

# Continuing Care Strategy



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

**Nova Scotia Department of Health**

**Long Term Care Facility**

**DEVELOPMENT and SERVICE AGREEMENTS**

**RFP 60137609  
APPENDIX D  
FINAL**

**July 27, 2009**

**DEVELOPMENT AGREEMENT** dated the \_\_\_\_\_ day of \_\_\_\_\_, 2009

**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 -

., a body corporate incorporated pursuant to the laws of Nova Scotia, (hereinafter referred to as the “Service Provider”)

of the Second Part

**WHEREAS** the Minister circulated a Request for Proposals, No. \_\_\_\_\_, issued on or about \_\_\_\_\_, 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, dated \_\_\_\_\_, to the Service Provider for the development of \_\_\_\_\_ Nursing Home Beds (“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 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 that are 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 6.1;
- (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 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 9.5;
- (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) “Nursing Home” means a Nursing Home as defined in the *Homes for Special Care Act*;
- (r) “Occupancy” means the admission of the first person as a Resident of the Facility and the commencement of the delivery of Services;
- (s) “Occupancy Date” means the proposed occupancy date in the Request for Proposals plus any additional day past January 2, 2008, to the date of the signing of this Agreement;
- (t) “Party” means a Party to this Agreement, and any references to a Party includes the successor and permitted assigns;
- (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 any policies, guidelines, directives and information releases of the Department of Health, related to Long Term Care, as listed in Schedule “C”, and as amended from time to time and 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 ““Long Term Care Facilities and Services for the Department of Health No. 60131638.” [and Appendices]”, attached to and incorporated into this Agreement as Schedule “B”;
- (y) “Request for Proposals” means the Request for Proposal entitled “Request for Proposals, No. 6013163 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 8 (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” includes the provision of accommodation; programs; goods; social work services; physical and occupational therapy; and in the case of Nursing Homes, personal and skilled nursing 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;
- (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 9.1 (Term), together with any extensions or renewals thereof;

## 1.2 **Headings and Division**

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.

## 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, as amended or re-enacted from time to time, and each reference to a statute is a Nova Scotia statute.

#### 1.7 **Schedules and Appendices**

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

**Facility Name/Location**

**Development Agreement Draft - [Date]**

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 “B”** - “Long Term Care Facilities and Services for the Department of Health No. \_\_\_\_\_.” [and Appendices]” in its entirety as submitted by the Service Provider incorporated by reference herein and specifically that portion of the Proposal in relation to the Facility attached hereto [in electronic form on CD-ROM];
- (c) **Schedule “C”** - Policy Inventory - Long Term Care which may be accessed on <http://www.gov.ns.ca/health/ccs/ltc.asp> and which is subject to change from time to time.

## 1.8 **Department of Health**

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 \_\_\_\_\_ ( ) 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

**Facility Name/Location**  
**Development Agreement Draft - [Date]**

(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**

- (a) The Service Provider must, for the purposes of the Development, obtain mortgage financing in accordance with Schedule “A”.
- (b) The Parties agree that the amortized development costs, as approved by the Minister, are dependent on the interest rate which was set by the Housing Development Corporation as of August 1, 2007 (5.12%). The Minister agrees to approve an amortized development cost which reflects the interest rate at the time the mortgage is set.
- (c) The Service Provider agrees to provide the mortgage documents to the Minister for purposes of verification of the set interest rate.

### 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 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.

## 2.9 **Amendment**

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, acting reasonably; 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, acting reasonably. The Service Provider will comply with such amended requirements within such period of time as the Minister may in its notice require.

The Minister acknowledges and agrees if any such amendments, departures or changes are carried out by the Minister, the Parties agree that to the extent such amendments, departures or changes result in an increase in any manner to the costs of the Development, such additional costs shall result in an applicable increase in the capital costs of the Development as agreed upon by the Parties acting reasonably.

