

**RESIDENTIAL CARE SERVICE AGREEMENT**

This Agreement made the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ (the “**Effective Date**”).

BETWEEN:

**Northern Health Authority  
600 – 299 Victoria Street  
Prince George BC V2L 5B8**

Attention:

(the “**Authority**”)

AND:

**[legal name of Service Provider]**

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

Attention:

(the “**Service Provider**”)

WHEREAS:

- A. The Authority has been created pursuant to the *Health Authorities Act* of British Columbia and has the ability to enter into agreements relating to the delivery of health care services, including residential care services such as the Services, within its geographic area of responsibility.
- B. The Service Provider has the expertise, resources and financial means to provide quality residential care services.
- C. The Authority and the Service Provider wish to work together in a collaborative manner in connection with the delivery of residential care services and wish to enter into this Agreement to set out the manner in which the Service Provider will provide the Services.

NOW THEREFORE 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 is hereby acknowledged, the parties to this Agreement agree as follows:

**Section 1 - Interpretation and Legal Relationship**

1.1 In this Agreement:

“**Agreement**” means this Residential Care Service Agreement, including the Schedules to this Agreement, as it or they may be amended or supplemented from time to time, and the

expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement and not to any particular Section or other portion of this Agreement;

**"Applicable Law"** means all present and future laws, statutes, ordinances, regulations, municipal by-laws, treaties, judgments and decrees applicable to any Person, property or event relating to this Agreement, and, whether or not having the force of law, all official directives, rules, consents, approvals, authorizations, standards, procedures, guidelines, orders and policies of any Governmental Authority having or purporting to have authority over that Person, property or event;

**"Authority Policies"** means those written standards, policies, guidelines and directives which have been or will be established by the Authority from time to time and which are applicable to the Services, the Facility or the Service Provider, including

**"Client"** means an Eligible Person who at the direction of the Authority receives Services from the Service Provider;

**"Confidential Information"** means any and all information of which the Service Provider becomes aware, or which the Service Provider receives (either directly or indirectly) from the Authority or otherwise, as a result of, in connection with or relating to the Services, the Facility or this Agreement, including all Personal Information and Records and all business, technical and other proprietary information of the Authority, except for Confidential Information that the Service Provider can prove was: (i) already known to the Service Provider at the time of disclosure; (ii) part of the public domain at the time of disclosure; or (iii) acquired independently from another Person and not subject to obligations of confidentiality, provided that none of the foregoing exceptions will apply to Personal Information or Records;

**"Eligible Person"** means an individual who meets the Ministry's eligibility criteria, as established from time to time, for admission to residential care;

**"Facility"** means the premises described in Schedule A together with all fixtures and assets employed therein for the delivery of the Services;

**"Funds"** has the meaning given to it in Section 3.1;

**"Governmental Authority"** means any Canadian government, including any federal, provincial, territorial or municipal government and any governmental agency, tribunal, commission or other authority exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to government;

**"Home and Community Care Policy Manual"** means the policy manual published by the Ministry outlining its requirements relating to the provision of the Services, the Facility or the Service Provider, as it may be amended or replaced by the Ministry from time to time;

**"Ministry"** means the British Columbia Ministry of Health, or such other ministry as may be assigned responsibility for residential care;

**“Ministry Policies”** means those written standards, policies, guidelines and directives which have been or will be established by the Ministry from time to time and which are applicable to the Services, the Facility or the Service Provider, including the Home and Community Care Policy Manual;

**“Performance Risk Assessment”** means the Authority’s assessment of the extent to which a residential care service provider is or is not providing residential care services in accordance with the Authority’s residential care service delivery and organizational standards:

**“Person”** means any individual or any incorporated or unincorporated entity or association of any kind;

**“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 Authority, in relation to providing the Services;

**“Province”** means the Province of British Columbia;

**“Records”** means records (as defined in the *Freedom of Information and Protection of Privacy Act*) which are collected, acquired, or obtained by or on behalf of the Authority, in relation to providing the Services;

