

# **STRATEGIC PARTNERING AGREEMENT**

for the development of  
Primary Health Care Access Centres

between

[\_\_\_\_\_]

and

**VANCOUVER COASTAL HEALTH AUTHORITY**

Dated \_\_\_\_\_, 2006

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**SCHEDULE A PRIMARY CARE ACCESS CENTRE DESCRIPTION**

**SCHEDULE B DEVELOPMENT AND APPROVAL PROCESS**

**SCHEDULE C COMMUNICATIONS PROTOCOLS**

**SCHEDULE D FORM OF AGREEMENT TO LEASE AND BUILD TO SUIT AGREEMENT**

# STRATEGIC PARTNERING AGREEMENT

THIS AGREEMENT made as of the \_\_\_\_ day of \_\_\_\_\_, 2006

BETWEEN:

[\_\_\_\_\_]
("Partner Co")

AND:

VANCOUVER COASTAL HEALTH AUTHORITY
("VCHA")

WHEREAS:

- A. VCHA, as a provincial health authority, has responsibility to develop and improve health care delivery, and to respond to changes in health care, for the benefit of the public and health care professionals and workers;
- B. As part of its effort to adapt to changing health care needs and to create an integrated and sustainable health care system, VCHA wishes to develop and refine primary health care access centres in strategic locations across its geographic region (each an "Access Centre");
- C. VCHA wishes to establish a relationship with a partner for the purposes of developing cost-effective methods for the development and operation of Access Centres, as well as possibly other projects involving the design, construction and ownership of other types of facilities by its partner, with space in such facilities being leased by VCHA; and
- D. Partner Co has expertise and experience in land development and operation and maintenance of buildings and related facilities.

## 1. INTERPRETATION

### 1.1 Definitions

In this Agreement:

"Access Centre" has the meaning given to it in Recital B and further described in Schedule A (Primary Care Access Centre Description);

"Affiliate" has the meaning given to it in the Business Corporations Act (British Columbia);

"Agreement to Lease" means an agreement to lease and build to suit agreement substantially in the form attached as Schedule D;

"Agreement" means this agreement including the recitals and Schedules, as amended or supplemented from time to time;

**“Approval Criteria”** means the criteria described in Section 3.4 of Schedule B (Development and Approval Process”;

**“Business Day”** means a day other than a Saturday, Sunday or statutory holiday in British Columbia;

**“Change in Control”** means a change in the corporate or partnership structure of the entity or of any company which is a holding company of the entity or of any company which is a general partner of an entity which is a limited partnership, which results in a person other than the equity holders of the entity immediately prior to the change:

- (a) controlling the composition of the majority of the board of directors of the entity or of a general partner of the entity;
- (b) controlling the voting power of the board of directors or any class of shareholders of the entity or of a general partner of the entity, or both; or
- (c) holding, directly or indirectly, more than one half of the equity (either beneficially or otherwise) of that entity;

**“Dispute”** means any disagreement, failure to agree or other dispute arising out of or in connection with this Agreement;

**“Dispute Notice”** means a notice from one party to the other party providing details of a Dispute and invoking the Dispute Resolution Procedure in respect of that Dispute;

**“Dispute Resolution Procedure”** means the procedure described in Section 8;

**“Final Submission”** has the meaning given in Section 3.1 of Schedule B (Development and Approval Process”)

**“Governmental Authority”** means any domestic or foreign government, including any federal, provincial, state, territorial or municipal government, and any government agency, tribunal, commission or other authority exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government;

**“Initial Access Centres”** means Access Centres for health areas in:

- (a) Vancouver Grandview Woodlands;
- (b) Vancouver South;
- (c) North Vancouver; and
- (d) Richmond;

**“Intellectual Property”** means any or all of the following and all rights, arising out of or associated therewith: (a) all national, international and foreign patents, utility models, mask works, and applications therefor and all reissues, divisions, renewals, extensions, provisionals,

continuations and continuations-in-part thereof; (b) all inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology, technical data, product formulations and specifications, and all documentation relating to any of the foregoing throughout the world; (c) all copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto throughout the world; (d) all industrial designs and any registrations and applications therefor throughout the world; (e) all rights in any internet uniform resource locators (URLs), domain names, trade names, logos, slogans, designs, common law trade-marks and service marks, trade-mark and service mark registrations and applications therefor throughout the world; (f) all moral rights of authors and inventors; and (g) any similar or equivalent rights to any of the foregoing anywhere in Canada;

**"Law"** means all present and future laws, statutes, regulations, treaties, judgments and decrees and, whether or not having the force of law, all official directives, rules, consents, approvals, authorizations, guidelines, orders and policies of any Governmental Authority;

**"Off The Shelf Software"** means software generally available through commercial suppliers on standard terms and conditions;

**"Permitted Action"** has the meaning set out in Section 9.11;

**"Person"** means any natural person, sole proprietorship, partnership, corporation, trust, joint venture, any Governmental Authority or any incorporated or unincorporated entity or association of any nature;

**"Preliminary Approval"** has the meaning given in Section 2.4 of Schedule B (Development and Approval Process);

**"Preliminary Project Proposal"** has the meaning given to it in Section 1.1 of Schedule B (Development and Approval Process);

**"Prescribed Financial Market"** means the Toronto Stock Exchange, the New York Stock Exchange or the London Stock Exchange;

**"Project"** means any Access Centre or other facility developed pursuant to this Agreement and **"Projects"** means all such facilities;

**"Project Intellectual Property"** means the Intellectual Property which is created, brought into existence, acquired, licensed or used by Partner Co, any of its contractors or any other third party, directly or indirectly, for the purposes of the design, construction or operation of a Project or otherwise for the purposes of this Agreement;

**"Restricted Person"** means any person who (or any member of a group of persons acting together, any one of which) as of the relevant date:

- (a) has (directly or indirectly) its principal or controlling office in a country other than Canada, any of the other G8 countries, any member state of the European Union or the European Economic Area or New Zealand or Australia, that is subject to

any economic or political sanctions imposed by Canada for reasons other than its trade or economic policies;