### **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, twenty (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 twenty (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, acting reasonably and with reference to the scope and content of the Site and Facility contemplated by Schedules "A" and "B" attached hereto, 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 ten (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 issue the Service Provider 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 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 perform its obligations under this Agreement and such other agreements and instruments referred to in Section 5.1(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 5.1(b):

- (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 among 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. 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 CONFIDENTIALITY**6.1 **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 Minister'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**

- (a) 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:

- (i) 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;
  - (ii) 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
  - (iii) termination of this Agreement pursuant to Section 9.2 (Termination by Minister) or Section 10.6 (Severability).
- (b) The Minister and the Minister's officers, employees, independent contractors, subcontractors, agents, successors and assigns shall not be liable for any injury or damage (including death) to the person or for the loss or damage to the property of the Service Provider, in any manner based upon, occasioned by, or in any way attributable to the Service Provider's Services under this Agreement unless such injury, loss, or damage is caused solely and directly by the negligence of an officer, or servant of the Minister while acting within the scope of his employment.

## 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 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 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. The indemnity referred to in this Article 8.2 shall not extend to any costs, losses, damages, judgments, claims, demands, suits, actions, causes of action or other proceedings of any kind or nature to the extent 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 connections with this Agreement or the performance 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(c) (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, which shall not be unreasonably withheld, 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 thirty (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(a)(ii).

9.3 **Housing Development Corporation**

In the event the Minister terminates this Agreement pursuant to Section 9.2, the Minister shall notify the Nova Scotia 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 cease 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 nature of such event of Force Majeure and the probable outcome.

9.6 Notwithstanding anything else contained in this Agreement, this Agreement is subject to:

- (i) there being sufficient monies available in the appropriation to enable the Minister to make payment;
- (ii) Department of Finance, not having controlled or limited expenditure under any appropriation referred to in (i).

### **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 Article 5.1 (Representations, Warranties and Covenants) 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 set out in Article 4 (Service Agreement Continuing Obligations), Article 6 (Confidentiality), Article 8 (Liability and Indemnification), and this 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.

#### 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 the Minister's interest in this Agreement.

10.10 **Time of the Essence**

Time shall be of the essence.

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 as reasonably requested by the Minister.

10.12 **Designated Representatives**

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

**Facility Name/Location**  
**Development Agreement Draft - [Date]**

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

Deputy Minister  
Nova Scotia Department of Health  
1690 Hollis Street  
P.O. Box 488  
Halifax, NS B3J 2R8  
Phone: 902-424-7570

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

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:

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

Witness )  
Date: \_\_\_\_\_ )

Per: )  
Date: \_\_\_\_\_ )

Witness )  
Date: \_\_\_\_\_ )

Per: )  
Date: \_\_\_\_\_ )

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

**SERVICE AGREEMENT** dated the \_\_\_\_\_ day of \_\_\_\_\_, 2009

**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 -

, a body corporate incorporated pursuant to the laws of Nova Scotia, (hereinafter referred to as the “Service Provider”)

**OF THE SECOND PART**

**WHEREAS** the Minister and the Service Provider have entered into a Development Agreement for the Development of a Facility located at \_\_\_\_\_ for \_\_\_\_\_ Nursing Home Beds [and \_\_\_\_\_ RCF Beds].

**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 Service Provider during each annual Term of this Agreement and is provided through the Protected Envelope, the Unprotected Envelope and the Capital Renewal Reserve;
  - (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

**RFP Template Service Agreement - [Facility]  
[Date]**

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 Beds operated under this Agreement;
- (f) “Capital Renewal Reserve” is the reserve received and invested by the Service Provider to support each Facility in the replacement of a Facility Component once the Theoretical Life of that Facility Component, as defined in the policy, has been reached in accordance with the process and definitions contained in Schedule “F”;
- (g) “Confidential Information” means any and all information of which either Party becomes aware, or which one Party received (either directly or indirectly) from the other Party 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 either Party;
- (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 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 Service Provider 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) “Nursing Home” means a Nursing Home as defined in the *Homes for Special Care Act*;
- (n) “Occupancy” means the admission of the first Person as a Resident of the Facility and the commencement of the delivery of Services;

