

MASTER SERVICES AGREEMENT

BETWEEN:

ALBERTA HEALTH SERVICES

AND

[● INSERT NAME OF SERVICE PROVIDER]

Contract #:			MSA Effective Date:			
Location	Service Schedule	CLM Number	Town / City	Initial Occupancy Date	Expiry Date	Renewal Terms

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MASTER SERVICES AGREEMENT

This agreement is made effective the ● day of ● ("Effective Date").

BETWEEN

ALBERTA HEALTH SERVICES,
a corporation under the *Regional Health Authorities Act* (Alberta)
("AHS")

and

[● INSERT NAME OF SERVICE PROVIDER]

a body corporate incorporated under the laws of the Province of Alberta
OR a body corporate extra provincially registered under the laws of the
Province of Alberta OR other as applicable
(the "Service Provider")

Recitals:

- A. AHS has the legislative responsibility to ensure reasonable access to quality health services within the province of Alberta, including contracting for continuing care services;
- B. AHS may provide continuing care services directly, or may provide continuing care services indirectly by contracting with service providers who meet AHS' requirements;
- C. AHS requires the services of a service provider who will work closely, diligently and in good faith with AHS to ensure excellence in health care for those individuals who require continuing care services;
- D. AHS and the Service Provider wish to define and clarify their respective rights and obligations with respect to the supply of continuing care services and the terms upon which the continuing care services will be provided by the Service Provider; and
- E. This Agreement is the master agreement that governs the relationship between AHS and the Service Provider and contains the general terms and conditions governing the contractual relationship between them.

The parties therefore agree as follows:

Article 1

INTERPRETATION AND SCHEDULES

1.1 Relationship

The relationship sought by AHS with the Service Provider pertains to the delivery of continuing care and related services to AHS and goes to the core of the day-to-day business operations of AHS. Contracting for continuing care services creates a fundamental dependence by AHS on the Service Provider in respect of the services.

1.2 Definitions

Each capitalized term in this Agreement has the meaning stated in Schedule A, unless otherwise defined.

1.3 Interpretation

For the purposes of this Agreement:

- (a) "to its knowledge" means a statement of the party's senior officer's knowledge of the facts or circumstances to which the phrase relates after having made reasonable inquiries in connection with the facts and circumstances;
- (b) each of the terms "Article" and "Section" followed by a number or letter or both, refers to a specific Article or Section of this Agreement and unless expressly stated otherwise all references to "Article" and "Section":
 - (i) in the main body of this Agreement shall mean a reference to an Article or Section in the main body of this Agreement; and
 - (ii) in a Schedule shall mean a reference to an Article or Section in that Schedule;
- (c) "person" includes a natural person, a corporation, a partnership, a limited partnership, an association, a trustee, an executor, an administrator, a trust or an unincorporated organization;
- (d) any words that impart the singular number include the plural number and vice-versa;
- (e) any words that impart a gender include all genders;
- (f) references to "days" means calendar days unless "Business Days" are specified;
- (g) if an action is required to be taken on a day that is not a Business Day, the action will be required to be taken on the next day that is a Business Day;
- (h) time periods within or following which any payment is to be made among the parties or act is to be done are calculated by excluding the date on which the period commences and including the day on which the period ends;
- (i) accounting terms are to be construed in accordance with prevailing Canadian generally accepted accounting principles;
- (j) all references to sums of money are references to Canadian currency; and
- (k) any reference to a statute includes and is deemed to be a reference to the statute and the regulations under it, the amendments made to it, and to any statute or regulation that is passed which has the effect of supplementing or superseding the statute referred to or the regulations under it.

1.4 Severability

If any term of this Agreement is held to be unenforceable by a court of competent jurisdiction, the provision will be severed from this Agreement and will not affect the enforceability of the remainder of this Agreement unless to do so would affect the entire purpose of this Agreement.

1.5 Headings and Format

The division of this Agreement into Articles and Sections and the insertion of the recitals and headings are for convenience of reference only and do not affect the interpretation of this Agreement.

1.6 Incorporation of Schedules

The following schedules (the "Schedules"), as amended, are part of this Agreement:

- (a) Schedule A Definitions
- (b) Schedule B AHS Policies
- (c) Schedule C Service Schedules
- (d) Schedule D Land
- (e) Schedule E Infection Prevention and Control Standards

1.7 Conflicts

The main body of this Agreement and the Schedules are to be interpreted so that all of the provisions are given as full effect as possible. If there is a conflict between the main body of the Agreement and a Schedule or between two or more Schedules, the order of precedence will be as follows:

- (a) 1st the main body of the Agreement;
- (b) 2nd Schedule C ("Service Schedule"); and
- (c) 3rd the rest of the Schedules in order of their occurrence.

Article 2 **GENERAL**

2.1 This Agreement

The main body of this Agreement contains the terms and conditions governing the respective obligations of AHS and the Service Provider.

2.2 Collaborative Resolution

The parties shall manage their relationship under this Agreement in a cooperative manner. When interacting with one another, the parties shall embody the principles of respect,

transparency and engagement. With such guiding principles, the parties shall manage all disputes in accordance with Article 19 (Dispute Resolution).

2.3 Contracted Service Provider

- (a) The Service Provider is an independent contractor. Neither the Service Provider, a Subcontractor, nor any officer, employee, partner, agent or representative of the Service Provider or a Subcontractor, is deemed to be an officer, employee, agent, contractor or representative of AHS. Neither AHS, nor any officer, employee, partner, agent or representative of AHS, is deemed to be an officer, employee, agent, contractor or representative of the Service Provider. Each of AHS and the Service Provider is responsible for the management, direction and control of its own officers, employees, agents, contractors and representatives and for any actions or omissions of any of its officers, employees, agents, contractors and representatives under this Agreement.
- (b) The parties are not partners or agents of each other, nor have they created any other form of legal entity or association.

2.4 Communications

- (a) The Service Provider shall not refer to AHS in any advertisement or marketing material produced by the Service Provider without AHS' prior written consent.
- (b) Each party shall make reasonable efforts to obtain approval from the other party prior to communicating with any news media regarding the Services.

2.5 Recruitment and Employment Practices

- (a) The Service Provider, at its sole cost and expense, shall ensure criminal records security clearance checks are completed:
 - (i) prior to initially performing the Services, in respect of new Personnel; and
 - (ii) at any time upon request of AHS, in respect of Personnel or other persons who perform the Services;

all of which shall be kept on file during the currency of such person's employment with the Service Provider and provided to AHS upon request.

- (b) The Service Provider shall obtain from its Personnel, and all other persons who perform the Services, all authorizations and consents that may be required under Section 2.5(a).

2.6 Responsibilities of the Service Provider

- (a) The Service Provider shall provide the Services in accordance with this Agreement and carry out its obligations under this Agreement in accordance with the terms and conditions of this Agreement.
- (b) The Service Provider has control over the methods of performing the Services and the Service Provider shall direct and supervise such activities so as to ensure compliance with this Agreement.