- (b) has as its primary business the illegal manufacture, sale, distribution or promotion of narcotic substances or arms, or is or has been involved in terrorism;
- (c) in the case of an individual, he or she (or in the case of a legal entity, any of the members of the board of directors or its senior executive managers who will be involved in the day-to-day management of Partner Co) has been sentenced to imprisonment or otherwise given a custodial sentence (other than a suspended sentence) for any criminal offence (other than minor traffic offences or misdemeanours) less than five years prior to the effective date of any proposed transfer of shares to such person;
- (d) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent; or
- (e) is subject to any material claim of VCHA or the Ministry of Health Services in any proceedings (including regulatory proceedings) which have been concluded or are pending at the time of any proposed transfer and which (in respect of any such pending claim, if it were to be successful) would, in VCHA's view, in either case, be reasonably likely to materially affect the ability of Partner Co to perform its obligations under this Agreement;

**“Term”** has the meaning given to it in Section 4;

**“use”**, in respect of Intellectual Property, includes acts of copying, executing, processing and translating the material in question and incorporating such material with other materials, and the term **“right to use”** will be construed accordingly;

**“VCHA Requirements”** has the meaning given in Section 1.1 of Schedule B (Development and Approval Process”); and

**“written”** includes printed, typewritten, faxed or otherwise capable of being visibly reproduced at the point of reception and **“in writing”** has a corresponding meaning.

## 1.2 Construction and Interpretation

The division of this Agreement into Sections, the insertion of headings and the provision of a table of contents are for convenience only, do not form a part of this Agreement and will not be used to affect the construction or interpretation of this Agreement. The word “including” will not be construed as limiting the general term or statement immediately preceding. Unless otherwise specified:

- (a) each reference in this Agreement to **“Section”** and **“Schedule”** is to a Section of, and a Schedule to, this Agreement;

- (b) 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;
- (c) words importing the singular include the plural and vice versa and words importing gender include all genders;
- (d) references to time of day or date mean the local time or date in Vancouver, British Columbia, and
- (e) all references to amounts of money mean lawful currency of Canada.

### **1.3 Governing Law**

This Agreement and each of the documents contemplated by or delivered under or in connection with this Agreement are governed exclusively by, and are to be enforced, construed and interpreted exclusively in accordance with, the laws of British Columbia and the laws of Canada applicable in British Columbia which will be deemed to be the proper law of the Agreement.

### **1.4 Severability**

Each provision of this Agreement is severable. If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect:

- (a) the legality, validity or enforceability of the remaining provisions of this Agreement, or
- (b) the legality, validity or enforceability of that provision in any other jurisdiction

except that if:

- (c) on the reasonable construction of this Agreement as a whole, the applicability of the other provision presumes the validity and enforceability of the particular provision, the other provision will be deemed also to be invalid or unenforceable, and
- (d) as a result of the determination by a court of competent jurisdiction that any part of this Agreement is unenforceable or invalid and, as a result of this Section 1.12, the basic intentions of the parties in this Agreement are entirely frustrated, the parties will use all reasonable efforts to amend, supplement or otherwise vary this Agreement to confirm their mutual intention in entering into this Agreement.

### **1.5 Schedules**

All Schedules are included in and form a part of this Agreement.



## **1.6 Conflict or Inconsistency**

If there is any conflict or inconsistency between the terms of this Agreement and the terms of any Agreement to Lease entered into pursuant to this Agreement, the terms of the Agreement to Lease will prevail and the provisions of this Agreement will be construed accordingly.

## **2. STRATEGIC PARTNERING**

### **2.1 Long Term Partnership**

The principal purposes of this Agreement are to:

- (a) establish a close working long term partnering relationship between VCHA and Partner Co for the design, development and procurement of Access Centres and other Projects for the use and benefit of VCHA in a manner whereby the design and development experience gained by either party with respect to a Project is available to be applied to the development, provision or operation of another Project for the benefit of VCHA;
- (b) achieve best value for money operational performance of the Access Centres and other Projects;
- (c) set in place processes to enable the parties to establish appropriate performance objectives and the measurement of the parties performance, including the weaknesses and strengths in the relationship between VCHA and Partner Co;
- (d) set in place processes to work together to overcome any weaknesses and to build on the strengths in the relationship between VCHA and Partner Co; and
- (e) commit to the early recognition and resolution of any differences, conflicts and disputes between VCHA and Partner Co.

## **3. PROJECT DEVELOPMENT**

### **3.1 Description of Access Centres**

Schedule A contains a general description of Access Centres, including their intended functions and features and anticipated services to be provided from them.

### **3.2 Development of Projects**

VCHA and Partner Co will work together, pursuant to the terms of this Agreement and in particular the terms of Schedule B (Development and Approval Process), in a strategic and cooperative manner to develop, build and operate Access Centres and, if applicable, other Projects for use by VCHA through operating lease arrangements pursuant to an Agreement to Lease.

### 3.3 Commercial Principles

The following commercial principles will apply to the development of a Project:

- (a) Partner Co will work with VCHA on an “open book” basis, and without limitation will provide VCHA with full access to all of Partner Co’s financial, design, construction and other records and information relevant to the Project, for use by VCHA with respect to any new Project to be provided by Partner Co under this Agreement;
- (b) [Partner Co and VCHA will agree to a financial model which will describe the applicable lease-rate structure for each Project; **NTD: to be discussed with proponents**]
- (c) [Partner Co and VCHA will agree to parameters and processes for sub-contracting strategy that will achieve and maintain appropriate competitive tension; **NTD: to be discussed with proponents**]
- (d) Partner Co will measure and evaluate each Project as compared to the previously completed Project, on a comparative bases, to demonstrate “project on project” performance, in a manner and level of detail to the reasonable satisfaction of VCHA; and
- (e) the parties will focus on achieving the best value operational performance of each Project.