- (o) “Party” means a Party to this Agreement, and any reference to a Party includes the successor and permitted assigns;
- (p) “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 Program Requirements and Policy Manual;
- (q) “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;
- (r) “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;
- (s) “Policy Manual” includes the current Long Term Care Policy Manual in effect as of the execution date of this Agreement and includes the policies, guidelines, directives and information releases of the Department of Health as listed in Schedule “C” and as amended from time to time;
- (t) “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”;
- (u) “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”;
- (v) “Province” means the Province of Nova Scotia;
- (w) “Resident” means a person who is admitted to a Facility in accordance with the Facility Placement Policy of the Policy Manual;
- (x) “RCF” means a Residential Care Facility as defined in the *Homes for Special Care Act*;
- (y) “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;

- (z) “Services” includes accommodation; programs; dietary; goods; social work services; physical, and occupational therapy; and personal and skilled nursing care;
- (aa) “Special Program” means a long term care special program as approved by the Minister;
- (bb) “Significant Risk” means a risk, where it is determined that there has been a fundamental breach of this Agreement by the Service Provider, which has caused significant risk to the health or safety of a Resident, staff or member of public;
- (cc) “Suitability Assessment” means the Minister’s assessment of the extent to which the Facility is or is not suitable to meet the needs of Residents;
- (dd) “Term” means the term of this Agreement as set forth in Article 8 together with any extensions or renewals thereof;
- (ee) “Unprotected Envelope” means the portion of the Approved Budget for Facility and Accommodation Services Costs that is funded at a nonprescribed rate and in accordance with Schedule “E”.

## 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

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 “B”** - “Long Term Care Facilities and Services for the Department of Health No. 60131638.” [and Appendices]” in its entirety as submitted by the Service Provider and incorporated by reference herein and specifically that portion of the Proposal in relation to the Facility attached hereto [in electronic form on CD-ROM].
- (c) **Schedule “C”** - Policy Manual Policy Inventory - Long Term Care which may be accessed on <http://www.gov.ns.ca/health/ccs/ltc.asp> and which is subject to change from time to time.
- (d) **Schedule “D”** - Protected Envelope Funding Policy.
- (e) **Schedule “E”** - Unprotected Envelope Funding Policy.
- (f) **Schedule “F”** - Capital Renewal Reserve Policy.
- (g) **Schedule “G”** - RFP Unprotected Envelope Per Diem with Annual Costing.

#### 1.8 **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.

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 Beds [and ( ) RCF Beds] 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 the Schedules to this Agreement; and
  - (c) Applicable Laws;
- (4) make best efforts to ensure there are no material 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) make best efforts to 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 use 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 costs 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 such Nursing Home Beds and space to Adult Protection and Respite Beds and Special Programs including but not limited to Dementia Care and Young Adult, as directed by the Minister;
- (b) The Service Provider agrees that it will designate RCF Beds to Nursing Home Beds and Nursing Home Beds to RCF Beds, as directed by the Minister;
- (c) In the event the Service Provider incurs any costs or a result of Section 2.5(a) or (b), this will be resolved through negotiation and written agreement between the Parties, acting reasonably.

## **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.

### 3.3 **Staffing Model**

- (a) The Service Provider agrees that it will implement the CCA Full Scope of Practice Staffing Model as set out in Schedule A that shall be subject to change from time to time by the Minister.
- (b) The Accommodation Services Costs, based on the CCA Full Scope of Practice Staffing Model, includes salaries, benefits and operational costs of: administration; maintenance; dietary; laundry and housekeeping services not provided by CCAs in the Resident Household as defined in Schedules “D” and “E”. For greater certainty, the cost of dietary, raw foods, laundry and housekeeping services provided by CCAs within the Resident Household is

excluded from Accommodation Services Costs and funded under the Protected Envelope.

- (c) 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 4 PAYMENT OF FUNDING**

##### **4.1 Protected Envelope**

The Minister shall pay the Protected Envelope portion of the Approved Budget under Article 3 in accordance with Schedule "D".