2.7 Responsibilities of AHS

AHS shall endeavour to seek input and advice from the Service Provider or its industry association when initiating changes to operating accountabilities or funding methodologies and developing best practices and programs to deal with existing or emerging needs.

Article 3 SUBCONTRACTING

3.1 General

- (a) Subject to this Article 3, the Service Provider may subcontract Services related to Client care to a Subcontractor, except that the Service Provider may not subcontract all or substantially all of the Services relating to Client care unless AHS, acting reasonably, approves the terms of the subcontract agreement in advance.
- (b) The Service Provider may subcontract any part of the Services that do not relate to Client care.
- (c) The Service Provider shall consult with AHS if the Service Provider has any doubts as to whether a particular part of the Services is or is not related to Client care.

3.2 Subcontract Agreement

All subcontract agreements entered into by the Service Provider with Subcontractors must be assignable to AHS and contain substantially similar provisions binding the Subcontractor to those provisions binding the Service Provider in this Agreement, including the requirement to maintain confidentiality in respect of Health Information and Confidential Information.

3.3 Liability

The Service Provider is responsible for the Subcontractor carrying out the Services under this Agreement and no subcontract by the Service Provider relieves the Service Provider from its obligations under this Agreement.

Article 4 REPRESENTATIONS

4.1 Mutual Representations

Each party represents to the other party as follows and acknowledges that the other party has relied upon the accuracy of the representations in entering into this Agreement:

- (a) it is a partnership or corporation, as the case may be, validly existing and in good standing under the laws of the jurisdiction in which it is organized, and is in good standing in each other jurisdiction where the failure to be in good standing would have a material adverse effect on its business or its ability to perform its obligations under this Agreement;
- (b) it has all necessary power and authority to own, lease and operate its assets and to carry on its business as presently conducted and as it will be conducted under this Agreement;

- (c) it has not violated and it will not violate any AHS Policies or Applicable Laws regarding the offering of any unlawful inducement in connection with this Agreement;
- (d) it has the necessary power and authority to enter into this Agreement and to perform its obligations under this Agreement;
- (e) the person signing this Agreement on behalf of it has been properly authorized and empowered to enter into this Agreement; and
- (f) this Agreement constitutes legal, valid and binding obligations of such party, enforceable against it pursuant to its terms, subject to bankruptcy or insolvency or similar laws affecting creditors' rights generally and the discretionary nature of equitable remedies.

4.2 Service Provider Representations

The Service Provider represents to AHS as follows and acknowledges that AHS has relied upon the accuracy of the representations in entering into this Agreement:

- (a) it is not a party to, and is not bound or affected by or subject to, any instrument, agreement, charter, by-law, provision, law, rule, regulation, judgment or order that would be contravened or breached as a result of the execution of this Agreement;
- (b) there are no actions, suits or proceedings pending or, to its knowledge, threatened (including claims subject to arbitration) against it (i) arising from an outsourcing relationship or supply of services similar to the relationship contemplated by this Agreement or, (ii) that could have an adverse effect upon the delivery of the Services or the performance of its obligations under this Agreement;
- (c) it shall perform the Services in a professional and workmanlike manner and in accordance with this Agreement, Applicable Laws, reasonable practices and industry standards;
- (d) it is capable of providing the Services, and to the extent reasonably within its power to do so, shall ensure that it continues to remain capable of providing the Services throughout the Term;
- (e) it has the skills, qualifications and experience necessary to ensure the performance and management of the Services in accordance with this Agreement and Applicable Laws; and
- (f) it will provide the Services for the Service Fees in Schedule C.

4.3 Notice of Breach

Each party shall promptly give Notice to the other party in the event that it becomes aware that it is not compliant with one or more of its representations or it is aware that the other party is not compliant with its representations.

Article 5
SERVICES

5.1 Overview of Services

- (a) The Service Provider shall provide to AHS the services, functions and responsibilities, all as described in the Service Schedules in accordance with this Agreement (the "Services").
- (b) The Service Provider shall provide all items and goods incidental to and necessary for the proper provision of the Services.

5.2 Personnel

The Service Provider shall recruit, train, supervise and provide sufficient numbers of qualified Personnel to meet the Client care requirements described in the Service Schedules.

5.3 Licences and Permits

The Service Provider shall obtain all applicable licences, authorizations, and permits required in connection with the Services and as otherwise required under each Service Schedule and shall pay all fees and taxes associated with the licences, authorizations and permits.

5.4 Service Schedules

- (a) Throughout the term of each Service Schedule, the Service Provider shall provide the Services described in that Service Schedule, as such Service Schedule may be amended and supplemented from time to time.
- (b) The parties may enter into Service Schedules as of the execution of this Agreement and from time to time during the Term. Each Service Schedule describes the scope of Services covered by that Service Schedule and, if applicable, the payment provisions, the term, and other provisions that are specific to that Service Schedule and not otherwise covered by this Agreement. The terms of this Agreement apply to each Service Schedule, except to the extent expressly negated or contradicted by the terms of a Service Schedule.
- (c) The Service Schedules set out a description of the Services to be provided by the Service Provider. The parties expect Services to evolve during the Term and accordingly, the parties will amend and supplement the Service Schedules from time to time in accordance with Article 9.

5.5 Non-Exclusive Supplier of Services

- (a) Nothing in this Agreement requires AHS to purchase products or services that are in addition to or outside the scope of the Services from the Service Provider. For greater certainty, AHS may request information, proposals, or competitive bids in respect of such products or services from third parties on the same or different terms than provided in this Agreement and AHS may contract with a third party to provide, or AHS itself may provide, any products or services. AHS shall notify the Service Provider of its intention to procure any such products or services.

- (b) If AHS contracts with a third party to provide any products or services, the Service Provider will cooperate with AHS and the third party as reasonably necessary in order to provide a seamless experience for Clients. If a third party is required to access the Service Provider's premises to provide products or services, either AHS or the Service Provider may require that the parties (including any third party) enter into an agreement to address scope, access, confidentiality and liability.

5.6 Health Records

The Service Provider shall maintain health records for all Clients in accordance with the Standards, AHS Policies and the Applicable Laws.

5.7 Participation in Surveys

As reasonably requested by AHS, the Service Provider shall participate in surveys of Clients and families.

5.8 Incident and Concerns Processes

- (a) The Service Provider and AHS shall promptly inform the other party of any material complaints, concerns or grievances made to or against the Service Provider with respect to the Services.
- (b) The Service Provider shall comply with the incident reporting process listed in any Service Schedule.

5.9 Reporting Requirements

The Service Provider shall:

- (a) comply with the Reporting Requirements in the Service Schedules; and
- (b) on occasion, provide reasonable ad hoc reports requested by AHS, all in form and substance reasonably satisfactory to AHS.