**“Services”** means those services to be provided by the Service Provider hereunder as defined and set out in Schedule A;

**“Significant Risk”** means that, in the sole discretion of the Authority, the health or safety of a Client or Clients, staff or members of the public is or may be jeopardized by the Service Provider’s non-compliance with this Agreement or other acts or omissions;

**“Suitability Risk Assessment”** means the Authority’s assessment of the extent to which the facility used for the provision of residential care services is or is not suitable to meet the needs of Clients;

**“Term”** has the meaning given to it in Section 10.1;

The word **“including”** when following any general term or statement will not limit the 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 within the broadest possible scope of the general term or statement; and

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 British Columbia statute.

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

Schedule A	Services
Schedule B	Payment for Services and Financial, Statistical and Other Data Reporting
Schedule C	Performance Management Framework

Schedule D	Insurance Requirements
Schedule E	Custody and Control of Personal Information

In the event of conflict or inconsistency between the main body of this Agreement and the Schedules hereto except for Schedule E, the main body of this Agreement will govern to the extent of the conflict and to the extent permitted by Applicable Law. In the event of conflict or inconsistency between the main body of this Agreement, or any other Schedule hereto, and Schedule E, Schedule E will govern to the extent of the conflict.

- 1.3 Wherever in this Agreement the context so requires, the singular number will include the plural number and vice versa.
- 1.4 The division of this Agreement into paragraphs, sections, subsections and other subdivisions and the insertion of headings are for convenience of reference only and will not affect or be utilized in the construction or interpretation hereof.
- 1.5 The invalidity or unenforceability of any provision of this Agreement will not affect the other provisions hereof and this Agreement will be construed in all respects as if such invalidated provisions were omitted.
- 1.6 Time will be of the essence of this Agreement.
- 1.7 This Agreement is not intended to, and does not in any way change the ownership or governance of the Service Provider or the Facility. The Service Provider remains a separate legal entity and an independent contractor of the Authority.
- 1.8 This Agreement is not intended to, and does not create an employment or agency relationship between the parties hereto, and the Service Provider will not in any manner whatsoever commit or purport to commit the Authority to the payment of any money to any Person or to any other obligation.

## **Section 2 – Services and Other Service Provider Responsibility & Accountability**

The Service Provider will:

- 2.1 provide the Services to Clients in the Facility in accordance with the terms of this Agreement ensure that the Services are made available to the Authority on a continuous and consistent basis throughout the Term;
- 2.2 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; and (b) the standards set by the Authority from time to time in Schedule C;
- 2.3 take such measures as are necessary to ensure that there are no health or safety risks to Clients, staff or members of the public, including such measures as may be required by: (a) the Authority; (b) the licenses, permits and other authorizations referred to in Section 4; (c) Applicable Law; and (d) prudent management practices;

- 2.4 ensure that the Facility is, at all times, a safe and appropriate environment for Clients, staff and members of the public;
- 2.5 at the Authority's request: (a) develop and deliver to the Authority a capital maintenance and redevelopment plan ("**Capital Plan**"), in form and content satisfactory to the Authority, which plan will include a timeframe to maintain and/or upgrade or rebuild the Facility, if required, and to address any issues arising out of the Suitability Risk Assessment; and (b) maintain and revise such Capital Plan from time to time. The Service Provider will implement such Capital Plan, as revised from time to time, in accordance with the timeframes set out therein;
- 2.6 ensure (and the Service Provider hereby represents) that it does and will at all times own or, except for any subcontracting permitted hereunder, have the exclusive right to use the Facility;
- 2.7 collaborate and participate with the Authority to develop, and will then implement, such changes as the Authority may require in order to add or alter residential care capacity, improve the quality of residential care across all or part of the Authority region and reduce costs to the health services system, all within such period of time as the Authority may require;
- 2.8 collaborate and participate with the Authority to develop, and will then implement, such changes as the Authority may require in connection with the revision of its service delivery models to achieve its long-term goal 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 Authority 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;
- 2.9 take (and will cause its agents, servants, subcontractors and employees to take) steps to ensure avoidance of conflicts of interest between the interests of the Service Provider or any of its agents, servants, subcontractors and employees, on the one hand, and those of the Authority, on the other. If the Service Provider or any of its agents, servants, subcontractors or employees become aware of any possibility of any such conflicts, the Service Provider will promptly disclose to the Authority the facts and circumstances pertaining to the same; and
- 2.10 promptly advise the Authority in writing of any circumstance 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.