##### **4.2 Unprotected Envelope**

- (1) The Minister agrees that the Unprotected Envelope portion of the Approved Budget is approved at \$ \_\_\_\_\_ per diem which includes all items listed at 3.2.2 of Schedule "A" with applicable HST, on all items in the Addendum submitted by the Service Provider concerning HST on Capital Costs and applicable Operating Costs, and which is fixed for the term of the Agreement subject to Section 4.3.
- (2) The Service Provider agrees that any return on investment is included in the per diem under Subsection 4.2(1).
- (3) The Service Provider is responsible for collecting the Authorized Accommodation Charge for each Resident in accordance with the Resident Charge Policy as outlined in Schedule "C".
- (4) The Minister will fund the difference between the amount the Service Provider is responsible for collecting in accordance with Section 4.2(3) and the Unprotected Envelope.
- (5) The Service Provider shall operate within its Unprotected Envelope throughout the term of this Agreement.
- (6) The Parties agree that the effective rate of interest used for the calculation of the principal and interest of the per diem under the Unprotected Envelope at the time of the submission of the Service Provider's Proposal, Schedule "B", was 5.12%.

##### **4.3 Indexing**

- (1) The component of the per diem for principal and interest related to the Capital Costs shall be the Amortized Project Development Cost and Financing Cost as referenced in Section 3.2.2 of Schedule “B” in the amount of \$ plus applicable HST and shall not be indexed during the term of this Agreement but shall be adjusted based on the Nova Scotia Housing Development Corporation effective interest rate.
- (2) Unionized wages and benefits at the per diem rate of \$ , as referenced in Section 3.2.2 of Schedule “B” under the Unprotected Envelope shall be indexed in accordance with Minister-approved Collective Agreements in effect as of October 31, 2006, and that are amended from time to time.
- (3) Management/administrative services at the per diem rate of \$ as referenced in Section 3.2.2 of Schedule “B” of the Unprotected Envelope based on the Nova Scotia All-Item Index Catalogue #62-001-XWE in effect from August 2007 that shall be adjusted annually from November 1 to October 31.
- (4) Operational Costs as referenced in section 3.2.2 of Schedule “B” plus applicable HST and the remainder of the per diem of \$ , after accounting for costs as set out in Subsection 4.3(1)(2) and (3), shall be indexed annually in accordance with the Nova Scotia All-Item Index Catalogue #62-001-XWE from August 2007, and as may be adjusted from time to time.
- (5) Schedule “G” sets out the per diem and annual funding costs that are applicable in accordance with Subsections 4.3(1), (2) and (3) of this Agreement.
- (6) The Minister agrees that in the event the Minister provides special funding related to energy price relief to the long term care sector under the Homes for Special Care Act, the Minister shall provide the Service Provider with the equivalent special funding.

For greater certainty, this means that the All Items Consumer Price Index Catalogue #62-001-XWE from August 2007, and as may be adjusted from time to time, less the fuel component, shall be applied to the non fuel portion of the operational bid under the Unprotected Envelope (as referenced in Section 3.2.2 of Schedule “B” of the Service Agreement). The service provider shall provide the Department of Health with documentation detailing fuel expenditures and the energy price relief shall be applied accordingly to this amount.

## **Article 5**

### **5.1 Dispute Resolution - Non-Payment**

The Service Provider, may, where the Minister fails to pay any amount, excluding those under Article 8, Reduction of Funding:

- (a) provide the Minister with written notice of such non-payment with a thirty (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 thirty (30) days after the dispute is referred to mediation, then either Party may refer the dispute to arbitration pursuant to the *Commercial Arbitration Act*.

### **5.2 Capital Renewal**

The Minister agrees to provide funding for Capital Renewal in accordance with the Capital Reserve Policy.

### **5.3 Payment**

- (1) The Minister shall pay the Service Provider the Annual Funding, based on an annual budget taking into account the Unprotected Envelope per diem rate with applicable charges in accordance with Article 4 (indexing and applicable taxes from August 2007) and the Protected Envelope as prescribed by the Minister upon the Licensing of the Facility.

## **Article 6 USE OF FUNDING**

### **6.1 Cost Transfer**

- (1) The Service Provider shall apply those parts of the Approved Budget for each of the Health Care and Raw Food Costs, as defined in Schedule “D”, 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 7 FINANCIAL RECORDS AND REPORTS**

7.1 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;
- (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.