5.10 Resources

Except as otherwise agreed to in writing,

- (a) the Service Provider shall obtain, at its expense:
 - (i) technology related items including computers, hardware and software; and
 - (ii) facility related items including equipment, supplies and materials,

as are or may be required from time to time by it in connection with the provision of Services and in order for it to fulfil its obligations under this Agreement; and

- (b) the Service Provider shall, at its expense, be responsible for the initial and ongoing technological investments necessary to:

- (i) implement new computer infrastructure, software and related processes necessary for the performance of the Services; and
- (ii) acquire, and keep current and operational, all software and systems reasonably necessary to achieve the foregoing, including technological advancements and improvements.

Article 6 **FUNDING**

6.1 Service Fees

In consideration of the provision of Services described in this Agreement, AHS shall pay Service Fees to the Service Provider. AHS establishes Service Fees in accordance with the applicable AHS Funding Methodology and may revise the Service Fees from time to time.

6.2 Funding Principles

- (a) AHS shall provide the Service Provider with adequate Service Fees, in accordance with the applicable AHS Funding Methodology, that reflect the nature of the Services being contracted from the Service Provider on a regular and timely basis.
- (b) The Service Provider may access resources that are otherwise generally available to business or charitable organizations through government, public or private sources without jeopardizing or decreasing the funding that the Service Provider receives from AHS. If the Service Provider receives money directly from a government source or other private pay source for matters that would otherwise be funded by AHS (for example, under programs administered by the Department of Indian Affairs, the Workers' Compensation Board or the Department of Veterans' Affairs, or by direct fees paid), the Service Provider will provide Notice to AHS of receipt of the money and the AHS funding will be equally decreased.
- (c) AHS may recover any overpayment made to the Service Provider by mistake or in an amount that is greater than permitted by Applicable Laws.
- (d) AHS shall endeavour to neither penalize the Service Provider for resourcefulness, frugality or good management nor reward the Service Provider for poor management or improvidence.
- (e) AHS shall, from time to time, specify common funding methodology parameters. If changes are proposed, AHS will afford the Service Provider a reasonable opportunity to provide its view on the changes proposed.
- (f) If AHS requests the Service Provider to implement a new program or service, and the Service Provider declines, AHS shall not be obliged to provide funding to the Service Provider for any similar program or service which the Service Provider subsequently decides to provide.
- (g) Subject to geographic and demographic differences, AHS shall fund comparable continuing care capacity through a common methodology and without differentiation between voluntary, private or AHS operated facilities.

6.3 Service Provider Charges

The Service Provider shall not charge Clients any fees in connection with the Services funded by AHS, except the fees identified in any Service Schedule.

6.4 Goods and Services Tax

Subject to the provisions of the Excise Tax Act (Canada), the Service Provider shall not charge AHS the federal goods and services tax in respect of the Services on the basis that AHS represents that it is listed as a tax free Government of Alberta entity and is not required to pay goods and services tax on purchases of taxable supplies and services. If, during the Term, AHS becomes subject to goods and services tax and it applies to some or all of the Services, the Service Provider will invoice AHS accordingly.

Article 7 COMPLIANCE

7.1 Conflict of Interest

- (a) Except as previously disclosed to AHS in writing, the Service Provider represents, to the best of its knowledge, that no official or employee of AHS has a direct or indirect interest or receives any direct or indirect proceeds from this Agreement. The Service Provider shall comply with AHS Policies regarding conflicts of interest.
- (b) The Service Provider shall ensure that it and its Personnel take all necessary steps to avoid a conflict of interest between any of their individual interests and those of AHS. If the Service Provider or its Personnel become aware of the possibility of any conflict of interest, the Service Provider shall, subject to applicable privacy laws, promptly disclose to AHS the facts and circumstances of the conflict of interest.

7.2 Compliance with Applicable Laws

- (a) The Service Provider shall comply with the Applicable Laws in force and applicable to its duties and obligations under this Agreement, including the requirements related to employment insurance, the Workers' Compensation Act (Alberta), income tax, Canada Pension Plan, occupational health and safety, and environmental protection legislation.
- (b) The Service Provider shall comply with the Applicable Laws set out in any Service Schedule.
- (c) AHS acknowledges that the obligations of the Service Provider under this Agreement are subject to and deemed subservient to the Applicable Laws.

7.3 Compliance with AHS Policies

The Service Provider shall comply with AHS Policies listed in Schedule B, the AHS Policies listed in any Service Schedule and the AHS Policies communicated to the Service Provider in writing from time to time.

7.4 Compliance with Accountabilities

The Service Provider shall comply with and report on the Accountabilities listed in any Service Schedule and the Accountabilities communicated to the Service Provider in writing from time to time.

7.5 Compliance with Standards

- (a) The Service Provider shall comply with the Infection Prevention and Control Standards as described in Schedule E.
- (b) The Service Provider shall comply with the Standards listed in any Service Schedule and the Standards communicated to the Service Provider from time to time.

Article 8 TERM

8.1 Term

This Agreement commences on the Effective Date and continues until it terminates in accordance with this Agreement or the last Service Schedule expires (the "Term").

8.2 Renewal of Master Services Agreement

- (a) AHS may offer to renew this Agreement for an additional period following the expiry of the initial term.
- (b) If AHS wishes to renew this Agreement, it will provide Notice to the Service Provider at least six months prior to the end of the Term.
- (c) If AHS and the Service Provider both wish to renew this Agreement, the parties will negotiate in good faith the terms of such renewal.
- (d) If AHS and the Service Provider are unable to agree upon the terms of the renewal of this Agreement as of two months prior to the end of the Term:
 - (i) if the parties wish to continue negotiating, this Agreement will be extended on the same terms and conditions as then in effect for a period of up to six months (the "Extension Period"). During the Extension Period, AHS and the Service Provider will continue to negotiate in good faith regarding renewal of this Agreement. If AHS and the Service Provider are unable to reach agreement on the renewal of this Agreement during the Extension Period, this Agreement will terminate upon expiration of the Extension Period and the parties may enter into a termination assistance plan as contemplated in Subsection 14.1(b); or
 - (ii) if the parties do not wish to continue negotiating, this Agreement will expire at the end of the Term and the parties may enter into a termination assistance plan as contemplated in Subsection 14.1(b).

8.3 Renewal of Service Schedule

AHS may offer to renew a Service Schedule in accordance with the renewal provisions in the applicable Service Schedule.

Article 9 **CHANGES TO SERVICES**

9.1 Annual Service Letter

By way of the Annual Service Letter, AHS may revise Standards, AHS Policies, Reporting Requirements, Accountabilities, the AHS Funding Methodology and Service Fees in accordance with this Section 9.1 ("Ordinary Course Changes") and subject to Section 2.7. The Ordinary Course Changes that AHS intends to make under this Section 9.1 are not outside the general expectations of the terms and conditions of this Agreement, will not have a material impact on the delivery, performance or cost of providing the Services, and will not present a material cost to the Service Provider or restrict operational efficiencies of the Service Provider, having regard to the overall amount of Service Fees. The Service Provider shall implement the Ordinary Course Changes upon receipt of the Annual Service Letter and the following provisions will apply:

- (a) except for increases to Service Fees, AHS shall provide at least 30 days' notice before the Ordinary Course Changes are to be implemented;
- (b) no additional documentation with respect to the Ordinary Course Changes is required;
- (c) the approval or agreement of the Service Provider to the Ordinary Course Changes is not required; and
- (d) this Agreement is amended accordingly.

