

**RFP Contract No:** \_\_\_\_\_

**SERVICE AGREEMENT** dated the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_

**BETWEEN:**

**HER MAJESTY THE QUEEN** in Right of the Province of Nova Scotia as represented 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 and \_\_\_\_\_ have entered into a Development Agreement for the Development of a Facility.

**AND WHEREAS** the Service Provider wishes to operate the Facility and provide services subject to the terms and conditions set forth in this Agreement.

**WITNESSETH** that in consideration of the mutual covenants, promises and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties to this Agreement agree as follows:

**Article 1 INTERPRETATION**

**1.1 Definitions**

- (1) In this Agreement
  - a. “Agreement” means this Agreement, including the Schedules to this Agreement as they may be amended from time to time;
  - b. “Annual Funding” is the total funding available to the Facility during each annual Term of this Agreement and is provided through the Protected Envelope, Unprotected Envelope and the Capital Renewal Fund;

**Draft/July 27, 2007**

- c. “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 matter. Applicable Law also includes, where appropriate, any interpretation of the Applicable Law by any person having jurisdiction over it;
- d. “Approved Budget” means the combined total budget for the Protected and Unprotected Envelopes;
- e. “Beds” means the Nursing Home or Residential Care Facility Beds operated under this Agreement;
- f. “Capital Renewal Fund” is a trust fund generated and invested by the Province to support each Facility in the replacement of a Facility Component once the Theoretical Life of that Facility Component has been reached in accordance with Schedule “E”;
- g. “Confidential Information” means any and all information of which the Service Provider becomes aware, or which the Service Provider receives (either directly or indirectly) from the Minister or otherwise, in connection with or relating to the Services, the Facility or this Agreement, including all Personal Information and Records, and all business, technical and other proprietary information of the Minister;
- h. “Day” means calendar day;
- i. “Department” means the Nova Scotia Department of Health;
- j. “Development Agreement” means the agreement between the Service Provider and the Minister for the development of the Facility;
- k. “Facility” means the Long Term Care Facility named \_\_\_\_\_ and located at \_\_\_\_\_ in which the Beds are located, and for greater certainty, includes the Beds and the common areas and common elements which will be used, at least in part, for the Beds but excludes any other part of the building which will be used for other uses other than long term care and which will not be used for the Beds being operated by the Operator pursuant to this Agreement;

- l. “License” means the License issued pursuant to Section 5 of the *Homes for Special Care Act* and Article 3 of the Development Agreement;
- m. “Occupancy” means the admission of the first Person as a Resident of the Facility and the commencement of the delivery of Services;
- n. “Party” means a Party to this Agreement, and any reference to a Party includes the successor and permitted assigns;
- o. “Performance Assessment” means the Minister’s assessment of the extent to which the Service Provider is or is not providing Services in accordance with the Minister’s Program Requirements and Policy Manual;
- p. “Person” is to be broadly interpreted and includes an individual, a corporation, partnership, 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 representative of an individual of such capacity;
- q. “Personal Information” means Personal Information as defined in the *Freedom of Information and Protection of Privacy Act*, which is collected, acquired or obtained by or on behalf of the Minister, in relation to providing the Services;
- r. “Policy Manual” includes the Long Term Care Policy Manual, revised December 1, 2006, policies, guidelines, directives and information releases of the Department of Health as listed in Schedule “C” and as amended from time to time;
- s. “Program Requirements” means those written requirements established by the Minister and as amended from time to time and which are applicable to the Services, the Facility and the Service Provider and as outlined in Appendix C of Schedule “A”;
- t. “Protected Envelope” means the portion of the Approved Budget for Health Care Costs and Raw Food Costs that is funded at approved rates prescribed by the Department of Health and in accordance with Schedule “D”;
- u. “Province” means the Province of Nova Scotia;

- v. “Resident” means a person who is admitted to a Facility in accordance with the Facility Placement Policy of the Policy Manual;
- w. “Service Provider’s Personnel” means the controlling shareholders (if any), directors, officers, employees, agents, subcontractors or other representatives of the Service Provider and any team member and affiliates and their Shareholders, directors, officers, employees, agents, or other representatives;
- x. “Services” means accommodation; programs; goods; social work, physical, and occupational therapy; and in the case of Nursing Homes, personal and skilled nursing care and Residential Care Facilities, personal and supervisory care;
- y. “Significant Risk” means that in the sole discretion of the Minister, the health or safety of a Resident or a situation where, Residents, staff or members of public is or may be jeopardized by the Service Provider’s non-compliance with this Agreement or other acts or omissions;
- z. “Suitability Assessment” means the Minister’s assessment of the extent to which the Facility used for the provision of Services is or is not suitable to meet the needs of Residents;
- aa. “Term” means the term of this Agreement as set forth in Article 8 together with any extensions or renewals thereof;
- bb. “Unprotected Envelope” means the portion of the Approved Budget for Facility and Accommodation Services (“FAS”) Costs that is funded at a non-prescribed rate and in accordance with Schedule “D”.

## 1.2 **Headings and Division**

The division of this Agreement into sections and the insertion of headings are for convenience of reference only, and are not intended to affect the construction or interpretation of this Agreement.