### 3.4 General Performance Standards

Partner Co will perform its obligations and provide the services under this Agreement:

- (a) with that degree of skill and care that would reasonably be expected of a competent professional provider of the relevant service having regard to the nature and extent of that service;
- (b) in accordance with all Laws; and
- (c) in accordance with good industry practice, unless a higher standard is expressly required under this Agreement.

### 3.5 No Obligation to Develop Projects

Except as set out specifically in Schedule B (Development and Approval Process), nothing in this Agreement will be interpreted as obligating VCHA to proceed with the design, development, construction or procurement of any Project, and VCHA expressly retains full discretion whether or not to proceed with the development of any new Project.

### 3.6 Exclusivity

If during the term of this Agreement VCHA elects to proceed with any new Project, and providing Partner Co performs its obligations under this Agreement, including Section 5.1 and Schedule B, then:

- (a) VCHA will not enter into discussions with any other party for the design, development or procurement of all, or any portion of, the new Project; and
- (b) the parties will use good faith efforts to reach agreements for an Agreement to Lease with respect to such new Project.

## 4. TERM

### 4.1 Term

The term of this Agreement will commence on the date of this Agreement and will continue until the earlier of:

- (a) ▼; and
- (b) the date this Agreement is terminated in accordance with Section 4.2.

### 4.2 Termination

**[NTD: to be discussed with Proponents]**

This Agreement may be terminated:

- (a) by VCHA:
  - (1) **[material unremedied default - consider mechanism, notice, etc.]**
  - (2) on [\_\_\_\_ days/months] notice to Partner Co;
- (b) by Partner Co:
  - (1) **[material unremedied default- consider mechanism, notice, etc.]**
  - (2) on [\_\_\_\_ days/months] notice to VCHA.

## 5. OTHER OBLIGATIONS

### 5.1 Partner Co's Obligations

In addition to its other obligations under this Agreement, Partner Co will:

- (a) provide VCHA, upon request, with information related to a Project, including financial and technical information and any other information which may assist

VCHA in determining whether to proceed with another Project under this Agreement;

- (b) comply with the communications protocols set out in Schedule C;
- (c) **[consider additional covenants]**

## **5.2 VCHA's Obligations**

In addition to its other obligations under this Agreement, VCHA will:

- (a) comply with the communications protocols set out in Schedule C;
- (b) **[consider whether any covenants are required]**

## **6. INFORMATION TECHNOLOGY**

### **6.1 Importance to Access Centres**

Partner Co acknowledges that appropriate and innovative use of information technology will be critical to the success of Access Centres.

### **6.2 Intellectual Property Licences**

Except for commercial software used for general business applications, Partner Co will ensure that all licenses for the use of Project Intellectual Property which Partner Co obtains from any Person and incorporates in a Project will:

- (a) be on a non-exclusive, perpetual, irrevocable and royalty free basis (with a right of assignment or sublicense for use) provided that the licence may be on payment terms no less favourable than those offered to other licensees in the usual distribution practices of such third party licensor or, in the case of Intellectual Property licensed from an Affiliate of Partner Co, on commercially reasonable terms;
- (b) permit the use of Project Intellectual Property for the sole purpose of operation of applicable Projects;
- (c) contain to the extent reasonably practicable on commercially reasonable terms, provisions to minimize the impact upon VCHA of:
  - (1) any default by the licensor of Project Intellectual Property (or any portion thereof) under any such license agreement;
  - (2) the bankruptcy or insolvency of such licensor; or
  - (3) the expiry or termination of any such license.

### 6.3 Project Intellectual Property Rights

Partner Co will:

- (a) ensure that rights of Partner Co under any third party license agreements respecting Confidential Information, Project Intellectual Property (other than Off The Shelf Software) and ownership rights of Partner Co, if any, therein will be fully transferable to VCHA or its nominee without transfer cost, solely and to the extent necessary for VCHA to carry out operation and maintenance of the Projects after the Transfer Date;
- (b) obtain all necessary licences, permissions and consents, and take all requisite actions, to permit Partner Co to transfer its rights in any Confidential Information, Project Data and Project Intellectual Property (other than Off The Shelf Software) to VCHA as required by this Agreement, solely for the purposes of VCHA or carrying out operation and maintenance of the Projects;
- (c) ensure that there are no actual or purported restrictions on VCHA's ability to use the transferred rights in respect of Confidential Information or any Project Intellectual Property (other than Off The Shelf Software) for the purposes of carrying out operation and maintenance of the Projects after the date of transfer to VCHA (the "**Transfer Date**"), subject to:
  - (1) payment by VCHA after the Transfer Date of any reasonable maintenance fees consistent with those which Partner Co was required to pay to the licensor prior to the Transfer Date; and
  - (2) commercially reasonable industry standard licensing restrictions such as confidentiality and restrictions on re-sale;
- (d) transfer, or cause the transfer of, its rights under any third party license agreements and its rights as owner of such Confidential Information and Project Intellectual Property (other than Off The Shelf Software), to VCHA or its nominee, to the extent necessary for VCHA to carry out operation and maintenance of the Projects; and
- (e) make available to VCHA, at VCHA's request, the particulars of all Off The Shelf Software which is Project Intellectual Property in sufficient detail to enable VCHA to locate and independently purchase such Off The Shelf Software.

## 7. CONFIDENTIALITY

### 7.1 Confidential Information

In this Section, "**Confidential Information**" means all information, documentation and records relating to the other party which is supplied, orally or in writing, by or on behalf of the other party (whether before or after the date of this Agreement) and which would be considered by a prudent businessperson, acting reasonably, to be confidential or proprietary in nature if it is

identified as confidential at the time of disclosure. "**Confidential Information**" also includes all analyses, compilations, studies and other documents whether prepared by or on behalf of a party which contain or otherwise reflect or are derived from the foregoing information, documentation and records.