7.2 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.

### **7.3 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 7.3(1) of this Agreement for the purpose of making copies and shall promptly return to the place from which they were removed.

## **Article 8 REDUCTION OF FUNDING**

- 8.1 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 noncompliance by the Minister.
- 8.2 Where the Minister, in his sole discretion, acting reasonably, 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, by the Minister, from the Annual Funding and paid to the Resident.
- 8.3 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 9 TERM**

- 9.1 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.

- 9.2 The terms and conditions of this Agreement shall remain in force for each renewal with the exception of 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”.
- 9.3 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 14.
- 9.4 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.
- 9.5 On the date of termination pursuant to Section 9.4, the Service Provider shall pay off any outstanding debt owed to the Nova Scotia Housing Development Corporation.

## **Article 10 CONFIDENTIALITY**

- 10.1 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.
- 10.2 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.

- 10.3 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.
- 10.4 **Personal Information International Disclosure Protection Act**
- 10.5 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.
- 10.6 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.
- 10.7 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.
- 10.8 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.
- 10.9 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.
- 10.10 The Parties agree that the Service Provider shall retain all rights (including, without limitation, all intellectual property rights), title, and interest in any and all Confidential Information provided to the Minister pursuant to this Agreement.

## **Article 11 LIMITATION OF LIABILITY AND INDEMNIFICATION**

- 11.1 The Minister and the Minister’s officers, employees, independent contractors, subcontractors, agents, successors and assigns shall not be liable for any injury or damage (including death) to the person or for the loss or damage to the property of the Service

Provider, in any manner based upon, occasioned by, or in any way attributable to the Service Provider's Services under this Agreement unless such injury, loss, or damage is caused solely and directly by the negligence of an officer, or servant of the Minister while acting within the scope of his employment.

- 11.2 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 this Section 11.2 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 12 INSURANCE**

- 12.1 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.

### 12.2 **All General Insurance**

The Service Provider shall 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 equal to the replacement value of the Facility;
  - (b) annual aggregate limits permitted for earthquake coverage and flood coverage, separately; no other policy aggregates permitted;
  - (c) 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);
  - (d) primary insurance without right of contribution of any insurance carried by the Minister;
  - (e) coverage for valuable papers and records;
  - (f) coverage for expediting and extra expenses;
  - (g) thirty (30) days prior written notice of cancellation or material change to the Province by the insurer;
  - (h) waiver of insurer's right of subrogations against the Province;
  - (i) 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 \$1,500,000.00 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 Minister; 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 from 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) non-owned automobile liability;
- (k) cross liability and separation of interests with respect to each Insured;
- (l) the Minister and its respective directors, officers, and employees shall be included as insured;
- (m) 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 Minister;
- (n) primary insurance without right of contribution of any other insurance carried by the Minister; and
- (o) the insurer shall provide thirty (30) days' prior written notice of material change or cancellation to the Minister.

12.3 All policies are to be issued by financially sound insurers licenced to carry on business in Canada and subject to approval by the Minister. The Service Provider shall not cancel or materially change the policy without thirty (30) days' prior written notice to the Province.

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[Date]**

- 12.4 Certified copies of all insurance policies and related documentation, in form and content acceptable to the Minister, 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 Minister, shall be provided to the Minister no later than fifteen (15) days prior to the expiration of existing policies. Upon request from the Minister or its designated representative, certified copies of any policy or policies shall be provided promptly.
- 12.5 All operating insurance policies must include a provision whereby the Minister (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 13 REPRESENTATIONS, COVENANTS AND WARRANTIES**

- 13.1 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.
- 13.2 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 13.1 of this Agreement.
- 13.3 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 Article 13 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 14.2 by giving thirty (30) days' written notice to the Service Provider.

#### **Article 14    TERMINATION**

14.1    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 Article 14 ("Termination").

14.2    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 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;
  - (v)     failure by the Service Provider to initiate a Contingency Plan or Emergency Response immediately upon a Force Majeure unless such failure was caused directly by the Force Majeure;

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 14.2(a), 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 14.2(a) or (b), the Minister shall notify the Nova Scotia Housing Development Corporation of such termination.
- (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 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 14.2(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.