## 1.3 **Calculation of Time**

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, and to the regulations made under that statute, as amended or re-enacted from time to time, and each reference to a statute is a reference to a Nova Scotia statute.

#### 1.7 **Schedules**

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

Schedule A - Development Agreement, including:

- a. **Schedule A** (“Schedule A1”) - 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 and the following appendices:

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

**Draft/July 27, 2007**

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” - Maximum per diem rates

- b. **Schedule C** - Service Provider’s Proposal entitled, “\_\_\_\_\_”
- c. **Schedule “C”** - Policy Inventory - Long Term Care.
- d. **Schedule “D”** - Facility Funding Policy.
- e. **Schedule “E”** - Capital Renewal Fund Policy.
- f. **Schedule “F”** - Licensing Process

#### 1.8 **Conflict**

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

- a. Applicable Law;
- b. This Agreement; and
- c. The Schedules to this Agreement.

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

#### 1.9 **Department of Health**

Any reference in this Agreement, Schedule and Appendices attached hereto, to the Department, is, for the purposes of this Agreement, a reference to the Minister.

**Article 2 SERVICES AND OTHER SERVICE PROVIDER RESPONSIBILITY AND ACCOUNTABILITY**

**2.1 The Service Provider shall**

- (1) operate \_\_\_\_ Nursing Home or Residential Care Facility Beds (as the case may be) at the Facility;
- (2) operate the Facility and provide the Services at the Facility.

all in accordance with all Applicable Laws, in particular, the *Homes for Special Care Act*, this Agreement and the Schedules to this Agreement.

**2.2**

- a. The Service Provider shall operate the number and designation of Beds as set out in Section 2.1 (1) and shall not make any change to the number or designation of such Beds without the prior written approval of the Minister.
- b. In the event the Service Provider contravenes Section 2.2 (a), the Minister may , at the Minister's discretion:
  - (i) reduce funding for those Beds in accordance with Section 7.1; and
  - (ii) provide notice to the Service Provider in accordance with Section 13.2(b).

**2.3** Each and every subsequent renewal to this Service Agreement entered into between the Service Provider and the Minister shall contain an express, continuing obligation on the Service Provider that is the same or substantially the same as the obligation set forth in Sections 2.1.

**2.4 The Service Provider will:**

- (1) provide the Services to Residents in the Facility in accordance with the terms of this Agreement;
- (2) ensure that the Services are made available on a continuous and consistent basis throughout the Term;

- (3) be responsible for the quality of the Services, and in this regard will provide the highest possible quality Services and without limiting the foregoing, will provide such Services in accordance with the higher of the following standards:
  - a. the standard of care, skill and diligence exercised by a competent person providing services similar to the Services;
  - b. the requirements set by the Minister from time to time in Appendix C of Schedule "A" and Schedule "D"; and
  - c. Applicable Laws;
- (4) take such measures as are necessary to ensure there are no health or safety risks to Residents, staff or members of the public, including such measures as may be required by:
  - a. the Minister;
  - b. Applicable Law; and
  - c. prudent management practices;
- (5) ensure that the Facility is, at all times, a safe and appropriate environment for Residents, staff and members of the public;
- (6) ensure (and the Service Provider hereby represents) that it does and will at all times own and have the exclusive right to the use of the Facility;
- (7) collaborate and participate with the Minister and our best efforts to develop, and then implement, such changes as the Minister may require in order to add or alter Services, improve Services and reduce cost to the health care system, all within such period of time as the Minister may require;
- (8) collaborate and participate with the Minister to develop, and then implement, such changes as the Minister may require in connection with the revision of the service delivery models to achieve its long term goals of delivering health care services in an easily accessible and highly integrated manner across the continuum of care, all within such period of time as the Minister may require. Without limiting the generality of the foregoing, such required changes may include changes to the nature of the Services and the method of delivery of such Services;

- (9) take steps to ensure avoidance of conflicts of interest between the interests of the Service Provider or the Service Provider's Personnel, on the one hand, and those of the Minister on the other. If the Service Provider or any the Service Provider's Personnel become aware of any such conflicts, the Service Provider will promptly disclose to the Minister the facts and circumstances pertaining to the same; and
- (10) promptly advise the Minister in writing of any circumstances that may materially adversely affect the ability of the Service Provider to meet its obligations to provide the Services on the terms set out herein.

**2.5 Bed Designation**

- a. The Service Provider agrees that it will designate Nursing Home or Residential Care Facility Beds and space to Adult Protection and Respite Beds and Special Programs such as Dementia Care and Young Adult, as directed by the Minister.
- b. In the event the Service Provider incurs any costs or a result of 5.2a, this will be resolved through negotiation.

**Article 3 APPROVED BUDGET**

- 3.1 The Minister shall, at his sole discretion, determine an Approved Budget for the Service Provider, which Approved Budget may be adjusted from time to time throughout the term of this Agreement on the terms set out herein.
- 3.2 The Approved Budget will determine the Annual Funding available to the Service Provider, in accordance with this Agreement and the Facility Funding Policy contained in Schedule "E".
- 3.3 The Unprotected Envelope, as per the Service Provider's proposal, as contained in Schedule "B", will be fixed for the term of this Agreement subject only to:
  - a. Minister approved Collective Agreements in accordance with Schedule "D"; and
  - b. Annual indexing of all other items in accordance with Schedule "D".
- 3.4 The Service Provider acknowledges and agrees that any return on investment is included in Schedule "B".