Article 10 **DEFAULT AND REMEDIES**

10.1 Mutual Events of Default

The occurrence of any one of the following events in respect of either party is deemed to constitute an Event of Default by that party:

- (a) any one of the following events regarding a party's financial or corporate status and capacity:
 - (i) a general assignment by a party for the benefit of creditors,
 - (ii) the institution by or against a party of a proceeding under any section or provision of the Federal Bankruptcy and Insolvency Act (Canada), the Companies' Creditors Arrangement Act (Canada) or any other laws relating to bankruptcy, insolvency or receivership, which proceeding is not dismissed, stayed or discharged within a period of 60 days after the initial filing,

- (iii) a proposed plan or arrangement or other action by a party's creditors taken as a result of a general meeting of the party's creditors,
 - (iv) the appointment of a receiver, custodian, trustee or similar officer, to take possession of a party's assets, which receivership remains undischarged for a period of 30 days from the date of its imposition,
 - (v) admission in writing by a party or its legal representative of the party's ongoing inability to pay its debts as they accrue, or
 - (vi) attachment, execution or other judicial seizure of all or any substantial part of a party's assets, which attachment, execution or other judicial seizure remains undischarged for a period of 30 days after its levy; provided however that such attachment, execution or other judicial seizure will not constitute an Event of Default if such party posts a bond, letter of credit or other security to fully satisfy the amount of such claim or judgment within 30 days after its levy and the party's assets are released from the attachment, execution, or judicial seizure;
- (b) the failure of a party to remedy a material breach of this Agreement (including in any Service Schedule) within 30 days of receipt of Notice of such breach, unless such breach is as a result of the act or omission of a third party and remedying such breach reasonably requires additional time, in which case the time for performance will be extended as necessary, provided the party in breach is using all reasonable efforts to remedy the breach; and
 - (c) the failure of a party to make payment of a material financial obligation under this Agreement within a period of seven days following receipt of Notice of the failure to make such payment.

10.2 Service Provider Events of Default

The occurrence of any one of the following events is deemed to constitute an Event of Default by the Service Provider:

- (a) if in the reasonable opinion of AHS the breach jeopardizes the care, safety or health of any Client, the failure of the Service Provider to remedy any material breach of this Agreement (including in any Service Schedule) within seven days of receipt of Notice of the breach unless remedying such breach reasonably requires additional time, in which case the time for performance will be extended as necessary, provided the Service Provider is using all reasonable efforts to remedy the breach; and
- (b) the unauthorized assignment of this Agreement by the Service Provider;
- (c) the failure to provide Essential Services;
- (d) fraudulent or unauthorized use of Service Fees by and with the knowledge of the Service Provider;
- (e) criminal activity of the Service Provider;

- (f) a breach of a term in a Service Schedule that specifically entitles AHS to terminate this Agreement.

10.3 Remedies of the Service Provider

- (a) Subject to Subsection 10.3(b), the Service Provider will be entitled to exercise one or more of the following remedies on the occurrence of an Event of Default by AHS:
 - (i) give Notice of termination of this Agreement or any Service Schedule, which notice will become effective no sooner than six months following the date of delivery of such notice;
 - (ii) to the extent permitted in this Agreement, rely on the provisions of Article 19 (Dispute Resolution) or
 - (iii) pursue any other remedy available at law or in equity to the Service Provider.
- (b) If the Event of Default by AHS relates to a Service Schedule, the Service Provider may only exercise remedies with respect to the applicable Service Schedule.

10.4 Remedies of AHS

- (a) Subject to Subsection 10.4(b), on the occurrence of an Event of Default by the Service Provider, AHS will be entitled to exercise one or more of the following remedies:
 - (i) to the extent permitted in this Agreement, rely on the provisions of Article 19 (Dispute Resolution);
 - (ii) to the extent permitted in this Agreement, give Notice of termination of this Agreement or any Service Schedule, which notice will become effective no sooner than six months following the date of delivery, unless a shorter notice period is permitted;
 - (iii) impose any further and additional term, condition or requirement on the provision of Services that AHS, acting reasonably, deems necessary or appropriate;
 - (iv) in respect of any Event of Default which in the reasonable opinion of AHS, jeopardizes the care, safety or health of any Client, immediately assume management and control of the Services, or delegate such responsibility to an Alternate Service Provider, during the continuance of any Event of Default and receive and apply the revenues from AHS payable under this Agreement and recover all incremental costs associated with assuming management and control of the Services;
 - (v) in respect of any Event of Default which in the reasonable opinion of AHS, jeopardizes the care, safety or health of any Client, relocate Clients during the continuance of any Event of Default and AHS will be entitled to receive and apply the revenues from AHS generated under this

Agreement and recover all incremental costs associated with relocating Clients;

- (vi) directly step in to the shoes of the Service Provider or appoint an Alternate Service Provider to step in to the shoes of the Service Provider to provide the Services, in which case the Service Provider will reimburse AHS all reasonable costs and expenses incurred by AHS in connection with the exercise of this remedy;
 - (vii) withhold and suspend payment of any amount otherwise payable by AHS in respect of the Services while an Event of Default remains unremedied, in which case the Service Provider may receive all suspended and withheld payments upon the Event of Default being waived or remedied to the satisfaction of AHS;
 - (viii) cancel the payment of any amount otherwise payable by AHS to the Service Provider in respect of the Services while an Event of Default in respect of the Services remains unremedied by the Service Provider; and if the Event of Default substantially deprives AHS or the Clients of the benefit of the Services, the Service Provider will conclusively forfeit any entitlement to the applicable Service Fees; and
 - (ix) pursue any other remedy available at law or in equity to AHS.
- (b) If the Event of Default by the Service Provider relates to Subsection 10.2(c) (Essential Services), the Service Provider's liability to AHS under Subsection 10.4(a) is limited, where the liability is covered by insurance, to the amount of such insurance.

Article 11 TERMINATION

11.1 Termination for Convenience

Either party may terminate this Agreement or any Service Schedule by giving the other party no less than twelve months' Notice.

11.2 Immediate Termination

AHS may immediately terminate this Agreement or any Service Schedule if the Service Provider is engaging in conduct which threatens imminent harm to Clients and, in the reasonable opinion of AHS, the Service Provider will be unable to correct the offending conduct to the satisfaction of AHS.

11.3 Notice of Termination

Where in this Agreement a party has an option to terminate, it shall exercise its termination option by delivering to the other party a Notice of such termination identifying the scope of the termination and the termination date.