### **Section 3 – Funding**

- 3.1 The Authority will, at its sole discretion, determine the amount of funding to be provided to the Service Provider as payment for the Services during the Term, which amount may be adjusted from time to time throughout the Term by the Authority on the terms set out herein (the "**Funds**") and will provide such Funds to the Service Provider in accordance with and subject to the terms of this Agreement, including Schedule B. The Service Provider will accept such payment in full satisfaction of the financial obligations of the Authority under this Agreement.
- 3.2 If the Ministry or any other relevant provincial ministry increases or decreases the funding allocation to the Authority or provides standards, policies, guidelines or directives to the Authority or if there is a change in Applicable Law, such that the Authority at its sole discretion determines that an amendment to the funding provisions of this Agreement, including an adjustment to the

Funds or an amendment to the terms upon which the Funds are provided, is necessary or desirable (which adjustment, for greater certainty, may include an increase or decrease in the amount of the Funds and which increase or decrease may be retroactive) (collectively, a “**Funding Amendment**”) or if the Authority at its sole discretion otherwise determines that such a Funding Amendment is necessary or desirable, then:

- (c) prior to making any Funding Amendment but without limitation to its rights pursuant to Section 3.2(d), the Authority will discuss the Funding Amendment, including any contemplated changes to the number of Clients, types of Clients, extent and level of Services and amount payable for the Services as a result of the Funding Amendment, with the Service Provider. Promptly following such discussion, the Service Provider will develop a plan, in form and content acceptable to the Authority, that minimizes the negative effects of such changes on the Service Provider, the Clients and the Authority; and
  - (d) notwithstanding any provision herein to the contrary, the Authority may unilaterally impose the Funding Amendment, and such amendment will be binding on the Service Provider on such date as the Authority may specify by notice to the Service Provider. Any disagreement between the Service Provider and the Authority regarding any Funding Amendment will not be subject to dispute resolution in accordance with Section 9.
- 3.3 Notwithstanding any other provision of this Agreement, the provision of funding by the Authority to the Service Provider pursuant to this Agreement is subject to sufficient funding being available to the Authority from the Province in the fiscal year of the Authority during which the payment becomes due.
- 3.4 The Service Provider will comply with Schedule B, including the financial, statistical and other data reporting requirements set out in Schedule B.
- 3.5 The Authority will not be responsible or liable for any operating or working capital deficits incurred in the Service Provider’s operations or as a result of this Agreement or otherwise.
- 3.6 Funds provided by the Authority to the Service Provider pursuant to this Agreement will be utilized solely for the provision of the Services to Clients

#### **Section 4 - Legislation and Policy Requirements**

The Service Provider will, at all times during the Term:

- 4.1 comply with all Applicable Law, Ministry Policies and Authority Policies; and
- 4.2 at its sole expense obtain, comply with all terms and requirements of, and maintain in good standing, all licenses, permits and other authorizations required by Applicable Law (including under the *Health Act*, the *Community Care and Assisted Living Act* or the *Hospital Act*, as applicable) or as otherwise required in accordance with the terms of this Agreement.

**Section 5 - Labour and Employment**

5.1 The parties acknowledge that certain Persons providing the Services may also be employed or engaged to perform services for the Authority, and consequently the parties agree that no Person employed or engaged by or otherwise associated with the Service Provider in the performance of the Services (whether or not such Person is also employed by the Authority to perform services) is, in connection with such Person's performance of the Services:

- (a) an employee of or in an employment relationship of any kind with the Authority; or
- (b) in any way entitled to any terms or conditions of employment or any employment benefits of any kind whatsoever from the Authority under any collective agreement or otherwise including private programs or coverage and statutory programs or coverage, whether under the *Employment Standards Act*, the *Workers' Compensation Act*, the *Employment Insurance Act* (Canada), health plan contributions, or otherwise.