**Article 4 PAYMENT OF FUNDING**

- 4.1 The Minister shall pay the Annual Funding under Article 3 in accordance with Schedules “D” and “E”.
  
- 4.2 The Service Provider, may, where the Minister fails to pay any amount, excluding those under Article 7, Reduction of Funding:
  - a. provide the Minister with written notice of such non-payment with a 30 day deadline for payment;
  
  - b. if non-payment continues, the Service Provider may refer this matter to an independent third party agreed to by both Parties for purposes of mediation;
  
  - c. if the dispute is not settled within 30 days after the dispute is referred to mediation, then either Party may refer the dispute to arbitration pursuant to the *Commercial Arbitration Act*.
  
- 4.3 The Service Provider must agree to a staffing model in accordance with Schedule “A1” and Schedule “D”. In the event the Service Provider is unable to implement a staffing model due to circumstances beyond the control of the Service Provider, which will be determined at the Minister’s sole discretion, the Minister may negotiate funding in accordance with the alternate staffing model.

**Article 5 USE OF FUNDING**

5.1 Cost Transfer

- (1) The Service Provider shall apply those parts of the Approved Budget for each of the Health Care and Raw Food Costs to each such costs respectively and shall not transfer any such portion of the Health Care Costs and Raw Food Costs to any other costs or the Unprotected Envelope.
  
- (2) The Service Provider may transfer any or all of the Approved Budget for the Unprotected Envelope within the Unprotected Envelope without prior written approval of the Minister’s staff, provided that the standards and criteria for Accommodation as set out in Appendix C of Schedule “A” and Schedule “D” have been complied with by the Service Provider.

**Article 6 FINANCIAL RECORDS AND REPORTS**

- 6.1 The Service Provider shall provide the following financial reports annually, within four (4) months of the fiscal year end:
- a. Audited Financial Statements including Appendix 1 (Accountability Review Appendix).
    - (i) Individual audited Facility statements are required for any group of homes with common ownership with Appendix 1 audited and attached to each;
    - (ii) a Review Engagement is acceptable for Residential Care Facilities.
  - b. a copy of the Annual Auditor's Management Letter;
  - c. Accountability Review Appendices;
  - d. Special Purpose Audit Report for the Protected Envelope; and
  - e. a Business Plan, prepared in accordance with the Minister's guidelines for Business Plans; and
  - f. a five (5) year outlook with respect to the Service Provider's intent to apply for funding from Schedule "E". This shall be submitted with the Business Plan.
- 6.2 The Minister may, at any time and for any reason, request that the Service Provider provide information in respect of the Occupancy of, and revenues accrued to the Service Provider of, any or all of the Beds.
- 6.3 **Financial Records**
- (1) The Service Provider shall maintain proper financial records and books of account in respect of the application and expenditure of the funding provided by the Minister on this Agreement for a period of seven (7) years.
  - (2) The Service Provider shall allow the Minister's staff or such other person as appointed by the Minister to inspect or audit said books or records at all reasonable times both during the term and a period of seven (7) years following any termination or expiry of this Agreement.

- (3) The Minister's staff shall have the right, upon providing a receipt to the Service Provider, to remove any of the financial records and books of accounts as set out in Section 6.3(1) of this Agreement for the purpose of making copies and shall promptly return to the place from which they were removed.

**Article 7 REDUCTION OF FUNDING**

- 7.1 The Minister may suspend admission of Residents to the Facility and reduce or withhold payments associated with those Beds under this Agreement where the Service Provider:
- (1) has not complied with any and all conditions set out in the License under the Development Agreement or this Agreement by the deadline for complying with any and all such conditions set out in the License; and
  - (2) has not complied with any other notice of non-compliance with the Development Agreement or this Agreement within thirty (30) days' written notice of such non-compliance by the Minister.
- 7.2 Where the Minister, in his sole discretion, determines that the Service Provider is charging the Residents for Services contrary to this Agreement, the Minister shall deduct the amount of those charges from the Annual Funding and the Service Provider shall reimburse the Resident the full amount. Failure to do so will result in that amount being deducted from the Annual Funding and paid to the Resident.
- 7.3 Where the Service Provider fails to make a repair or a replacement in accordance with a condition of the License, the Minister may arrange for such repair or replacement and deduct the cost thereof from the Annual Funding.

**Article 8 TERM**

- 8.1 The term of this Agreement shall begin on the date that Licensing occurs (the "Effective Date"); and shall remain in force for a twenty-five (25) year term and shall be renewed annually, subject to:
- (1) the Service Provider receiving a License from the Minister; and
  - (2) the right of the Minister to terminate this Agreement pursuant to the terms and conditions of this Agreement or otherwise available to the Minister at law or in equity.