Article 12

FORCE MAJEURE, ESSENTIAL SERVICES, BUSINESS CONTINUITY

12.1 Force Majeure

- (a) If a party is prevented from, or delayed in performing any of its obligations under this Agreement by an event of Force Majeure, the party claiming the event of Force Majeure will promptly notify the other party upon becoming aware of the potential non-performance or delay, of the particulars of event of Force Majeure, its expected duration and the obligations under the Agreement that will be affected by the event.
- (b) Prior to claiming an event of Force Majeure, the party intending to claim an event of Force Majeure shall use reasonable efforts to prevent or avoid any event, condition or circumstance which would result in such event of Force Majeure. If the party intending to claim an event of Force Majeure is the Service Provider, AHS will work collaboratively with the Service Provider to ensure that the health and safety of Clients is not compromised. Failing prevention of the occurrence of the event of Force Majeure, the party claiming the event of Force Majeure will, during the continuance of such event of Force Majeure, use reasonable efforts to mitigate and minimize the effects of such event of Force Majeure, to reduce or minimize the ensuing delay and to recommence performance of its obligations under this Agreement.
- (c) Subject to Sections 12.2 and 12.3 and to the limitations set out below, during the occurrence of an event of Force Majeure, the obligations of the party claiming an event of Force Majeure, to the extent that its obligations cannot be performed or are delayed as a result of the event of Force Majeure, will be suspended, and such party will not be considered in breach for the period of the occurrence. No obligation of either party that existed prior to the event of Force Majeure causing the suspension of performance will be excused as a result of the Force Majeure, unless such obligation is a continuing obligation of the performance which is affected by the event of Force Majeure. AHS may suspend this Agreement if the Service Provider Force Majeure event lasts greater than 30 days.
- (d) During the event of Force Majeure of the Service Provider and subject to Section 12.3, AHS may exercise any one or more of the following remedies:
 - (i) not pay Service Fees in respect of the Services to the extent reasonably allocable to the Services not being performed as a result of such event of Force Majeure, during the period of time such event of Force Majeure remains in effect; and
 - (ii) procure or otherwise obtain alternative services from any person in replacement or substitution of the affected Services during the period of time such event of Force Majeure remains in effect and for a reasonable period of time thereafter.
- (e) The party claiming that an event of Force Majeure has occurred will bear the burden of proving the existence of the event of Force Majeure.

12.2 Essential Services

The Service Provider shall continuously provide Essential Services notwithstanding any event of Force Majeure.

12.3 Emergency Management and Business Continuity

- (a) The Service Provider shall develop, maintain and update as required written business continuity and disaster recovery plans for the Services, which must:
 - (i) contain risk mitigation and business continuity strategies for the Services and Essential Services to ensure the continuity of the Services;
 - (ii) address events of Force Majeure, pandemics, and labour disputes;
 - (iii) provide for back-up services, facilities, systems, procedures and personnel;
 - (iv) be consistent with AHS' business continuity and disaster plans;
 - (v) provide for the restoration of all applicable Services as soon as practicable; and
 - (vi) provide for Personnel, Client and family support.
- (b) The Service Provider shall educate and train its Personnel on the business continuity and disaster recovery plans and test the plans no less than once in a 12 month period.
- (c) If the Service Provider is required to execute its business continuity and disaster recovery plans, AHS will work collaboratively with the Service Provider to ensure that the health and safety of Clients is not compromised.
- (d) The Service Provider shall be deemed to have complied with its obligations under Subsection 12.3(a) if and to the extent that any such business continuity and disaster recovery plan has received approval from AHS.

Article 13 **INDEMNITY AND LIABILITY**

13.1 Indemnification

Each party (the "Indemnifier") shall be liable to the other party for, and shall indemnify and save harmless the other party from and against, any and all Losses which may be brought or made against the other party, or which the other party may sustain, pay or incur, in either case arising out of a breach by the Indemnifier of its obligations under this Agreement or the wilful or negligent acts of the Indemnifier or those for whom the Indemnifier is responsible at law. The foregoing provisions are subject to Subsection 2.5(1) of the Regional Health Authorities Regulation (AR 15/95).

13.2 Liability

Regardless of whether a party directly fulfills the requirements of this Agreement, or does so through a third party including, a consultant, contractor, subcontractor, agent, employee, assign, director or officer, that party (except for cases where AHS appoints a third party to perform the Service Provider's obligations) remains solely responsible for complying with all of its representations, covenants and obligations under this Agreement as if they had performed the Services in question or this Agreement themselves, and that party is solely responsible to the other party for any Losses suffered by such party due to a breach of this Agreement by the defaulting party, or anyone for whom the defaulting party is responsible.

Article 14 **TERMINATION ASSISTANCE**

14.1 Termination Services

Commencing upon any Notice of termination or expected expiration of this Agreement or any Service Schedule, the Service Provider will:

- (a) assist AHS and continue to provide Services to facilitate the orderly transition and migration of Services to the Alternate Service Provider, if applicable (the "Termination Services") to allow the Services to continue without interruption or adverse effect.
- (b) develop in consultation with AHS, a mutually agreed to termination assistance plan, including the scope of services and funding, for transition of the Services from the Service Provider to the Alternate Service Provider, if applicable;
- (c) provide any other services reasonably requested by AHS on an "as needed" basis.

14.2 Quality of Services

The Service Provider shall continue to provide quality Services in accordance with the terms of this Agreement during the termination assistance period.

14.3 Temporary Extension of Services

If AHS is unable to complete the transition of Services by the termination date, AHS may extend the termination assistance period for up to six months by providing Notice to the Service Provider at least 60 days prior to the termination date. The parties acknowledge that they may need to re-negotiate the termination assistance plan for the extended termination assistance period.

14.4 Provision of Services after the Termination Date

After this Agreement or any Service Schedule terminates, the Service Provider shall provide answers to questions from the Alternate Service Provider regarding the Services, systems and any other material provided by the Service Provider to AHS or the Alternate Service Provider on an "as needed" basis for a period of three months or such other time period that the parties agree to. AHS acknowledges that the Service Provider is entitled to remuneration for the provision of such services.

Article 15
INSURANCE

15.1 Insurance Coverage

- (a) The Service Provider shall obtain and maintain the following insurance policies:
- (i) employer's liability insurance covering each person directly involved in the provision of Services under this Agreement, in an amount of \$1,000,000 per occurrence, if such person is not covered under Workers' Compensation legislation;
 - (ii) commercial general liability insurance in an amount not less than \$5,000,000 per occurrence with either no annual aggregate or an annual aggregate limit not less than \$5,000,000, insuring against bodily injury, personal injury and property damage, including loss of use thereof. Coverage is to include contractual liability, tortious liability, and completed operations liability;
 - (iii) professional liability insurance covering employees providing professional Services under this Agreement in an amount not less than \$5,000,000 per occurrence with either an annual aggregate or an annual aggregate limit not less than \$5,000,000, insuring against liability arising from the rendering of or failure to render professional services;
 - (iv) automobile public liability insurance covering all owned and non-owned automobiles engaged in performing the Services hereunder, insuring against bodily injury, death, or property damage in an amount not less than two million dollars (\$2,000,000) per occurrence; and
 - (v) other insurance as set out in a Service Schedule.
- (b) If any of the above insurance policies are written on a claims made basis, the Service Provider shall maintain the policies for 39 months after the expiration of this Agreement.
- (c) The Service Provider shall:
- (i) ensure that the insurance policies in Subsection 15.1(a) are not cancelled or changed to the prejudice of AHS without at least 30 days Notice to AHS; and
 - (ii) furnish AHS with certificates evidencing all required insurance.
- (d) The Service Provider shall ensure that the commercial general insurance policy under Subsection 15.1(a)(ii) names AHS as an additional insured and contains a severability of interests provision.
- (e) The Service Provider shall obtain additional insurance coverage, including Workers' Compensation insurance, as AHS may reasonably require.