The Authority will have no liability or responsibility for the withholding, collection or payment of income taxes, employment insurance, statutory or other taxes or payments of any other nature on behalf of, or for the benefit of, the Service Provider or any other Persons in connection with the provision of the Services.

5.2 The Service Provider is the sole decision-making authority regarding planning and implementing human resource issues for its own personnel with respect to the Facility and the Services.

5.3 With respect to the Facility and the Services, the Service Provider has the full rights of an employer including the right:

- (a) to ratify a collective agreement;
- (b) to control the selection, retention, discipline, layoff and termination of personnel;
- (c) to develop personnel policies and practices;
- (d) if applicable, to direct participation with the Health Employers Association of British Columbia ("**HEABC**"); and
- (e) if applicable, to contract out services in accordance with the *Health and Social Services Delivery Improvement Act*, the *Health Sector Partnerships Agreement Act*, and all other Applicable Law provided that:
  - (i) the Service Provider notifies the Authority of its intention and plan regarding such contracting out; and
  - (ii) any plans to contract out any services relating to direct care delivery require the prior written approval of the Authority, which approval will not be unreasonably withheld.

5.4 The Service Provider will comply with all medical, nursing and other professional staff governance provisions binding upon the Service Provider (such as reporting requirements) and will ensure

that the Services are provided only by or under the supervision of competent and qualified personnel meeting the professional qualifications required by Applicable Law.

- 5.5 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 records checks to be made in respect of all new individuals employed or contracted by the Service Provider to provide Services to Clients, prior to the Service Provider hiring or contracting for the services of such individuals.
- 5.6 The Service Provider will ensure that all staff maintain a level of training appropriate for the provision of quality care.
- 5.7 The Service Provider is fully responsible to the Authority for acts and 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.

### **Section 6 - Performance Management System and Accreditation**

- 6.1 Without limitation to its obligations to be responsible for the quality of the Services pursuant to Section 2.3, the Service Provider will comply with Schedule C, and the Authority and the Service Provider will review and assess the Services provided by the Service Provider according to the Authority's performance management system described therein.
- 6.2 The Service Provider will allow employees, agents, contractors or other representatives of the Authority, at the Authority's request at any time from time to time and without notice to the Service Provider, to monitor and have access to the Facility and to any Client in the 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 Authority's performance management system referred to in Section 6.1.
- 6.3 The Service Provider is required to be accredited with the Canadian Council on Health Services Accreditation or meet the standards of another quality assurance process approved by the Authority at all times during the Term at its own cost. If on the Effective Date the Service Provider does not hold a current accreditation certificate or meet the standards of such other Authority-approved quality assurance process ("**Accreditation**"), the Service Provider will: (a) begin such process within 1 year of the Effective Date; (b) achieve Accreditation within 2 years of the Effective Date; and (c) maintain Accreditation throughout the remainder of the Term. The Service Provider will provide the Authority with the information set out in Schedule C and such other information as the Authority may require in connection with its compliance with this Section 6.3.

### **Section 7 - Insurance and Indemnification**

The Service Provider acknowledges that it will be responsible for its operations and organization, the Facility and the Services. Without limiting the generality of the foregoing, the Service Provider will:

- 7.1 at all times throughout the Term, comply with Schedule D, including maintaining the insurance described therein and any other insurance that the Service Provider is required to carry by Applicable Law or which it, acting reasonably, considers necessary to cover any risks that it may



assume as a result of entering into this Agreement, providing the Services, owning and operating the Facility and otherwise carrying on its business;