- 8.2 The terms and conditions of this Agreement shall remain in force for each renewal except for the Approved Budget, which shall be the Approved Budget most recently approved by the Minister under the Facility Funding Policy attached hereto as Schedule “D”.
- 8.3 The Minister may renew the Term of this Agreement for an additional ten year term (“Renewal”).
- a. Where the Minister wishes to renew he will provide notice to the Service Provider at Year 20 (Term) of such Renewal.
  - b. The Parties shall negotiate the terms of the Renewal.
  - c. In the event the Parties are unable to reach an agreement with respect to the Renewal by the end of Year 22 (Term), the Minister shall provide notice to the Service Provider that termination will be effective at the end of the Term.
  - d. Where the Service Provider receives such notice, the Service Provider will put into effect, as soon as it is reasonably possible, the Transition Plan as referenced in Article 13.
- 8.4 The Service Provider may terminate this Agreement with three (3) years notice to the Minister, at which time the Service Provider shall put the Transition Plan into effect.
- 8.5 On the date of termination pursuant to Section 8.4(a), the Service Provider shall pay off any outstanding debt owed to or guaranteed by the Housing Development Corporation.

## **Article 9 CONFIDENTIALITY**

- 9.1 The Service Provider and the Service Provider’s personnel shall hold confidential and shall not disclose or release to any person at any time during or following the termination of this Agreement, except in accordance with Applicable Law, any document that may identify or identifies any Resident in receipt of Services without obtaining the written consent of the Resident, or the Resident’s lawful representative, prior to the release or disclosure of such information.
- 9.2 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 Minister or other persons without having obtained the Minister's consent thereto in writing.

9.3 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.

9.4 **Personal Information International Disclosure Protection Act**

9.5 The Service Provider acknowledges and confirms that it is a "Service Provider" as defined in PIIDPA (*Personal Information International Disclosure Protection Act*, SNS 2006 c. 6) and that it has read and understands its obligations as a service provider under PIIDPA. It is a condition precedent to the Minister entering into an agreement with the Service Provider that the Service Provider undertakes, covenants and agrees to be bound by and comply with the obligations imposed on it under PIIDPA.

9.6 The Service Provider further covenants, warrants and represents to the Minister that it will not at any time provide or allow the release of personal information to which it has access in its capacity as a Service Provider to the Minister in response to any "foreign demand for disclosure" or permit or allow the "unauthorized disclosure of personal information" as each of those terms are defined in PIIDPA.

9.7 Service Provider shall at all times strictly enforce such security arrangements as may be required to protect all personal information that it collects or uses on behalf of the Minister and shall confirm in writing to the Minister, upon request, the details of those security arrangements.

9.8 All personal information that the Service Provider obtains or becomes aware of while providing services to the Minister is not and shall not be or deemed to be property of the Service Provider; and the Service Provider expressly confirms that it will not, either directly or indirectly, acquire any rights to use or own any such personal information except the right to use it for the sole purpose of fulfilling its obligations to the Minister hereunder.

9.9 The parties expressly agree that the laws of the Province of Nova Scotia shall apply to this Schedule and to any breach by the Service Provider of its obligations under this clause or under PIIDPA.

**Article 10 LIMITATION OF LIABILITY AND INDEMNIFICATION**

- 10.1 The Minister and the Minister's officers, employees, independent contractors, subcontractors, agents, 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 out of or by reason of, or attributable to the Service Provider's Services or performance of the Service Provider's obligations under this Agreement.
- 10.2 The Service Provider shall indemnify and save harmless the Minister and its 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, judgment, 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 anything done or omitted to be done by the Service Provider or the Service Provider's personnel in the performance of this Agreement, including any breach by the Service Provider of its obligations under, or its representations, warranties and covenants set forth in, this Agreement. The indemnity referred to in Section 10.2 shall not extend to any costs, losses, damages, judgments, claims, demands, suits, actions, causes of action, contracts or other proceedings of any kind or nature to the extent that they are based on, occasioned by, or attributable to anything negligently done or omitted to be done by the Minister or the Minister's staff in connection with this Agreement or the performance of this Agreement.

## **Article 11 INSURANCE**

- 11.1 The Service Provider shall protect itself from and against all claims that might arise from anything done or omitted to be done by the Service Provider or the Service Provider's personnel under this Agreement, and more specifically, all claims that might arise from anything done or omitted to be done under this Agreement of bodily injury (including personal injury), death, or property damage, including loss of use thereof, if caused.

### **11.2 All General Insurance**

The Service Provider shall, at its own expense, purchase and maintain in full force and effect insurances to protect itself, its contractors and subcontractors, their successors and assigns and their respective directors, officers, employees, agents and servants involved in the Services and the Province for the purposes and risks outlined herein:

- (1) **All Risk Property Insurance**, which shall include flood and earthquake insurance, for all risks of loss of or damage to the Facility including coverage for

the costs of demolition, debris removal, contamination hurricane, lightning, vandalism and the increased costs to repair or replace resulting from application of bylaws or ordinances. The coverage shall be at replacement cost value and no co-insurance will be permitted. This insurance will include the following provisions:

- a. policy limit of liability of five million dollars (\$5,000,000.00) per each occurrence;
- b. business interruption coverage (of \_\_\_ million dollars (\$\_\_,000,000) per occurrence \_\_\_ to form part of \_\_\_ million dollars per occurrence all risk property insurance);
- c. annual aggregate limits permitted for earthquake coverage and flood coverage, separately; no other policy aggregates permitted;
- d. maximum deductible of five hundred thousand dollars (\$500,000.00) per occurrence (or one million dollars (\$1,000,000.00) combined property damage and business interruption);
- e. primary insurance without right of contribution of any insurance carried by Nova Scotia;
- f. coverage for valuable papers and records;
- g. coverage for expediting and extra expenses;
- h. sixty (60) days prior written notice of cancellation or material change to the Province by the insurer;
- i. waiver of insurer's right of subrogations against the Province;
- j. breach of any of the terms or conditions of the policy, or any negligence or wilful act or omission or false representation by an insured or any other person, shall not invalidate the insurance with respect to the Province.

