days (the "Cure Period") after the Service Provider receives from the Minister written notice of such breach setting out particulars thereof, then, in any such event, in addition to the Minister's other rights and remedies under this Agreement or at law or in equity, the Minister shall have the right to terminate this Agreement immediately upon giving notice of termination to the Service Provider to that effect at the end of the Cure Period, provided, however, that if such breach is of such a nature that it cannot be completely cured or remedied within the Cure Period, or the Service Provider is not proceeding in a manner satisfactory to the Minister, the Minister shall have the right to terminate this Agreement immediately upon giving notice of termination to the Service Provider

prior to the end of the Cure Period. This provision does not apply to terminations other than terminations pursuant to Clause 9.2(1)(b).

9.3 **Housing Development Corporation**

In the event the Minister terminates this Agreement pursuant to Section 9.2, the Minister shall notify the Housing Development Corporation that the Minister has terminated this Agreement.

9.4 **Effective Date and Consequences of Termination**

In the event of early termination of this Agreement, the effective date of the termination shall be the last day of the notice period, if any, and if there is no notice period, immediately upon the Minister giving notice of termination to the Service Provider.

- (a) The Service Provider shall have no further entitlement to develop the Facility under this Agreement and there shall be no obligation on the Minister to provide to the Service Provider a License; and
- (b) All rights and obligations of the Service Provider and the Minister under this Agreement shall erase upon any termination of this Agreement subject to Section 10.4 (Survival of Certain Terms).

9.5 **Force Majeure**

If, as a result of an event of Force Majeure (as defined below), the Service Provider fails to perform or comply with any of its obligations under this Agreement, such failure shall not constitute a default or breach of this Agreement. Dates and times by which the Service Provider is required to render performance under this Agreement shall be postponed automatically to the extent and for the period of time that the Service Provider is prevented from meeting them by causes beyond its control which are not avoidable by the exercise of reasonable foresight. Which causes (each such cause, an event of “Force Majeure”) shall include but not be limited to acts of God, acts of war, riots, epidemics, fire, strikes, labour disruptions or lockouts, other than such as are caused by the actions or omissions of the Service Provider. The Service Provider must, however, notify the Minister immediately, in writing and in detail of the commencement nature of such event of Force Majeure and the probable outcome.

Article 10 GENERAL PROVISIONS**10.1 Entire Agreement**

This Agreement and the Schedules to this Agreement, constitute the entire agreement between the Parties hereto pertaining to the subject matter of this Agreement and supercede all prior agreements and understandings, collateral, oral, or otherwise. There are no conditions, warranties, representations or other agreements between the Parties in connection with the subject matter of this Agreement (whether oral or written, expressed or implied, statutory or otherwise), except as specifically set forth or incorporated by reference in this Agreement or in the Schedules. No modification of this Agreement shall be binding upon the Parties to this Agreement unless in writing and executed by the Designated Representatives of the Service Provider and the Minister, as specified in Section 10.12 (Designated Representatives).

10.2 Further Assurances

The Service Provider agrees to promptly perform, make, execute, deliver or cause to be performed, made, executed, or delivered, all such further acts and documents as the Minister may reasonably require for the purpose of giving effect to this Agreement.

10.3 Independent Contractor

The Service Provider and the Minister are independent contractors and neither of them shall be deemed to be employee, agent, partner of, or in a joint venture with the other. The Service Provider's Personnel shall not be deemed to be the employees, agents, partners of, or in a joint venture with, the Minister.

10.4 Survival of Certain Terms

The representations, covenants, warranties, indemnities and limitations of liability set out in Section 4.1 (Representations and Warranties) of this Agreement shall survive the termination or expiry of this Agreement, and shall bind the Parties and their successors and assigns, for a period of six (6) years after termination. The representations, covenants, warranties, indemnities and limitations of liability set out in Article 6 (Confidentiality), Article 8 (Liability and Indemnification), Section 9.4 (Consequences of Termination) and Section 10.4 (Survival) of this Agreement shall survive the termination or expiry of this Agreement and shall bind the Parties and their successors and assigns, indefinitely. Representations, covenants, warranties, indemnities and limitations of liability set out in Section 3.4 (Operation of Beds), and the second and third sentences of Section 3.5 (Service Agreement) of this Agreement shall survive the expiry of this Agreement, and shall bind the Parties and their successors and assigns, indefinitely.

10.5 **Enurement:**

This Agreement shall enure to the benefit of and be binding upon the respective successors and permitted assigns of each of the Parties.