- 7.2 at all times throughout the Term, maintain such risk management practices as a prudent and reasonable Person providing services similar to the Services would maintain; and
- 7.3 indemnify and save harmless the Authority and its members, directors, officers, employees and agents from and against any and all losses, claims, damages, actions, causes of actions, costs and expenses (including legal fees on a solicitor and own client basis) that any of them may sustain, incur, suffer or be put to at any time, either before or after the termination or expiration of this Agreement, where the same or any of them are based upon, arise out of or occur, directly or indirectly because of: (a) any act or omission of, or breach of this Agreement by the Service Provider (or of any agent, employee, officer, director or subcontractor of the Service Provider); (b) the provision of the Services; or (c) the operation of the Facility, except for liability arising solely and directly out of any independent negligent act by the Authority under this Agreement.

## **Section 8 - Records and Confidentiality**

- 8.1 In addition to its reporting obligations set out in this Agreement, the Service Provider will promptly make available to the Authority or its representatives at the request of the Authority, all such Confidential Information and other relevant information as may be required by Applicable Law, Authority Policies, Ministry Policies or as may otherwise be maintained by the Service Provider in connection with the operation of the Facility and the provision of the Services, in order to, and in such form and content that will allow the Authority to determine whether the Service Provider is in compliance with the terms of this Agreement.
- 8.2 The Service Provider will maintain, document and manage all information described in Section 8.1 in accordance with all Applicable Law, including, as applicable, the *Community Care and Assisted Living Act*, the *Hospital Act* and the *Freedom of Information and Protection of Privacy Act* as well as Authority Policies and Ministry Policies. Without limiting the generality of the foregoing, the Service Provider will comply with Schedule E.
- 8.3 **[Except to the extent required by Applicable Law, including the *Freedom of Information and Protection of Privacy Act*,]** the Service Provider will treat as confidential and will not, without the prior written consent of the Authority, publish, release or disclose, or permit to be published, released or disclosed either before, during or after the Term, any Confidential Information nor will the Service Provider use or exploit, directly or indirectly, any Confidential Information:
- (a) for any purpose other than for the fulfilment of the Service Provider's obligations under this Agreement; or
  - (b) to any Person other than to its employees, contractors, professional advisors and agents who need to know such Confidential Information to permit them to perform or advise with respect to the Services and who agree to be bound by the provisions of this Section 8.3 and Schedule E.

- 8.4 **[To the extent permitted by Applicable Law, including the *Freedom of Information and Protection of Privacy Act*,]** the Authority will, in respect of each Client, promptly provide the Service Provider with the Personal Information that the Authority possesses about the Client and which the Authority determines that the Service Provider requires in order to provide the Services to the Client, and will identify to the Service Provider the other providers of care to such Client, all in order to ensure the continuity of care and the safety and well-being of the Client, provided such Personal Information relates to the Services and is within the Authority's knowledge, possession and control.

## **Section 9 - Dispute Resolution**

- 9.1 The Service Provider and the Authority agree to work together towards resolution of disputes in accordance with this Section 9. Subject to Sections 9.5 and except for any disputes relating to: (a) termination of this Agreement; (b) Section 13; (c) the placement of Eligible Persons; (d) funding issues; (e) a Significant Risk; (f) matters governed by Applicable Law (including the *Continuing Care Act*, the *Community Care and Assisted Living Act* and the *Hospital Act*, as applicable), none of which will be subject to this Section 9, any dispute, controversy or claim arising between the parties with respect to or relating to this Agreement will be promptly referred first to the appropriate representative of each of the Authority and the Service Provider. Unless such representatives agree to proceed directly to arbitration, if such representatives have not resolved such dispute within 10 days after the dispute is referred to them, the dispute will be referred to mediation.
- 9.2 A dispute referred to mediation pursuant to Section 9.1 will be mediated by a neutral Person agreed to by the parties and will be administered under the British Columbia International Commercial Arbitration Centre's Commercial Mediation Rules. If the dispute is not settled within 30 days after the dispute is referred to mediation, then either party may refer the dispute to arbitration.
- 9.3 At any time after the expiry of the 30 day period referred to in Section 9.2 either party may elect to commence arbitration by giving the other party written notice of its intention to do so (the "**Arbitration Notice**"). Within 7 days after receipt by the other party of the Arbitration Notice, the matter will be submitted to arbitration under the *Commercial Arbitration Act*. The award of the arbitrator will be final and binding on the parties.
- 9.4 The non-prevailing party will pay for its own expenses as well as the fees of the mediator and/or arbitrator and the administrative costs of the mediation and/or the arbitration, but not the legal fees and costs of the prevailing party. The place of the mediation and/or arbitration will be [●], British Columbia. Nothing in this Agreement, including this Section 9, will prevent either party from applying to a court of competent jurisdiction for interlocutory or interim relief or will prevent the Authority, in the case of a Significant Risk, from taking any action it deems necessary, including removing a Client from the Facility.