- (2) **Business Interruption Insurance** to include the loss of earnings resulting from a peril insured under the All Risks Property Insurance. Coverage shall be on an actual loss sustained basis and no co-insurance will be permitted. This insurance will include the following provisions:

- a. it shall be written on a per-occurrence basis of All Risk Property insurance;
- b. a maximum deductible of five hundred thousand dollars (\$500,000.00) per occurrence (or one million dollars (1,000,000.00) combined Property Damage and Business Interruption);
- c. primary insurance without right of contribution of any insurance carried by the Province; and
- d. coverage for loss of use without property damage.

**(3) Commercial General Liability Insurance** including liabilities arising out of property damage, personal injury and bodily injury including death resulting any activity connected with the existence, management, maintenance and operation of the Facility. All such policies shall name the Province as an additional insured, their successors and assigns, and their respective directors, officers, council members and employees. This insurance will include the following provisions:

- a. to be written on a per-occurrence basis (can be structured as primary plus supplementary layers or primary plus Umbrella and/or Excess);
- b. sudden and Accidental Pollution coverage for all insured perils;
- c. nil deductible for Bodily Injury;
- d. maximum deductible all other occurrences of one hundred thousand dollars (\$100,000.00) per occurrence, except Sudden and Accidental Pollution (\$500,000.00 each claim);
- e. annual aggregate limits permitted for malpractice exposures;
- f. blanket written and oral contractual liability;
- g. contingent employers liability;
- h. personal injury liability;
- i. broad form occurrence property damage;
- j. firefighting expense liability;

- k. non-owned automobile liability;
- l. cross liability and separation of interests with respect to each Insured;
- m. the Province, the Corporation and their respective directors, officers, council members, employees shall be included as insured;
- n. breach of any of the terms or conditions of the policy, or any negligence or wilful act or omission or false representation by an Insured or any other person, shall not invalidate the insurance with respect to Nova Scotia;
- o. primary insurance without right of contribution of any other insurance carried by the Province; and
- p. the insurer shall provide sixty (60) days' prior written notice of material change or cancellation to the Province.

(4) **Blanket Crime Insurance** which shall include insuring all employees of the Service Provider, its contractors and subcontractors associated with the Facility. This insurance will include the following provisions:

- a. policy to be written on Policy Form A;
- b. maximum deduction of one hundred thousand dollars (\$100,000.00) per occurrence; and
- c. primary insurance without right of contribution of any insurance carried by the Province.

(5) **Automobile Liability Insurance** including insurance for all licensed vehicles owned, leased or operated by the Facility. The Service Provider must ensure that evidence of comparable coverage is provided by all contractors, subcontractors and workmen or tradesmen working at the site.

(6) **Umbrella and Excess Liability Insurance** following the form of the Commercial General Liability or Comprehensive General Liability and Automobile Liability insurances. This insurance will include the following provisions:

- a. an overall limit of liability per occurrence (can be structured as primary plus supplementary layers and Umbrella and/or Excess, or primary plus Umbrella and/or Excess);

- b. provision for impaired or exhausted aggregates underlying insurances (automatic reinstatement or aggregate limits and underlying insurance acceptable alternative).

**(7) Directors and Officers Liability Insurance** covering the directors and officers of the corporation. This insurance will include the following provisions:

- a. policy limit of five million dollars (\$5,000,000.00) each claim.
- b. Corporate Reimbursement maximum deductible of one hundred thousand dollars (\$100,000.00) per claim.
- c. Nil for directors and officers.

11.3 All policies are to be issued by financially sound insurers licenced to carry on business in Canada and subject to approval by the Province. The Service Provider shall not cancel or materially change the policy without sixty (60) days' prior written notice to the Province.

11.4 Certified copies of all insurance policies and related documentation, in form and content acceptable to the Province, must be delivered to the Minister prior to the opening of the Facility. Certificates of insurance evidencing renewal or replacement insurances, in form and content acceptable to the Province, shall be provided to the Province no later than fifteen (15) days prior to the expiration of existing policies. Upon request from the Province or its designated representative, certified copies of any policy or policies shall be provided promptly.

11.5 All operating insurance policies must include a provision whereby the Province (or its nominee) may, but will not be obligated to, assume direction and control of the insurance policy in the event the Service Provider or any of its successors or assigns default in its obligations in connection with the project.