CONFIDENTIALITY AND CONFIDENTIAL INFORMATION

16.1 Disclosure of Confidential Information and Health Information

The Service Provider acknowledges that AHS is disclosing Confidential Information, Personal Information and Health Information to it on a strictly confidential basis and under a relationship of utmost confidence and trust.

16.2 Obligations Regarding Information

- (a) All Confidential Information, Personal Information and Health Information is the sole property of AHS. The Service Provider shall take reasonable safeguards to ensure that all Confidential Information, Personal Information and Health Information is held in the strictest confidence.
- (b) The collection, use, disclosure, access, storage and disposal of Confidential Information, Personal Information and Health Information under this Agreement is subject to and completed in accordance with the HIA and the FOIP. The Service Provider shall comply with the HIA, FOIP and any other Applicable Laws, and this obligation survives the termination of this Agreement for as long as the Service Provider holds or has access to Confidential Information, Personal Information or Health Information.
- (c) The Service Provider shall collect, use or disclose Health Information in accordance with the HIA and AHS Policies.
- (d) If the Service Provider receives a request for Health Information under section 8 of HIA or a request for Personal Information under section 7 of FOIP, it will promptly refer the request to AHS and cooperate with AHS to prepare a response.
- (e) The Service Provider shall collect, use, disclose, access, store and dispose of the minimum Confidential Information, Personal Information and Health Information necessary to provide the Services.
- (f) The Service Provider shall correct any errors or inaccuracies in the Health Information of which it becomes aware within a reasonable period of time. The Service Provider is not entitled to charge AHS to make the corrections.

16.3 Confidentiality Restrictions

The Service Provider shall ensure that Confidential Information, Personal Information and Health Information is:

- (a) kept in strict confidence;
- (b) not transported, accessed, used, dealt with, exploited or disclosed for any purpose other than for the purpose of providing the Services;
- (c) not disclosed to any person other than Appointed Representatives and is only disclosed or shared with the Appointed Representatives as strictly necessary for the Service Provider to provide Services;

- (d) safeguarded against theft, damage or access by unauthorized persons by using reasonable administrative, technical and physical security measures in accordance with current industry standards and AHS Policies;
- (e) kept separate from all its other records and databases;
- (f) not disclosed under any non Canadian law, rule order, or document and the Service Provider shall immediately notify AHS if it receives any subpoena, warrant, order, demand or request issued by a non Canadian court or other foreign authority for the disclosure of Confidential Information, Personal Information or Health Information;
- (g) not disclosed or transferred outside of Canada; and
- (h) subject to Section 16.5(a), either destroyed or returned to AHS immediately after the Service Provider no longer needs it to provide Services.

16.4 Compliance with Agreement by Appointed Representative

Before disclosing any Confidential Information, Personal Information or Health Information to an Appointed Representative, the Service Provider shall obtain a confidentiality agreement from the Appointed Representative obligating him to keep Confidential Information and Health Information in strict confidence and to abide by the terms and conditions of this Agreement. At the request of AHS, the Service Provider shall provide AHS with a list of all Appointed Representatives who have received Confidential Information, Personal Information or Health Information and written evidence that the Appointed Representatives are bound by the terms and conditions of this Agreement. The Service Provider is liable for any breach of this Agreement by its Appointed Representatives.

16.5 Exceptions to Confidentiality Restrictions

- (a) The restrictions in Sections 16.2 and 16.3 do not apply to any part of Confidential Information that:
 - (i) at the time of disclosure, or thereafter becomes, a part of the public domain through no violation of this Agreement;
 - (ii) was in the lawful possession of the Service Provider prior to its disclosure;
 - (iii) is subsequently lawfully acquired by the Service Provider through a third party that, to the best of the Service Provider's knowledge, is not under an obligation of confidence to AHS or AHS' affiliates or subsidiaries and which third party was not in a contractual or fiduciary relationship with AHS;
 - (iv) is disclosed by operation of Applicable Laws and which is disclosed in accordance with Section 16.8; or
 - (v) is disclosed with AHS' prior written consent.

- (b) For greater certainty, the exceptions to the confidentiality restrictions contained in Subsection 16.5(a) do not apply to Health Information or Personal Information.

16.6 Return or Destruction of Information

At the request of AHS, the Service Provider shall immediately return to AHS or destroy any Confidential Information, Personal Information or Health Information in whatever form it may be held by it or its Appointed Representatives.

16.7 Notice of Imminent Threat

- (a) The Service Provider shall notify AHS immediately upon discovery by it that Confidential Information, Personal Information or Health Information could be, or has been, released to a third party or that as a result of the conduct of the Service Provider or any third party, AHS may suffer financial damage. The Service Provider shall cooperate with AHS' investigation of such incident and AHS efforts to recover the Confidential Information, Personal Information or Health Information and shall ensure that its Appointed Representatives are aware of their obligations under this Section 16.7. Notwithstanding any notification by the Service Provider to AHS under this Section 16.7, all obligations of the Service Provider with respect to the Confidential Information, Personal Information or Health Information shall survive and continue to bind the Service Provider.
- (b) The Service Provider shall immediately notify AHS if it becomes aware of, or receives a notice of an investigation conducted by the Office of the Information and Privacy Commissioner or any other government agency that relates to the Confidential Information, Personal Information or Health Information. The Service Provider shall cooperate with AHS in responding to any such investigation.

16.8 Legal Compulsion to Disclose

If the Service Provider is legally compelled, by oral questions, interrogatories, requests for Confidential Information, Personal Information or Health Information, documents, subpoena, civil investigative demand or similar legal process, to disclose any Confidential Information, Personal Information or Health Information, the Service Provider will provide AHS with prompt Notice so that AHS may seek a protective order or other appropriate remedy. If AHS does not obtain a protective order or other remedy, the Service Provider will:

- (a) furnish only that portion of the Confidential Information, Personal Information or Health Information which is legally required;
- (b) exercise its best efforts to obtain reliable assurance that the Confidential Information, Personal Information or Health Information will be accorded confidential treatment; and
- (c) promptly provide to AHS copies of the Confidential Information, Personal Information or Health Information that was disclosed along with the disclosure request.