## **Section 10 - Term and Termination**

- 10.1 The term of this Agreement will commence on the Effective Date and will continue until the date that is 20 years thereafter unless earlier terminated in accordance with this Section 10 (the "**Term**").

10.2 Notwithstanding any other provision of this Agreement, this Agreement may be terminated:

- (a) at the option of the Authority, upon the occurrence of any of the following events:
- (i) any license, permit or other authorization referred to under Section 4 is terminated, suspended, revoked or expires;
  - (ii) a public administrator is appointed for the Facility;
  - (iii) a Significant Risk;
  - (iv) an order is made, a resolution is passed or a petition is filed for the Service Provider's liquidation or winding up; 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 Authority's reasonable opinion based on generally accepted accounting principles, to carry on business as a going concern;
  - (v) a breach of Section 12.1;
  - (vi) non-compliance with financial, statistical and other data reporting requirements as contemplated by Schedule B, Section 6;
  - (vii) non-compliance with performance management obligations or reporting requirements as contemplated by Schedule C, Section 4; or
  - (viii) a breach of Schedule E or any provisions of the *Freedom of Information and Protection of Privacy Act* which directly bind the Service Provider as contemplated by Schedule E, Section 12,

in which case the Authority 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 Authority, if the Service Provider has failed to comply with a material term or condition of this Agreement that is not set out in Section 10.2(a) or Section 10.2(c), in which case:
- (i) the Authority 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 Authority 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; or
  - (B) if such default cannot reasonably be remedied within the Remedy Period, then the Service Provider will promptly notify the Authority in writing that this is the case (together with the reasons therefore) and, within 30 days of the date of the Default Notice, will deliver to the Authority a plan satisfactory to the Authority for rectification of such default, which plan will include a time frame within which rectification will be achieved; and
- (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 Authority before such date; or
  - (B) delivers a rectification plan that is satisfactory to the Authority and remedies such default to the satisfaction of the Authority on or before the date specified in the rectification plan;
- (c) at the option of the Authority:
  - (i) which option is exercisable at any time following the occurrence of a breach by the Service Provider of Section 2.9; or
  - (ii) which option is exercisable at any time if the Authority, at its sole discretion, determines that the Facility is unable to meet the needs of Clients or is otherwise no longer needed, provided that:
    - (A) if the Authority, at its sole discretion, determines that the future need for the Services is less than current supply within a particular geographic area, then the Authority will first terminate the agreement with the service provider having the Suitability Risk Assessment that is the least satisfactory (as determined by the Authority at its sole discretion) and if the Authority, at its sole discretion, determines that more than one service provider's facility has a Suitability Risk Assessment that is unsatisfactory (as determined by the Authority at its sole discretion), then the Authority will terminate the agreement with the service provider that the Authority in its sole discretion determines to have the Performance Risk Assessment that is the least satisfactory (as determined by the Authority at its sole discretion); or
    - (B) if the Authority, at its sole discretion, determines that the future need within a particular geographic area is for different types of residential

care services other than the Services, then the Authority will issue a request for proposal to **[an/all?]** to allow such service providers the opportunity to update their facility to the Authority's satisfaction, or to convert their facility to the required type of facility, and if such proposal is not accepted by the Authority, then the Authority will terminate the agreement with the at risk service provider,

if written notice is given to the Service Provider that the Authority wishes to terminate this Agreement pursuant to this Section 10.2(c) on a date that is no less than 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 365 day time period or such other period of time; or