10.6 **Severability**

If any provisions of this Agreement is invalid, illegal or unenforceable, such provision shall be severed from the balance of this Agreement and the remaining provisions of this Agreement shall continue in full force provided that such remaining provisions express the intent of the Parties. If the intent of either Party cannot be preserved, this Agreement shall be either renegotiated or terminated by either Party, without liability, cost or penalty to the other Party, upon thirty (30) days' prior written notice to the other Party.

10.7 **Waiver**

No waiver of any breach of this Agreement shall operate as a waiver of any subsequent breach or of the breach of any other provision of this Agreement. No provision of this Agreement shall be deemed to be waived, and no breach excused, unless such waiver or the consent excusing the breach is in writing and signed by the Party that is purported to have given such a waiver or consent. No delay or omission on the part of any Party to this Agreement to avail itself of any right it may have under this Agreement shall operate as a waiver of any such right. No waiver or failure to enforce any of the provisions of this Agreement shall in any way effect the validity of this Agreement or any part hereof.

10.8 **Rights and Remedies Cumulative**

The rights and remedies of the Parties to this Agreement are cumulative, in addition to and not in substitution for any rights and remedies provided at law or in equity.

10.9 **Assignment**

- (a) The Service Provider shall not assign, transfer, or pledge, directly or indirectly, any of its rights or obligations under this Agreement except with the consent of the Minister which shall not be unreasonably withheld.
- (b) The Minister may, in the Minister's sole discretion, assign this Agreement.

10.10 **Time of the Essence**

Time shall be of the essence of this Agreement in all respects.

10.11 **Publicity**

The Service Provider shall notify the Minister in advance of any proposed publicity or publications by or on behalf of the Service Provider relating to this Agreement or the development (including press releases and press conferences but excluding brochures, pamphlets, books or other marketing materials intended to promote or advertise Beds in the Facility), where feasible, and shall use reasonable efforts to make such changes thereto reasonably requested by the Minister.

10.12 **Designated Representatives**

For purposes of this Agreement, the designated representatives are as follows:

- (a) the designated representative of the Minister is:

TO BE DETERMINED

- (b) the designated representative of the Service Provider, who shall be an authorized signing officer of the Service Provider is:

TO BE DETERMINED

Any Party may designate different representatives, addresses, telephone or facsimile numbers, by notifying the other Party in accordance with Section 10.13 (Notice).

10.13 **Notice**

- (a) **Form**

Any notice, request, demand, consent, approval or authorization (each, a notice) required, permitted or contemplated under this Agreement, shall be in writing, whether or not such Notice is expressly stated herein to be provided or made in writing, (unless a provision of this Agreement expressly provides otherwise); under the signature of the respective designated representative as specified in Section 10.12 (Designated Representatives); and delivered by courier or personal delivery addressed to the designated representative of the Party to whom it is intended to specify in Section 10.12 (Designated Representatives).

- (b) **Deemed Receipt**

A notice delivered by courier on a Business Day is deemed to be received by the addressee on the day that it is sent. If the notice is so sent or delivered after the end of the Business Day, then it is deemed to be received by the addressee on the following Business Day. If the notice is so sent or delivered on a day other than a

Business Day, then it is deemed to be received by the addressee on the following Business Day.

10.14 **Governing Law**

This Agreement shall be governed by, subject to, and interpreted in accordance with the laws of the Province of Nova Scotia and the laws of Canada applicable therein, and the Parties agree to submit to the jurisdiction of the courts of the Province of Nova Scotia.

10.15 **Joint and Several Liability**

In the event that the Service Provider is comprised of more than one Party, each of such Parties shall execute and deliver this Agreement and shall be jointly and severally liable in all respects under and in connection with this Agreement.

IN WITNESS WHEREOF the Parties hereto execute this Agreement as of the date first written above.

SIGNED, SEALED AND DELIVERED)
 in the presence of:)
)
)
 _____)
 Witness)
 Date: _____)
)
)
 _____)
 Witness)
 Date: _____)

HER MAJESTY THE QUEEN in right of
 the Province of Nova Scotia as represented
 by the Department of Health

 Per:
 Date: _____

[Insert OPERATOR LEGAL NAME]

 Per:
 Date: _____

Continuing Care Strategy



Living well in a place you can call home.

Nova Scotia Department of Health

Long Term Care Facility Forms of Contracts

DEVELOPMENT AGREEMENT

RFP No. 60131638

APPENDIX E1

FINAL

July 25, 2007