## **7.2 Use and Disclosure of Confidential Information**

Subject to Section 7.3, each party will hold in confidence any and all Confidential Information, provided that the provisions of this Section will not restrict either party from disclosing Confidential Information to its professional advisors (including its consultants, advisors and solicitors) to the extent necessary to enable the party to perform (or to cause to be performed) or to enforce its rights or obligations under this Agreement, and provided further that Partner Co may, subject to Partner Co instructing the following parties to comply with Partner Co's obligations under this Section 7:

- (a) disclose to lenders or Affiliates of lenders (and officers, directors, consultants, advisors and solicitors of any of the foregoing) such Confidential Information as is reasonably required by lenders in connection with the financing of a Project; and
- (b) disclose to contractors or Affiliates of contractors (and officers, directors, consultants, advisors and solicitors of any of the foregoing) Confidential Information which is necessary for Partner Co's or the contractor's performance of this Agreement.

## **7.3 Exceptions**

The obligation to maintain the confidentiality of Confidential Information does not apply to information, documentation and records:

- (a) which the other party confirms in writing is not required to be treated as Confidential Information;
- (b) which is or comes into the public domain otherwise than through any disclosure prohibited by this Agreement;
- (c) to the extent any person is required to disclose such Confidential Information by Law or by any Governmental Authority (but only to that extent);
- (d) to the extent consistent with any VCHA policy the details of which have been provided to Partner Co in writing prior to the disclosure;
- (e) that is in the possession of the party prior to its disclosure; or
- (f) that is received by the party on a non-confidential basis from a source other than the other party hereto and to the best of the first party's knowledge such source is not bound by a confidentiality agreement with the other party hereto or otherwise prohibited from disclosing the information to the first party by a contractual, legal or fiduciary obligation.

## 7.4 Announcements

Unless otherwise required by any Law, by any Governmental Authority or by the rules, orders or regulations of any stock exchange (but only to that extent), neither party will make or permit to be made any public announcement or disclosure (whether for publication in the press, radio, television or any other medium) of any Confidential Information or in the case of Partner Co of its (or any contractor's) interest in this Agreement or any Project, without the prior written consent of the other party (which will not be unreasonably withheld or delayed).

## 8. DISPUTE RESOLUTION PROCEDURE

### 8.1 Dispute Resolution

All Disputes will be resolved in accordance with the Dispute Resolution Procedure described in this Section 8, as follows:

- (a) unless expressly provided otherwise in this Agreement, the Dispute Resolution Procedure will be started by delivery of a Dispute Notice;
- (b) the parties will attempt to resolve the Dispute by a Settlement Meeting under Section 8.2; and
- (c) if all of the above fail to resolve the Dispute, with the consent of both parties, the Dispute will be referred for arbitration.

### 8.2 Negotiation through Settlement Meeting

In the event of a Dispute, either party may deliver a Dispute Notice to the other party. Within five Business Days from the delivery of the Dispute Notice, senior managers having the authority to settle the Dispute designated by VCHA and Partner Co, respectively, will meet at a mutually acceptable time and place to attempt to resolve the Dispute (a "**Settlement Meeting**"). If possible, the representatives for each party will be persons who have not previously been involved directly with the matter in Dispute. The parties and their representatives will make all reasonable efforts to resolve the Dispute by amicable negotiations and will provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate negotiations. If the Dispute is not resolved through these negotiations within 15 days after the Dispute Notice is delivered, then the Dispute will be referred to arbitration in accordance with Section 8.3.

All negotiations held pursuant to this Section 8.2 are to be held on a without prejudice basis.

### 8.3 Arbitration

If the Dispute is not completely resolved following the Settlement Meeting process described in Section 8.2, then, if both parties consent in writing, the Dispute will be submitted to binding arbitration before a single arbitrator. If either party does not consent to arbitration then either party will be free to commence litigation proceedings.

#### **8.4 Commencement of Arbitration**

Whenever any arbitration is consented to by the parties, arbitration proceedings will be commenced by the party desiring arbitration (the "**Initiating Party**") giving notice to the other party entitled to participate in the arbitration proceedings (the "**Responding Party**") specifying the Dispute to be arbitrated.

#### **8.5 Selection of Arbitrator**

If the parties are unable to agree on the choice of an arbitrator within five Business Days after delivery of the notice by the Initiating Party, either party may request a judge of the Supreme Court of British Columbia under the *Commercial Arbitration Act* (British Columbia) for selection of the third arbitrator

#### **8.6 Qualifications**

Any arbitrator selected to act under this Agreement will be qualified by a profession or occupation to decide the matter in dispute and will have at least 10 years' experience in relation to the matter in dispute.

#### **8.7 Powers of Arbitrator**

The arbitrator, or arbitration panel, will have the authority to award any remedy or relief that a court or judge of the Supreme Court of British Columbia could order or grant in accordance with the Agreement, including, without limitation, specific performance of any obligation created under the Agreement, the issuance of an interim, interlocutory or permanent injunction, or the imposition of sanctions for abuse or frustration of the arbitration process.

#### **8.8 Location and Time of Arbitration**

Meetings and hearings of the arbitrator will take place in the City of Vancouver or in such other place as the parties will agree upon in writing and such meetings and hearings will be conducted in the English language unless otherwise agreed by such parties. Subject to the foregoing, the arbitrator may at any time fix the date, time and place of meetings and hearings in the arbitration and will give all parties adequate notice of same. Subject to any adjournments which the arbitrator allows, the final hearing will be continued on successive Business Days until it is concluded. All meetings and hearings will be in private unless the parties agree otherwise and either party may be represented at any meetings or hearings by legal counsel. Either party may examine, and re-examine, all its own witnesses at the arbitration and may cross-examine all of the other parties witnesses.

#### **8.9 Confidential Proceedings**

The arbitration will be kept confidential and the existence of the proceeding and any element of it (including, but not limited to, any pleadings, briefs or other documents submitted and exchanged, and testimony or other oral submission and any awards) will not be disclosed beyond the arbitrators, the parties, their counsel and any person necessary to the conduct of the proceeding, except as may be agreed by the parties or lawfully required to be disclosed.



### **8.10 Decision**

The arbitrator will make and send a decision in writing within 15 Business Days after the conclusion of the hearing and, unless the parties agree otherwise, will set out reasons for the decision.