**Article 12 REPRESENTATIONS, COVENANTS AND WARRANTIES**

12.1 The Service Provider hereby represents and warrants to, and covenants with the Minister as follows:

- (1) the Service Provider shall have full power and authority to enter into this Agreement and to observe, perform and comply with the terms and conditions of this Agreement and all necessary acts and procedures have been taken in order to authorize this Agreement;

- (2) the Service Provider holds all permits, licenses, consents, intellectual property rights and authorities necessary to perform its obligations under this Agreement;
- (3) the Service Provider shall comply with all applicable federal, provincial and municipal laws, rules, orders, regulations and bylaws in respect of the performance of this Agreement; and
- (4) if the Service Provider is a corporation or partnership, it is duly organized, registered and validly existing under the laws of Nova Scotia or Canada and is qualified to do business whenever necessary to carry out the terms and conditions of this Agreement and has not been dissolved.

12.2 The Minister shall not in any way be limited or prejudiced in enforcing any right or remedy available at law or in equity relating to any representation, warranty or covenant contained in Section 12.1 of this Agreement.

12.3 In addition to any and all other rights and remedies provided for in this Agreement, the Minister shall have the right to demand the correction of any breach of any representation, warranty or covenant in Section 12.3 of this Agreement and in the event that such correction is not made by the Service Provider, as applicable, within a reasonable period of time, the Minister shall have the right to terminate this Agreement pursuant to Section 13.2 by giving thirty (30) days' written notice to the Service Provider.

### **Article 13    TERMINATION**

13.1 The term of this Agreement will commence on the Effective Date and will continue until the date that is twenty-five (25) years thereafter unless earlier terminated in accordance with Section 13 ("Term").

13.2 Notwithstanding any other provision of this Agreement, this Agreement may be terminated

- a. at the option of the Minister, upon the occurrence of any of the following events:
  - (i) a cancellation or deemed cancellation of the License pursuant to Section 7 and 8, respecting of the *Homes for Special Care Act*;
  - (ii) a Significant Risk;

- (iii) a resolution is passed or a petition is filed for the Service Provider's liquidation or winding up;
- (iv) the Service Provider commits an act of bankruptcy, makes an assignment for the benefit of its creditors or otherwise acknowledges its insolvency; a bankruptcy petition is filed or presented against the Service Provider or a proposal under the *Bankruptcy and Insolvency Act* (Canada) is made by the Service Provider; a compromise or arrangement is proposed in respect of the Service Provider under the *Companies Creditors Arrangement Act* (Canada) or any legislation of similar purport; a receiver or receiver-manager of any of the Service Provider's property is appointed; or the Service Provider ceases, in the Minister's reasonable opinion based on generally accepted accounting principles, to carry on business as a going concern;

in which case, the Minister will notify the Service Provider in writing of the termination of this Agreement as a result of the occurrence of such event and will specify in such notice the effective date that this Agreement will terminate, which effective date may be immediate.

- b. At the option of the Minister, if the Service Provider has failed to comply with a material term or condition of this Agreement that is not set out in Section 13.2(a) or 10.2(c), in which case:
  - (i) the Minister will notify the Service Provider in writing of the nature of the default (the "Default Notice") and the period of time, as determined by the Minister at its 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;
    - (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 (and together with the reasons therefore) and within thirty (30) days of the date of the Default Notice, will deliver to the Minister a plan satisfactory to the Minister for rectification

for such default, which plan will include a time frame within which rectification will be achieved;

- (iii) this Agreement will terminate on the last day of the Remedy Period unless the Service Provider either:
  - (A) remedies such default to the satisfaction of the Minister before such date; or
  - (B) delivers a rectification plan that is satisfactory to the Minister in remedy of such default to the satisfaction of the Minister on or before the date specified in the rectification plan;

In the event the Minister terminates pursuant to subsection 13.2(a) or (b), the Minister shall notify the Housing Development Corporation of such termination and the Service Provider agrees that it will vacate the Facility and permit the Minister to appoint a receiver who will be the interim manager and continue with the operation of the Facility.

- c. At the option of the Minister;
  - (i) which option is exercisable at any time following the occurrence of a breach by the Service Provider of Section 2 of this Agreement; or
  - (ii) which option is exercisable at any time if the Minister, in its sole discretion, determines that the Facility is unable to meet the needs of Residents or is otherwise no longer needed, provided that:
    - (A) if the Minister, at its sole discretion, determines that the future need for the Services is less than the current supply within a particular geographic area, then the Minister will first terminate the Agreement with the Service Provider having the Suitability Assessment that is the least satisfactory (as determined by the Minister at its sole discretion) and if the Minister, at its sole discretion, determines that more than one Service Provider's Facility has a Suitability Risk Assessment that is unsatisfactory (as determined by the Minister at its sole discretion), then the Minister will terminate the Agreement with the Service Provider that the Minister in its sole discretion determines to have the Performance Assessment that is least

satisfactory (as determined by the Minister at its sole discretion); or

- (B) if the Minister, in its sole discretion, determines that the future need within a particular geographic area is for different types of Services other than the Services, then the Minister will issue a Request for Proposal to Service Providers that the Minister determines has an unsatisfactory Suitability Risk Assessment to allow such Service Providers the opportunity to update their Facility to the Minister's satisfaction, to convert their Facility to the required type of Facility, and if such proposal is not accepted by the Minister, then the Minister will terminate the Agreement with the at-risk Service Provider.