16.9 Equitable Relief

If the Service Provider breaches the Confidential Information, Personal Information and Health Information provisions, the injury to AHS would be impossible to calculate and money damages would be an inadequate remedy. Accordingly, if the Service Provider breaches any of the

Confidential Information, Personal Information and Health Information provisions, AHS will suffer irreparable damage and will be entitled, without the requirement to show or prove actual or prospective damages, to an injunction or to another appropriate court order to restrain or prevent the breach by the Service Provider. The remedies contained in this Section are not exclusive remedies for the breach of the obligations respecting Confidential Information, Personal Information and Health Information, but are in addition to all other remedies under this Agreement, the Applicable Laws and in equity.

16.10 Freedom of Information and Protection of Privacy

- (a) AHS is a public body that must comply with FOIP. AHS is not able to guarantee confidentiality of documents submitted to it in the normal course of business or otherwise, or to which it otherwise has a right of access. All documentation or other information submitted by the Service Provider to AHS, even those marked "confidential", may be subject to the privacy and disclosure provisions of FOIP.
- (b) The parties shall comply in all respects with the requirements of FOIP and HIA in the event that a valid application for disclosure is made, but shall take all such steps to preserve the full confidentiality or as much confidentiality as is available. under the provisions of those statutes.
- (c) All records and other data created in connection with the provision of the Services and provided to AHS are subject to the provisions of FOIP, by which AHS is bound. All materials, documents, records or other information provided by AHS to the Service Provider or generated by the Service Provider in relation to the performance of the Services for AHS remain the property of AHS and remain under its control for the purpose of FOIP and HIA.

Article 17

AUDIT AND INVESTIGATION

17.1 Right to Inspect and Audit

- (a) The Service Provider shall, at all reasonable times, permit AHS to:
 - (i) inspect equipment and premises used in the provision of Services;
 - (ii) copy or audit books, records, financial statements and accounts created or maintained by the Service Provider in relation to the Services ("Statements"); and
 - (iii) interview any Client or Personnel of the Service Provider,
 - (iv) to ensure that the Service Provider is in compliance with this Agreement.
- (b) The Service Provider shall cooperate with and assist AHS to carry out any inspection, audit or interview.

17.2 Inspection or Audit Without Prior Notice

If AHS determines that the health or safety of a Client is at risk and prior Notice is impractical, AHS may inspect, access, audit and interview without prior Notice to the Service Provider.

17.3 Inspection or Audit with Notice

AHS shall, on five Business Days Notice or such lesser time as the parties may agree, inspect, access, audit and interview under this Article 17.

17.4 Fees for Inspection and Audit

- (a) The Service Provider shall not charge any administrative fee or similar charge for maintaining or providing Statements to AHS or assisting AHS in any inspection, audit or interview.
- (b) Unless otherwise agreed to in writing, in the event of a material breach by the Service Provider of this Agreement, the Service Provider will reimburse AHS for the costs incurred by AHS to conduct the inspection, audit or interview.

17.5 Survival

Article 17 will survive the expiration of this Agreement for five years.

Article 18

CONTRACT ADMINISTRATION

18.1 Appointed Representatives

AHS and the Service Provider shall:

- (a) concurrent with execution of this Agreement, appoint an Appointed Representative as the primary point of contact to represent the respective party in the day to day management and administration of this Agreement and the provision of Services; and
- (b) appoint an individual contact person with respect to each Service Schedule.

18.2 Function of the Appointed Representative

The responsibilities and authority of the Appointed Representative include:

- (a) directing and managing the respective party's activities and interests in relation to this Agreement;
- (b) providing an initial point of communication with the other party's Appointed Representative;
- (c) monitoring and ensuring compliance of the respective party's obligations under the terms of this Agreement; and

- (d) meeting on an "as required" basis to discuss performance of each party's respective obligations pursuant to, and to anticipate and resolve any emerging issues under, this Agreement.

Article 19
DISPUTE RESOLUTION

19.1 Dispute Resolution by Negotiation

AHS and the Service Provider shall make reasonable efforts to resolve any disputes that arise as a result of this Agreement by negotiation between the Appointed Representatives of the parties, or depending upon the nature of the dispute, by good faith negotiations between the senior management of the parties.

19.2 Dispute Resolution by Arbitration

If a dispute remains unresolved after ten Business Days of being referred to the senior management of the parties for negotiation, then either party may initiate arbitration of the dispute in accordance with the following requirements:

- (a) The party seeking to initiate arbitration will give written notice, containing a brief description of the matter submitted for arbitration, to the other party.
- (b) Within ten days of receipt of the notice of arbitration, the parties will attempt to nominate a single arbitrator to conduct the arbitration.
- (c) If the parties fail to nominate a single arbitrator within the ten day period, then the party initiating the arbitration will nominate one arbitrator and notify the other party in writing of the nomination and the other party will, within ten days of receipt of the notice of nomination, nominate one arbitrator and the two nominated arbitrators will select a third arbitrator to act as chairman of the arbitration tribunal to act jointly with them. The parties will select arbitrators who are qualified by education or experience to deal with the matters in issue.
- (d) The parties will meet with the arbitrator or the arbitration panel, as the case may be, to establish procedures to govern the arbitration and the rendering of the decision by the arbitrator or the arbitration panel. The parties will request that the arbitrator or arbitration panel, as the case may be, provide its decision on the matter in issue within 30 days of appointment of the arbitrator or the arbitration panel.
- (e) The decision of the single arbitrator, or a majority of the arbitration panel, as the case may be, will be final and binding upon the parties.
- (f) The costs of the arbitration will be borne as between the Service Provider and AHS in the manner specified in the arbitrator's decision or in the absence of any direction by the arbitrator costs will be borne equally.
- (g) Except as modified by this Section 19.2 the Arbitration Act (Alberta) will govern the arbitration process.

19.3 Continuous Performance

The Service Provider and AHS shall continue to perform their respective obligations during the negotiation or arbitration of any dispute until this Agreement expires.

19.4 Matters excluded from Arbitration

The following matters are excluded from the arbitration process in Section 19.2:

- (a) a decision taken to implement any remedy available to a party as a result of an occurrence of an Event of Default by the other party; and
- (b) any claims governed under the terms of any insurance policies.

Article 20 **ASSIGNMENT**

20.1 Assignment

- (a) This Agreement is binding upon and enures to the benefit of the parties and their respective successors and permitted assigns.
- (b) The Service Provider shall not assign this Agreement or any rights, duties, obligations or interests of the Service Provider under this Agreement, without the prior written consent of AHS, such consent not to be unreasonably withheld. For the purposes of this Section 20.1, a change in control of the Service Provider is deemed to be an assignment.
- (c) If the Service Provider assigns this Agreement, the Service Provider will conduct the assignment with as minimal amount of disruption to the delivery of the Services as possible. The Service Provider shall reimburse AHS for one time costs reasonably incurred by AHS in connection with the assignment, including the costs of legal and other professional advisors retained by AHS in order to perform due diligence related to the assignee or the assignment transaction and, if applicable, to close the assignment transaction.

Article 21 **LAND**

21.1 Land Requirements

If the Service Provider owns or leases land or buildings at which it provides Services to Clients, the Service Provider will comply with the land requirements in Schedule D.