### **8.11 Strict Compliance with Time Limits**

The parties agree that timely resolution of any Dispute is mutually beneficial and, in order to achieve timely resolution, the time limits as set out in this Schedule will be strictly enforced.

### **8.12 Performance of Obligations**

Notwithstanding the existence of any Dispute, VCHA and Partner Co will, to the extent not precluded by the matter in Dispute, continue to perform their respective obligations in accordance with the provisions of the Agreement without prejudice to the right to contest, dispute and challenge the relevant matter in accordance with the provisions of the Agreement.

## **9. GENERAL**

### **9.1 Enurement**

This Agreement enures to the benefit of and binds the parties and their respective successors and permitted assigns.

### **9.2 Assignment by Partner Co**

- (a) Subject to Section 9.2(b) or as otherwise set out in this Agreement, Partner Co will not, without the prior written consent of VCHA (such consent not to be unreasonably withheld), assign, transfer, or otherwise dispose of any interest in this Agreement or any agreement entered into in connection with this Agreement to which Partner Co and VCHA are parties.
- (b) If Partner Co gives no less than 10 Business Days notice to VCHA, the provisions of Section 9.2(a) will not apply to an assignment, transfer or other disposition to an Affiliate if the Affiliate:
  - (1) has the financial and technical capacity to perform the relevant obligations of Partner Co hereunder;
  - (2) is not involved in a business or activity which is incompatible or inappropriate in relation to the operation of a public hospital; and
  - (3) the direct or indirect consequences of the proposed assignment or transfer, if effected, would not and will not materially or adversely affect VCHA's rights, or VCHA's ability or capacity to exercise its rights, under the Project Documents,

and Partner Co provides VCHA with sufficient information at least 5 Business Days prior to the assignment, transfer or other disposition to allow VCHA to confirm the satisfaction of the above conditions;

- (c) The effectiveness of any assignment or transfer permitted under this Section 9.2 will be conditional on:
  - (1) the proposed assignee or transferee entering into such deeds or other agreements as are reasonably required by VCHA to ensure that the obligations of Partner Co under this Agreement are assumed by the proposed assignee or transferee; and
  - (2) the proposed assignee or transferee obtains all necessary approvals (other than from VCHA) in order to perform the obligations of Partner Co under this Agreement.

### **9.3 Change in Control**

- (a) Subject to Section 9.3(b), Partner Co will not, without the prior written consent of VCHA, permit a Change in Control of Partner Co, provided that VCHA will respond to a request for consent within the Approval Period and will not withhold its consent if:
  - (1) the change will have no material adverse effect on VCHA, the Facility or the provision of the Operation and Maintenance Services; and
  - (2) the persons who will control Partner Co are:
    - (A) institutional investors or Fit and Proper Persons; and
    - (B) not involved in a business or activity which is incompatible or inappropriate in relation to the operation of the Project; and
  - (3) the request for consent from Partner Co includes all relevant information reasonably required by VCHA to determine if the conditions described in this Section have been satisfied.
- (b) This Section 9.3 will not apply (and the consent of VCHA is not required) if shares or other equity interests (including shares or units) in an entity with ultimate control of Partner Co are quoted on a Prescribed Financial Market and a Change in Control occurs due to the transfer of such shares or interests on that market.
- (c) No Disposition at any time of any or all of the shares in Partner Co (or any company, other than a public quoted company whose equity securities are quoted on a Prescribed Financial Market, of which Partner Co is a subsidiary), will be permitted where the person acquiring the relevant interest is a Restricted Person or a person whose standing or activities are so inconsistent with VCHA's

role as a community hospital as to potentially compromise the integrity of VCHA or are so inconsistent with the nature of British Columbia's health care system as to potentially affect public confidence in that system or in VCHA.

#### 9.4 Assignment by VCHA

VCHA will not assign, transfer or otherwise dispose of any interest in this Agreement or any agreement entered into in connection with this Agreement to which Partner Co and VCHA are parties other than:

- (a) to any successor, where such successor arises as a result of a direction under the *Health Authorities Act* (British Columbia) or a reorganization of the delivery of health services initiated by the Government; or
- (b) with the prior written consent of Partner Co which will not be unreasonably withheld.

#### 9.5 Notices

Each notice, approval, election, demand, direction, consent, designation, request, agreement, instrument, certificate or other communication required or permitted to be given or made under this Agreement (each, a "**notice**") to a party must be given in writing. A notice may be given by delivery to an individual or by fax, and will be validly given if delivered on a Business Day at the following address, or, if transmitted on a Business Day by fax addressed to the following party:

if to VCHA:

Vancouver Coastal Health Authority – Corporate Office  
601 West Broadway, 11<sup>th</sup> floor  
Vancouver, British Columbia, V5T 1X7

Attention: Executive Director, Facilities, Planning and Property Management

Facsimile: 604.875.5673

if to Partner Co:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

Facsimile: \_\_\_\_\_

or to any other address, fax number or individual that the party designates. Any notice:

- (a) if validly delivered, will be deemed to have been given when delivered (provided that such notice is received by the contact person noted above or a person authorized on their behalf);
- (b) if validly transmitted by fax before 5:00 p.m. (local time at the place of receipt) on a Business Day, will be deemed to have been given on that Business Day, and
- (c) if validly transmitted by fax after 5:00 p.m. (local time at the place of receipt) on a Business Day, will be deemed to have been given on the Business Day after the date of transmission.

## **9.6 Waivers**

No waiver of any provision of this Agreement is binding unless it is in writing and signed by all the parties to this Agreement except that any provision which does not give rights or benefits to particular parties may be waived in writing, signed only by those parties who have rights under, or hold the benefit of, the provision being waived if those parties promptly send a copy of the executed waiver to all other parties. No failure to exercise, and no delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

## **9.7 No Partnership or Agency**

Nothing in this Agreement will be construed as creating a partnership or as constituting one party the principal or agent of the other. Except as expressly provided in this Agreement, neither party will hold itself out as having any authority or power to bind the other party in any way.