- (d) at the option of the Service Provider if the Authority fails to pay any undisputed amount due to the Service Provider hereunder in accordance with the payment obligations in this Agreement, provided that the following process is followed:
- (i) the Service Provider will provide the Authority with written notice of such non-payment with a 30 day deadline for payment (the "**Payment Request**");
  - (ii) if non-payment continues after the 30 day deadline set out in Section 10.2(d)(i), then the Service Provider will provide the Authority with written notice of the continued non-payment (the "**Payment Demand**"); and
  - (iii) if non-payment continues for 30 days after receipt by the Authority of the Payment Demand, then the Service Provider may terminate this Agreement upon the provision of no less than 60 days written notice to the Authority.

10.3 From the date that notice of such termination is given by either party pursuant to Section 10.2 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 Authority a transition plan, in form and content satisfactory to the Authority, 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 Authority may determine.

10.4 The Authority may request that the Service Provider continue to provide the Services after the effective date of termination or expiration of this Agreement, for such period of time as the Authority may deem necessary up to a maximum of six months after such effective date of termination or expiration (the "**Transition Period**") in order to ensure the welfare of the Clients until reasonable alternate arrangements can be made for the Clients by the Authority as outlined in Ministry Policies, Authority Policies and Applicable Law. If the Authority 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 Authority 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 10.4(a) during the Transition Period and otherwise will be under no further obligation to the Service Provider.

10.5 Without limitation to any other rights available to the Authority hereunder or otherwise in such circumstances, the Authority may, at its option, on the happening of any of the events described in Sections 10.2(a), (b) or (c) take any actions, whether in its own name or in the name of the Service Provider, that may reasonably be required to cure the default, in which case all payments, costs and expenses incurred therefor will be payable by the Service Provider to the Authority on demand and set off against any present or future sums owing by the Authority to the Service Provider.

### **Section 11 – Amendment**

11.1 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 Authority may, by providing notice of such amendments to the Service Provider in writing, unilaterally amend all or any part of: (a) this Agreement if 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 Authority 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 Authority may in its notice require.

### **Section 12 - No Assignment, Transfer, Sale etc.**

- 12.1 The Service Provider will not, without the prior written approval of the Authority, which approval will not be unreasonably withheld:
- (a) subcontract any obligation of the Service Provider under this Agreement except to the extent that such subcontracting is permitted by Section 5.3(e) without the need for the Authority's prior written approval;
  - (b) directly or indirectly transfer, sell or otherwise dispose of voting, effective or de facto control of the Service Provider to another Person;
  - (c) amalgamate, merge, consolidate or enter into an arrangement with another Person;
  - (d) assign, either directly or indirectly, this Agreement or any of its rights or obligations under this Agreement;
  - (e) sell, transfer, lease, sublease or otherwise dispose of all or a material part of its rights or interest in the Facility, or of the assets used for or in connection with the provision of the Services to another Person; or

- (f) pledge, encumber, hypothecate or otherwise grant, create or permit to be created a security interest, charge, encumbrance or lien in this Agreement in whole or in part or any rights received hereunder.
- 12.2 The Service Provider will seek the approval referred to in Section 12.1 at least 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 Authority with all information and documents that the Authority reasonably requests concerning any of the events listed in Section 12.1 above.
- 12.3 In determining whether or not to grant its approval pursuant to Section 12.1, the Authority 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 Authority, acting reasonably, deems to be necessary to ensure the continued and effective provision of the Services. The Authority 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). The Service Provider agrees to reimburse the Authority for all reasonable costs and expenses, including reasonable internal costs and legal fees and disbursements, incurred by the Authority in connection with any request for approval pursuant to Section 12.1.