If written notice is given to the Service Provider that the Minister wishes to terminate this Agreement pursuant to this Section 13.2(c) on a date that is no less than three hundred and sixty-five (365) days from the date of such notice (or such other period of time as the Parties may agree in writing), in which case this Agreement will terminate at the expiration of such three hundred and sixty-five (365) day time period or such other period of time as the Minister in his sole discretion determines.

- 13.3 From the date that notice of such termination pursuant to Section 13.2 to and including the effective date of the termination, this Agreement will be performed by the Parties in accordance with its terms. The Service Provider will, promptly following delivery of such notice of termination, provide to the Minister transition plan, in form and content satisfactory to the Minister, to ensure the orderly transfer of clients and wind up of the Services (the "Transition Plan"). The Service Provider will commence the implementation of the Transition Plan on such date as the Minister may determine.
- 13.4 The Minister may request the Service Provider continue to provide the Services after the effect date of termination or expiration of this Agreement, for such period of time as the Minister may deem necessary up to a maximum of three (3) years after such effective date of termination or expiration (the "Transition Period") in order to ensure the welfare of the residents until reasonable alternate arrangements can be made for the residents by the Minister. If the Minister makes such a request, then:

- a. The Service Provider will provide the Services on the terms set out in, and will otherwise comply with and be bound by, this Agreement during such Transition Period; and
- b. The Minister will pay to the Service Provider such amount as the Service Provider may be entitled to receive pursuant to this Agreement for Services provided in accordance with Section 13.4(a) during the Transition Period and otherwise will be under no further obligation to the Service Provider.

13.5 Without limitation to any other rights available to the Minister hereunder or otherwise in such circumstances, the Minister may, at his option, on the happening of any of the events described in Sections 13.2(a), or (b) take any actions, whether in its own name or the name of the Service Provider, that may reasonably be required to cure the default, in which case all payments, costs and expenses incurred therefore will be payable by the Service Provider to the Minister on demand and set off against any present or future sums owing by the Minister to the Service Provider.

13.6 The Minister agrees that in the event of termination pursuant to Section 13.2(c), the Minister will cover the Service Provider's outstanding mortgage debt in relation to this Agreement and any incidental costs associated with termination of the Agreement including contractual commitments or collective agreements.

#### **Article 14 AMENDMENT**

14.1 No amendment of or departure from the terms and conditions of this Agreement will be effective unless evidenced by an agreement executed by both Parties, except that the Minister may, by providing notice of such amendments to the Service Provider in writing, unilaterally amend all or any part of:

- a. this Agreement if the changes to Applicable Law require amendment;
- b. the Schedules hereto from time to time and at any time; and
- c. any other provision of this Agreement and any document contemplated hereby that specifically provides that the Minister is entitled to unilaterally amend such provision or document. The Service Provider will comply with such amended requirements within such period of time as the Minister may in its notice require.

**Article 15 NO ASSIGNMENT, TRANSFER, SALE, ETC.**

- 15.1 The Service Provider will not, without the prior written approval of the Minister, which approval will not be unreasonably withheld:
- a. subcontract any obligation of the Service Provider under this Agreement except to the extent that such contracting is for the provision of particular Services;
  - b. directly or indirectly transfer, sell or otherwise dispose of voting, effective or defacto control of the Service Provider to another person;
  - c. assign, either directly or indirectly, this Agreement or any of its rights or obligations under this Agreement;
  - d. sell, transfer, lease, sublease or otherwise dispose of all or a material part of its rights or interests in the Facility, or of the assets used for or in connection with the provision of the Services.
- 15.2 The Service Provider will seek the approval referred to in Section 15.1 at least ninety (90) days before the date that it wishes to carry out the action for which approval is being sought. The Service Provider will provide the Minister will all information and documents that the Minister reasonably requests concerning any of the events listed in Section 15.1 above.
- 15.3 In determining whether or not to grant its approval pursuant to Section 15.1, the Minister will be entitled to impose any additional or modified terms and conditions (with respect to the Services, the third party, the third party's operations or otherwise) which the Minister, acting reasonably, deems to be necessary to ensure the continued and affective provision of the Services. The Minister at its sole discretion will determine whether the third party will sign a new agreement or an assignment and assumption agreement (either of which may contain the aforementioned additional or modified terms and conditions).
- 15.4 The Service Provider agrees to reimburse the Minister for all reasonable costs and expenses, including reasonable internal costs and legal fees and disbursements, incurred by the Minister in connection with any requests for approval pursuant to Section 15.1.
- 15.5 The Minister may, in his sole discretion, assign this Agreement.