## **9.8 Further Assurances**

Each party will promptly execute and deliver all further documents and take all further action reasonably necessary or appropriate to give effect to the provisions and intent of this Agreement and to complete the transactions contemplated by this Agreement.

## **9.9 Remedies Cumulative**

The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at Law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

## **9.10 Amendments**

No amendment, supplement, restatement or termination of any provision of this Agreement is binding unless it is in writing and signed by each party to this Agreement at the time of the amendment, supplement, restatement or termination.

### 9.11 Submission to Jurisdiction

Subject to Section 8, each of the parties irrevocably submits to the jurisdiction of the courts of British Columbia in any suit, action, or other proceeding in any way related to or arising out of this Agreement commenced in the courts of British Columbia and all courts having appellate jurisdiction over those courts, by any party to this Agreement against any other party to this Agreement (a "**Permitted Action**") and each party to this Agreement waives, and will not assert by way of motion, as a defence, or otherwise, in any Permitted Action, any claim that:

- (a) that party is not subject to the jurisdiction of the courts of British Columbia;
- (b) the Permitted Action is brought in an inconvenient forum;
- (c) the venue of the Permitted Action is improper, or
- (d) any subject matter of the Permitted Action may not be enforced in or by the courts of British Columbia.

In any suit or action brought to obtain a judgment for the recognition or enforcement of any final judgment rendered in a Permitted Action, no party to this Agreement will seek any review with respect to the merits of any Permitted Action, whether or not that party appears in or defends the Permitted Action.

### 9.12 Entire Agreement

This Agreement and all documents contemplated by or delivered under or in connection with this Agreement, constitute the entire agreement between the parties with respect to the subject matter of this Agreement and supersede all prior agreements, negotiations, discussions, undertakings, representations, warranties and understandings, whether written or oral, express or implied, statutory or otherwise.

### 9.13 Counterparts

This Agreement and all documents contemplated by or delivered under or in connection with this Agreement may be executed and delivered in any number of counterparts with the same effect as if all parties had all signed and delivered the same document and all counterparts will be construed together to be an original and will constitute one and the same agreement.

### 9.14 Facsimile and Electronic Mail Delivery

- (a) To evidence the fact that it has executed this Agreement or any other document contemplated by or delivered under or in connection with this Agreement, a party may transmit a copy of its executed counterpart to all other parties thereto by facsimile (fax) or by electronic mail and, unless the parties agree to some other date as the date of delivery, the transmitting party shall be deemed to have delivered this Agreement on the date it transmitted such counterpart by facsimile (fax) or by electronic mail or such later date as the transmitting party specifies in

a written notice to the other parties given with or prior to the transmission of its executed counterpart.

- (b) Any party transmitting an executed counterpart of this Agreement or such other document by facsimile (fax) or electronic mail will promptly thereafter deliver to the other parties a counterpart bearing its original signature (but any failure or delay in so doing will not derogate in any way from the sufficiency or effectiveness of that party having transmitted its executed counterpart by facsimile (fax) or electronic mail).
- (c) The signature of an individual executing this Agreement (or any notice, certificate or other document contemplated by this Agreement) on behalf of a party, if sent and received by electronic mail or facsimile (fax) transmission, will be deemed to be genuine in the absence of evidence to the contrary and thus effective in the hands of the recipient, and binding upon the party on whose behalf that individual signed, for all purposes and with the same effect as if it were the original signature of that individual.

**IN WITNESS WHEREOF** the parties have executed this Agreement as of the day and year first above written.

**VANCOUVER COASTAL HEALTH AUTHORITY**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

**[name of Partner Co]**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

## **SCHEDULE A**

### **PRIMARY CARE ACCESS CENTRE DESCRIPTION**

Access Centres will become the “hub” for VCHA’s primary health care delivery. Access Centre staff will work in a collaborative partnership with group practice clinics, satellite health centres, non-profit service agencies and others to serve the primary health needs of a specific geographically defined population.

The functions of an Access Centre will include:

- (a) facilitating access to a 24/7 source of health information as well as access to urgent care. If clients need a service that is not available in the Access Centre, they will be referred to the appropriate provider in Family Practice Networks or social service agencies. Urgent care access for the population will be ensured using nurse line, on-call, clinics with extended hours or support to the Emergency Room either in the Centre or in Family Practice Networks;
- (b) providing multidisciplinary primary health care to the most complex and hard-to-reach populations;
- (c) delivering and integrating VCHA community-based programs such as: health promotion, disease prevention and health protection, mental health and addictions services and home care;
- (d) conducting community needs analysis and performance monitoring and improvement;
- (e) providing services to augment or support services provided by Family Practice Networks such as outreach teams; practice guidelines, protocols and care maps; point of care testing e.g. diagnostics; specialty clinics that might otherwise be offered in the hospital; and
- (f) training and research in primary health care.

VCHA has identified a range of programs and client services expected to be included in an Access Centre, including:

- (a) Primary Care for Target Population;
- (b) Urgent Care;
- (c) Public Health/Prevention and Promotion for General Population;
- (d) Mental Health & Addictions for Target Population;
- (e) Home Care for Eligible Population;
- (f) Community Health Assessment; and

- (g) Referral & Health System Navigation.

Each Access Centre will have additional specialized programs/services that are developed to meet the specific needs of the community which they serve. These services may include:

- (a) Specialty Ambulatory Care;
- (b) Diagnostics/Lab Services; and
- (c) Training & Research.

The service mix in each Access Centre will be determined during functional programming activities as each Access Centre project is initiated.



**SCHEDULE B**  
**DEVELOPMENT AND APPROVAL PROCESS**

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## 1. PRELIMINARY PROJECT PROPOSAL

### 1.1 VCHA Requirements

During the Term VCHA may advise Partner Co that it intends to proceed with the development or acquisition of a Project. VCHA will, in cooperation with Project Co, develop and identify requirements in relation to such a Project that must be satisfied as part of a Preliminary Project Proposal (the "**VCHA Requirements**").