### **Section 13 - No License or Interference with Statutory Powers**

- 13.1 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 Province or any of its agencies or from the Authority in order to provide the Services. Nothing in this Agreement is to be construed as interfering with the exercise by the Province or its agencies or the Authority or any Medical Health Officer 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 Authority or a Medical Health Officer to issue or renew, or constitutes consent or approval by the Authority or a Medical Health Officer to issue or renew, a license to operate the Facility;
    - (ii) constitutes any other consent or approval, pursuant to any Applicable Law (including the *Community Care and Assisted Living Act*, the *Health Act* or the *Hospital Act*), by the Authority or any official or other authorized Person under Applicable Law (including any Medical Health Officer) in respect of a license, permit or approval to operate the Facility; and
  - (b) any obligations of the Service Provider contained herein will be in addition to any requirements under Applicable Law (including the *Continuing Care Act*, *Community Care and Assisted Living Act* and the *Hospital Act*), and nothing contained herein will release the Service Provider of any requirements of any Applicable Law (including those of the Medical Health Officer under the *Community Care and Assisted Living Act* or the *Health Act*).

**Section 14 – Communications**

- 14.1 The Service Provider will participate with the Authority in regular communication through meetings between their respective representatives.
- 14.2 The Authority acknowledges that the Service Provider is expected to communicate with the public on general issues pertaining to the Services and the Facility. Communication regarding other matters, such as public health and safety issues affecting a wider community, to the extent that such matters may impact the Authority, will be planned and undertaken only with the prior approval of the Authority.

**Section 15 - Marketing and Promotion**

- 15.1 The Service Provider will not involve the Authority in any marketing, advertising or promotional activities without the prior written consent of the Authority, and if such consent is given and the Service Provider wishes to involve any Client in such activities, then the Service Provider will obtain the prior written consent of each Client (or the Client's legal representative) to the involvement of such Client in same.

**Section 16 - General Provisions**

- 16.1 This Agreement may not be assigned by the Service Provider, either directly or indirectly, except in accordance with Section 12.1. This Agreement enures to the benefit of and binds the parties hereto and their respective successors and permitted assigns.
- 16.2 This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties hereto pertaining to the subject matter hereof.
- 16.3 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.
- 16.4 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 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 this Agreement without regard to conflict of laws requirements. The parties hereto hereby attorn to the exclusive jurisdiction of the courts of British Columbia.
- 16.5 The obligations of this Agreement that by their nature should survive termination or expiration hereof, including the obligations of the Service Provider set out in Sections 7, 8, 10.3, 10.4, 10.5, 12.4, 13 and 16.5 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. No waiver of any provision hereof is binding unless it is in writing and signed by the parties except that any provision which gives rights or benefits to a particular party may be waived, signed only by the party that has rights under, or holds the benefit of, 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.

16.6 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.

**Section 17 – Notice**

17.1 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 individual representative of such party identified on the first page of this Agreement and will be validly given if delivered to such representative of such party at the addresses set out on the first page of this Agreement.

17.2 Any notice if validly delivered by personal delivery or registered mail, will be deemed to have been given:

- (a) on the business day of such delivery, if such notice is delivered before 3:00 p.m. (local time at the place of receipt) on a business day;
- (b) on the business day immediately following the date of delivery, if such notice is delivered after 3:00 p.m. (local time at the place of receipt) on a business day; and
- (c) on the business day immediately following the date of delivery, if such notice is delivered on a day that is not a business day.

17.3 Either party, may from time to time, advise the other party by notice in writing of any change of address or representative of the party giving such notice, and from and after the giving of such notice the address or representative therein specified will, for the purposes of this Section 17, be conclusively deemed to be the address or representative of the party given in such a notice.

This Agreement has been executed by the parties effective as of the Effective Date.

**On behalf of the Authority:**

Signature \_\_\_\_\_

Print Name \_\_\_\_\_

Print Title \_\_\_\_\_

**On behalf of [legal name of Service Provider]:**

Signature \_\_\_\_\_

Print Name \_\_\_\_\_

Print Title \_\_\_\_\_