14.3 From the date that notice of such termination pursuant to Section 14.2 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.

- 14.4 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 14.4(a) during the Transition Period and otherwise will be under no further obligation to the Service Provider.
- 14.5 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 14.2(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.
- 14.6 The Minister agrees that in the event of termination pursuant to Section 14.2(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 15 AMENDMENT**

- 15.1 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.

15.2 The Minister acknowledges and agrees that if any such amendments, departures or changes as outlined in Section 15.1 and carried out by the Minister, to the extent such amendments, departures, or changes result in an increase to the costs of the Service Provider, such additional costs shall result in an applicable increase in the Approved Budget.

**Article 16 NO ASSIGNMENT, TRANSFER, SALE, ETC.**

16.1 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.

16.2 The Service Provider will seek the approval referred to in Section 16.1 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 16.1 above.

16.3 In determining whether or not to grant its approval pursuant to Section 16.1, 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 effective 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).

- 16.4 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 16.1.
- 16.5 The Minister may, in his sole discretion, assign the Minister's interest in this Agreement.

**Article 17 NO LICENSE OR INTERFERENCE WITH STATUTORY POWERS**

17.1 This Agreement does not operate as a 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 18    LABOUR AND EMPLOYMENT**

- 18.1    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”.
- 18.2    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.
- 18.3    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”.
- 18.4    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 19    PROGRAM REQUIREMENTS**

- 19.1    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 as outlined in Appendix C of Schedule A, 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.
- 19.2    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 20    GENERAL PROVISIONS**

- 20.1    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.

- 20.2 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.
- 20.3 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.
- 20.4 The obligations of this Agreement that by their nature should survive termination or expiration of, including the obligations of the Service Provider set out Articles 5, 8 and 9, 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.
- 20.5 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.
- 20.6 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.
- 20.7 The Parties are and shall at all times remain independent parties and nothing contained herein shall be construed as constituting a partnership, joint venture or agency arrangement between the Parties.
- 20.8 **Force Majeure**

If the Service Provider is delayed or prevented from exercising its obligations or making deliveries in accordance with this Agreement due to unforeseeable or unexpected circumstances beyond the reasonable control of a Service Provider, including third party labour interruptions including strikes, walkouts or labour disputes, fire, explosion, act of God, or terrorism or any threat of war, terrorism or other such similar causes (being collectively referred to herein as a "Force Majeure"), provided that it could not have been prevented by reasonable precautions and could not reasonably have been circumvented by the Service Provider through the use of alternate resources, then such failure to meet

obligations or make deliveries shall not be a breach of this Agreement, except that the Service Provider has the obligations to initiate Services in the event of a Force Majeure in accordance with a Contingency Plan or Emergency Response as required by Appendix C of Schedule "A", as agreed upon and updated from time to time in joint agreement between the Service Provider and the Minister. For greater certainty, no Force Majeure will excuse the Service Provider from initiating such Contingency Plan or Emergency Response as is in force at the time that any Force Majeure occurs, except to the extent that the event triggering the Force Majeure precludes initiation of the Contingency Plan or Emergency Response.

## **Article 21 NOTICE**

21.1 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 21.2 of this Agreement and will be validly given if delivered to such representative of such Party at the address set out.

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

(1) The designated representative of the Minister is:

Deputy Minister  
Nova Scotia Department of Health  
1690 Hollis Street  
P.O. Box 488  
Halifax, NS B3J 2R8  
Phone: 902-424-7570

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

21.3 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.

21.4 A notice sent by pre-paid registered mail is deemed to be received by the Party to which it is delivered on the fifth day the Minister is open for business following the date when it is so mailed.

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

**RFP Template Service Agreement - [Facility]  
[Date]**

**SIGNED, SEALED AND DELIVERED )**

in the presence of: )

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

Witness )

Date: \_\_\_\_\_ )

Per: )

Date: \_\_\_\_\_ )

Witness )

Date: \_\_\_\_\_ )

Per: )

Date: \_\_\_\_\_ )

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