### 1.2 Request for Preliminary Project Proposal

During the Term, VCHA may (but is not obliged to other than for the Initial Access Centres as set out in Section 1.4 below) submit a written request to Partner Co to produce an outline proposal (a "**Preliminary Project Proposal**") for a Project that satisfies the requirement of the applicable VCHA Requirements.

### 1.3 Partner Co Response

Partner Co will confirm in writing within 20 Business Days of receipt of a request for a Preliminary Project Proposal whether or not it will submit a Preliminary Project Proposal to VCHA. If Partner Co advises that it will not submit a Preliminary Project Proposal or fails to respond to the request in accordance with this Section 1.3, then VCHA may enter into discussions with third parties for the Project as VCHA may decide. Otherwise, Partner Co will submit a Preliminary Project Proposal to VCHA within **[2]** months of receiving a request therefor from VCHA.

### 1.4 Initial Access Centres

VCHA and Partner Co will develop **[or have developed, if applicable]** VCHA Requirements for the Initial Access Centres and VCHA will submit **[or hereby submits, as applicable]** a Preliminary Project Proposal for each Initial Access Centre in accordance with Section 1.3 above.

## 2. PRELIMINARY APPROVAL PROCESS

### 2.1 Content of Preliminary Project Proposals

The Preliminary Project Proposal will contain the following information in sufficient detail to enable VCHA to fully review and consider the Preliminary Project Proposal:

- (a) a description of the Project;
- (b) a description of the proposed location of the Project, including description of any other buildings or facilities to be located on or adjacent to the site **[NTD: How will locations be determined?]**;
- (c) an outline of :

- (1) the proposed building solution and design including the VCHA Requirements and Lifecycle Costs **[NTD: to be defined]**;
- (2) an analysis of alternative building and design solutions including refurbishment, remodelling and new build together with reasons for the preferred option;
- (3) a preliminary design in sufficient detail to provide indicative costing (including Life Cycle Costs) for the preferred option for the Project;
- (d) an outline of how Partner Co will procure and deliver the Project, including its subcontracting strategy;
- (e) a report setting out Partner Co's performance to date in relation to previously approved Access Centres, if any, in accordance with performance measures as reasonably requested by VCHA (including design, construction and operation costs); and
- (f) a preliminary schedule setting out the design, construction and occupancy timelines.

## **2.2 Liaison between Partner Co, VCHA and User Groups**

In developing a Preliminary Project Proposal Partner Co will:

- (a) meet with VCHA and potential Access Centre user groups identified by VCHA to identify demands and needs for the Project; and
- (b) use reasonable commercial efforts to accommodate the requirements of VCHA and the user groups into the Preliminary Project Proposal in a cost effective manner.

## **2.3 Consideration of a Preliminary Project Proposal by VCHA**

VCHA will consider Preliminary Project Proposals submitted by Partner Co in a timely manner and VCHA will not unreasonably withhold or delay its consent to a Preliminary Project Proposal. If VCHA determines that any material aspects of the Preliminary Project Proposal are not in compliance with applicable requirements, or are otherwise unsatisfactory, VCHA will advise Partner Co in writing, and will meet with Partner Co as Partner Co may reasonably request, and permit Partner Co a reasonable opportunity to address such deficiencies and resubmit the Preliminary Project Proposal.

## **2.4 VCHA Response to a Preliminary Project Proposal**

If VCHA approves a Preliminary Project Proposal (as may be amended or modified by agreement of the parties), then the relevant Project will then be a **Stage 1 Approved Project** or be referred to as having received **Preliminary Approval**, as the context requires.

## 2.5 Partner Co's Costs

If a Preliminary Project Proposal submitted in accordance with this Schedule does not receive Preliminary Approval then Partner Co's costs in relation to the proposal will be borne by Partner Co.

## 2.6 Rejected Projects

If a Preliminary Project Proposal does not receive Preliminary Approval then VCHA may proceed with the procurement or development of the Project in any manner as VCHA may decide including with third parties. In such event, and subject to the provisions of Section 7 of this Agreement, any concepts, approaches, design solutions or other information contained in a Preliminary Project Proposal may be used by VCHA without compensation to Partner Co.

## 3. FINAL APPROVAL PROCESS

### 3.1 Development of a Final Project Submission

On receipt of Preliminary Approval for a Project, Partner Co will diligently develop the Preliminary Project Proposal into a detailed submission for each Access Centre (a "**Final Submission**") and will submit the Final Submission to VCHA as soon as is reasonably practicable.

### 3.2 Content of Final Submission

Partner Co will include the following in each Final Submission:

- (a) a draft of the Agreement to Lease in respect of the relevant Access Centre identifying any material changes or amendments proposed to the form of the Agreement to Lease together with the reasons for any such changes or amendments;
- (b) detailed plans and drawings; **[NTD: Specify level of detail]**;
- (c) a detailed construction plan, including Partner Co's subcontracting plan;
- (d) a description of all required planning permissions and any other required Permits and the process by which Partner Co will obtain them;
- (e) a detailed operations, facility management and maintenance plan including Partner Co's subcontracting plan;
- (f) a full financial model including:
  - (1) **[IRR]**;
  - (2) amounts of Basic and Additional Rent;

- (3) detailed Capital Costs **[to be defined]** and Lifecycle Costs **[to be defined]** estimates together with all supporting documentation; and
- (4) **[others]**;
- (g) a value for money assessment setting out how the Final Submission represents value for money taking into account both estimated Capital Cost and Life Cycle Costs;
- (h) a report setting out Partner Co's performance to date in relation to previously approved Access Centres, if any, including a description of improvements to be included in the Project;
- (i) a detailed schedule and method statement setting out the stages and timelines for the period between achieving Final Approval and occupancy of the Access Centre;
- (j) **[others]**.