**Article 16 NO LICENSE OR INTERFERENCE WITH STATUTORY POWERS**

- 16.1 This Agreement does not operate as permit, license, approval or other statutory authority which the Service Provider may be required to obtain from the Minister in order to provide the Services. Nothing in this Agreement is to be construed as interfering with the exercise by the Minister of any statutory power or duty. Without limiting the generality of the foregoing, the Service Provider acknowledges that:
- a. nothing hereunder in any way
    - (i) obligates the Minister to issue or renew, or constitutes consent or approval by the Minister to issue or renew, a License to operate the Facility; and
    - (ii) constitutes any other consent or approval, pursuant to any applicable law, including the *Homes for Special Care Act* by the Minister in respect of the license, permit or approval to operate the Facility.
  - b. any obligations of the Service Provider contained herein will be in addition to any requirements under applicable law and nothing contained herein will release the Service Provider of any requirements of any applicable law.

## **Article 17    LABOUR AND EMPLOYMENT**

- 17.1 The Service Provider will comply with all medical, nursing and other professional staff governance provisions binding upon the Service Provider (such as reporting the clients) and will ensure that the Services are provided only by or under the supervision of competent, qualified personnel meeting professional qualifications required by Applicable Law and Appendix C of Schedule “A”.
- 17.2 The Service Provider will implement all appropriate and/or required pre-employment screening mechanisms prior to employing or engaging any individual to provide the Services, including causing criminal record checks to be made in response of all new individuals employed or contracted by the Service Provider to provide service to Residents, prior to the Service Provider hiring or contracting for the Services of such individuals.
- 17.3 The Service Provider will ensure that all staff maintain a level of training appropriate for the provision of quality care as required by Appendix C of Schedule “A”.

- 17.4 The Service Provider is fully responsible to the Minister for acts and/or omissions of its employees, subcontractors and any other persons directly or indirectly employed or engaged by the Service Provider. No subcontract, whether consented by the authority to or not, will relieve the Service Provider from any of its obligations under this Agreement.

**Article 18 PROGRAM REQUIREMENTS\**

- 18.1 Without limitation to its obligations to be responsible for the quality of the Services pursuant to Section 2.4. The Service Provider will comply with the Program Requirements, and the Minister and the Service Provider will review and assess the Services provided by the Service Provider according to the Minister's licensing processes described therein.
- 18.2 The Service Provider will allow employees, agents, contractors or other representatives of the Minister, at the Minister's request at any time from time to time and without notice to the Service Provider and in accordance with the *Homes for Special Care Act*, to monitor and have access to the Facility and to any resident in any Facility in order to assess the condition of the Facility, including any issues arising out of the suitability risk assessment, and to ensure compliance with the terms of this agreement, including compliance with the Minister's licensing processes.

**Article 19 GENERAL PROVISIONS**

- 19.1 This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supercedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties hereto pertaining to the subject matter hereof.
- 19.2 All rights and remedies of each Party hereto will be cumulative and may be exercised singularly or concurrently, and are without limitation to the rights and remedies of such Party at law or equity.
- 19.3 This Agreement and each of the other documents contemplated by or delivered under or in connection with this Agreement are governed exclusively by and are to be in force, construed and interpreted exclusively in accordance with the laws of Nova Scotia and the laws of Canada applicable in Nova Scotia which will be deemed to be the proper law of this Agreement without regard to conflict of law requirements. The Parties hereto hereby attorn to the exclusive jurisdiction of the courts of Nova Scotia.
- 19.4 The obligations of this Agreement that by their nature should survive termination or expiration of, including the obligations of the Service Provider set out Sections \_\_\_\_\_, will survive termination or expiration of this Agreement for any reason whatsoever,

either by the authority, the Service Provider or their respective successors and permitted assigns.

- 19.5 No waiver of any provision hereof is binding unless it is in writing and signed by the Parties except that any provision that gives rights or benefits to a particular Party may be waived, signed only by the Party that has a right under, or holds the benefit, the provision being waived if that Party promptly sends a copy of the executed waiver to the other Party. No failure to exercise and no delay in exercising any right or remedy hereunder will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision hereof will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.
- 19.6 Where the Service Provider is a corporation, the signatory or signatories signing this Agreement on behalf of the Service Provider represent and warrant that they have been duly authorized by the Service Provider to enter into and execute this Agreement on its behalf.

**Article 20 NOTICE**

- 20.1 Each notice to a Party to this Agreement will be given in writing. A notice may be given by personal delivery or by registered mail to the designated representative of each Party identified in Section 20.2 of this Agreement and will be validly given if delivered to such representative of such Party at the address set out.
- 20.2 For purposes of this Agreement, the designated representatives are as follows:
- (1) The designated representative of the Minister is \_\_\_\_\_;
  - (2) The designated representative of the Service Provider, who shall be an authorized signing officer of the Service Provider is \_\_\_\_\_.
- 20.3 A notice sent by facsimile transmission, or delivered by courier or other personal delivery and received in such manner between 8:30 and 4:30 p.m. on any day is deemed to be received by and given to the addressee on the day that it is sent. If the notice is received after 4:30 p.m. on any day, then it is deemed to be received by and given to the addressee on the following day. Notices received on a day other than a day the Minister is open for business are deemed to be received by and given to the addressee on the next day the Minister is open for business.



# Continuing Care Strategy



*Living well in a place you can call home.*

## **Nova Scotia Department of Health**

### **Long Term Care Facility Forms of Contracts**

### **SERVICE AGREEMENT**

**RFP No. 60131638  
APPENDIX E2  
FINAL**

**July 25, 2007**