### 3.3 Liaison between Partner Co, VCHA and User Groups

In developing a Final Submission, Partner Co will liaise with VCHA and the relevant Access Centre user groups identified by VCHA, and Partner Co will use reasonable commercial efforts to accommodate the requirements of VCHA and such user groups into the Final Submission.

### 3.4 Approval Criteria

VCHA will assess each Final Submission against the following criteria:

- (a) the amount of Basic Rent being no greater than the amount set out in the VCHA Requirements;
  - (b) a determination by VCHA, acting reasonably, that the Final Submission:
    - (1) meets the VCHA Requirements;
    - (2) demonstrates value for money;
    - (3) demonstrates it incorporates improvements reasonably available from previously approved Access Centres; and
  - (c) **[others]**,
- (collectively, the “**Approval Criteria**”).

### 3.5 Consideration of a Final Submission by VCHA

VCHA will consider a Final Submission submitted by Partner Co and VCHA will not unreasonably withhold or delay its approval of a Final Submission. If, acting reasonably, VCHA finds that any material aspects of a Final Submission are unsatisfactory or if VCHA, acting

reasonably, determines it requires additional information from Partner Co, VCHA will notify Partner Co and permit Partner Co to address such deficiencies and resubmit the Final Submission as soon as reasonably practicable.

### **3.6 Final Approval**

As soon as reasonably practicable after Partner Co has submitted a Final Submission, VCHA will give written notice to Partner Co whether VCHA:

- (a) approves the Final Submission (in which case the relevant Project will be referred to as having received “Final Approval” or as being an “Approved Project” as the context requires); or
- (b) rejects the Final Submission and the reasons for such rejection.

### **3.7 Resubmission**

If VCHA rejects a Final Submission:

- (a) Partner Co may within **[XX]** Business Days of receiving the rejection resubmit to VCHA a revised Final Submission which addresses the reasons for the initial rejection; and
- (b) VCHA will consider the revised Final Submission in accordance with Sections 3.5 and 3.6 of this Schedule.

### **3.8 Exclusivity in relation to a Final Submission which is not Approved**

If a Final Submission does not receive Final Approval, then VCHA may in its discretion procure the relevant Access Centre outside the terms of this Agreement.

### **3.9 Partner Co's Costs**

If a Final Submission submitted in accordance with this Schedule does not receive Final Approval, then Partner Co's costs in relation to the Final Submission will be **[NTD: TBD]**

### **3.10 Dispute Resolution**

If VCHA rejects a Final Submission, Partner Co may refer the matter for consideration under the Dispute Resolution Procedure within ten Business Days after receiving written notice of VCHA's decision. If, following a referral to the Dispute Resolution Procedure, it is agreed or determined that the Project rejected by VCHA met the Approval Criteria and that VCHA was not otherwise entitled to reject the Final Submission, VCHA will declare that the relevant Project has received Final Approval.

## **4. APPROVAL PERIOD**

### **4.1 Time for Approval**

Each Preliminary Project Proposal and each Final Submission will be valid for a period of three months from the date of its submission by Partner Co.

### **4.2 VCHA Inaction**

If by the end of the three month period referred to in Section 4.2 VCHA has not in relation to a Preliminary Project Proposal or a Final Submission :

- (a) approved or rejected that Preliminary Project Proposal or Final Submission in accordance with the procedures set out in this Schedule (or has not given any notification of VCHA's response to the Preliminary Project Proposal or Final Submission) then:
  - (1) Partner Co will be entitled to withdraw the Preliminary Project Proposal or Final Submission;
  - (2) **[costs?]**; and
  - (3) the provisions of this Agreement will continue to apply in respect of such Access Centre.

## **5. CHANGES TO VCHA'S REQUIREMENTS**

If VCHA wishes to make a material change to any of the VCHA Requirements in relation to a Project after the Preliminary Project Proposal has been submitted then:

- (a) Partner Co will negotiate with VCHA in good faith as to the implications of such changes on the Preliminary Project Proposal or Final Submission (as the case may be) and will seek to agree to accommodate the changes by agreement with VCHA; and
- (b) if agreement has not been reached pursuant to Section 5(a) within 20 Business Days, Partner Co may withdraw the Preliminary Project Proposal or the Final Submission (as the case may be).

## **6. IMPLEMENTATION**

### **6.1 Implementation of Approved Project**

If a Project receives Final Approval, Partner Co will implement the Project on the terms of the Final Submission (as may be amended from time to time by agreement between Partner Co and VCHA) and in accordance with the relevant Agreement to Lease.

## SCHEDULE C

### COMMUNICATIONS PROTOCOLS

#### 1. Communications Roles

1.1 VCHA and Partner Co will, throughout the Term, share certain responsibilities for communications, including community relations, stakeholder consultation, media relations and crisis communications.

1.2 This Schedule may be amended through mutual agreement.

#### 2. Categories of Communications:

2.1 The following categories of communications are covered by this Section:

- (a) **Communications Planning** - developing plans and strategies in support of the Projects, and integrating the categories listed below;
- (b) **Community Relations** - keeping affected communities informed throughout, including overall Project information and any construction or traffic management communications;
- (c) **Consultation** - involving stakeholders in decisions, as appropriate, throughout the rezoning, property acquisition, construction and operations phases;
- (d) **Media relations** - providing Project updates and responding to issues as they arise, throughout the rezoning, property acquisition, construction and operations phases; and
- (e) **Emergency Communications** - crisis communications planning and preparedness in relation to the design, construction and operations/maintenance phases.

2.2 Notwithstanding the lead and supporting responsibilities described below, for all categories of communication, paid advertising will be directed, coordinated, and approved by VCHA.

#### 3. Lead and Supporting Roles

VCHA will direct and coordinate all communications activities related to the Projects, including communication planning, community relations, consultation, media relations, emergency communications and paid advertising.

Partner Co will be expected to provide support to these activities, including providing an appropriate level of resourcing to respond to communications needs related to the Projects throughout the term of the leases entered into for each Project. In addition, Partner Co will



support VCHA in demonstrating publicly that public private partnerships, in general, and the Projects, in particular, provide value for money for taxpayers.