Article 22
GENERAL TERMS AND CONDITIONS

22.1 Set Off

The parties have reciprocal rights of set off in respect of amounts payable to each other party under this Agreement. For clarity, AHS shall be entitled to set-off any payments due and owing by it under this Agreement to the Service Provider against payments due and owing to it by the Service Provider under this Agreement.

22.2 Research and Intellectual Property

- (a) As required, the parties may enter into research agreements.
- (b) In accordance with AHS's Intellectual Property policy and unless otherwise agreed to in writing, all works, writings, creations, inventions, techniques, improvements, methods, software programs, designs and other original works without limitation developed or produced for and on behalf of AHS in the performance of the Services under this Agreement are the property of AHS, are hereby assigned to AHS, and all moral rights in the same are waived by the Service Provider. Upon the termination or expiry of this Agreement or any Service Schedule, the Service Provider shall deliver up to AHS any and all materials developed or produced for and on behalf of AHS in the performance of the Services in whatever form they may be found to exist.

22.3 Unions

If the Service Provider's Personnel are unionized, the Service Provider will prepare a strike contingency plan one year prior to the expiry of the collective agreement and provide it to AHS upon request.

22.4 Consent, Agreement and Approval

- (a) AHS shall use bona fide and relevant considerations in making its decision to grant or withhold any consent, agreement or approval under this Agreement and shall:
 - (i) provide such consent or approval as soon as reasonably possible; and
 - (ii) not withhold any consent or approval unreasonably or arbitrarily.
- (b) Consent or approval by AHS under this Agreement will be deemed to have been given unless AHS provides notice of disapproval in writing to the Service Provider's written request, sent to AHS's address for service, for such approval or consent within 60 days of receipt of such request.

22.5 Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior negotiations and discussions.

22.6 Time of the Essence

Time is of the essence of this Agreement.

22.7 Governing Law

The laws of the province of Alberta, excluding laws dealing with conflicts of laws, govern this Agreement. The parties irrevocably attorn to the exclusive jurisdiction of the courts of the province of Alberta. This provision does not interfere with the dispute resolution process in Article 19.

22.8 Amendment, Waiver or Modification

Except for changes to this Agreement under the provisions of Section 9.1 (Changes to Services), amendments to this Agreement must be in writing and signed by an authorized representative of each party. No indulgence or forbearance by any party is deemed to constitute a waiver of its rights to insist on performance in full and in a timely manner of all covenants of the other party and any waiver, in order to be binding upon a party, must be in writing and signed by such party and then the waiver is only effective in the specific instance and for the specific purpose for which it is given.

22.9 Notices

(a) All demands, notices, consents or communications other than day to day communications under this Agreement are to be in writing and delivered by courier or fax or hand to the other party, as follows:

(i) If to AHS at:

Alberta Health Services

● INSERT NOTICE CONTACT

Concurrent copy to:

Alberta Health Services
Attention: Legal and Privacy
10301 Southport Lane SW
Calgary, AB T2W 1S7
Facsimile: (403) 943-0907

(ii) If to the Service Provider at:

● INSERT NOTICE CONTACT

(b) A demand, notice, consent or communication sent by fax or courier during normal business hours at the place of receipt on a Business Day is deemed to have been sent at the time of actual transmittal or delivery, as the case may be, on the Business Day. Any demand, notice, consent or communication sent by fax or courier after normal business hours at the place of receipt or otherwise than on a Business Day is deemed to have been sent at the commencement of normal business hours at the place of the receipt on the first Business Day following actual transmittal or delivery, as the case may be.

(c) A party may change its address for notice by notifying the other party in writing in accordance with this Section 22.9.

22.10 Survival

Unless otherwise stated in this Agreement, the provisions of this Agreement which by their terms or intent survive the expiry of this Agreement will remain in effect and be enforceable following expiry of the Agreement.

22.11 Rights and Remedies

The rights and remedies available to a party under this Agreement are in addition to and not a limitation of any rights and remedies available to the party by law or in equity.

22.12 Further Assurances

The parties shall, with reasonable diligence, hold all meetings, perform all acts, execute and deliver all documents and instruments and do all things that are necessary or desirable to give effect to this Agreement.

22.13 Counterparts

The parties may execute this Agreement in counterparts, each of which will be deemed to be an original. The counterparts together will constitute one and the same instrument, notwithstanding that all of the parties are not signatories to the original or the same counterpart. Counterparts may be executed either in original, faxed or electronic form and the parties shall adopt any signatures received by a receiving fax machine or electronically as original signatures of the parties.

The parties have executed this Agreement on the date stated opposite the signatory's signature.

ALBERTA HEALTH SERVICES

By: _____

Date: _____

Name: _____

Title: _____

By: _____

Date: _____

Name: _____

Title: _____

[● INSERT NAME OF SERVICE PROVIDER]

By: _____

Date: _____

Name: _____

Title: _____

By: _____

Date: _____

Name: _____

Title: _____

Template

SCHEDULE A DEFINITIONS

When capitalized in this Agreement, the following words and phrases have the following meanings:

"Accountabilities" means those service accountabilities formulated by AHS, including specified staffing models, which are applicable to all continuing care operators that provide the same services in the province of Alberta.

"Agreement" means this Master Services Agreement, including the Schedules, as amended.

"AHS' Funding Methodology" means the funding model based on, but not limited to, staffing requirements and accountabilities, that is utilized by AHS from time to time which endeavours to reflect a relationship between the Services and the Service Fees.

"AHS Policies" means those written policies, processes, bylaws, directives, guidelines, manuals, standards and requirements formulated by AHS which are applicable to all continuing care operators in the province of Alberta.

"Alternate Service Provider" means AHS or any person designated by AHS as an alternate service provider for any or all of the services that are equivalent to or that replace the Services.

"Annual Service Letter" means the letter issued by AHS to the Service Provider amending the duties, responsibilities, accountabilities and funding related to the Services under this Agreement.

"Applicable Laws" means all federal, provincial and municipal statutes, regulations, rules, orders, directives, guidelines, codes and bylaws applicable to the Services and the Service Provider.

"Appointed Representative" means the representative appointed by each party to manage the administration of this Agreement.

"Business Day" means 8:00 a.m. to 4:30 p.m., Mountain Standard Time, Monday to Friday inclusive, except statutory or civic holidays observed in the Province of Alberta.

"Client" means an individual receiving publicly-funded continuing care health services, and where applicable, the Client's legal representative.

"Confidential Information" means any and all information of a proprietary and confidential nature including any information, documents, reports, records and materials, (whether or not such information is marked as confidential and whether or not such information is copyrightable, uncopyrightable, patentable or unpatentable) that belongs to AHS or any affiliate of AHS, or any of their respective employees, agents, professional advisors, contractors, subcontractors or other service providers, which is disclosed or to be disclosed to the Service Provider or its Appointed Representatives by AHS or any of its directors, officers, employees, agents, counsel, professional advisors or other persons in connection with the Services or this Agreement; and for greater certainty, Confidential Information includes information, documents, reports, records and materials whether oral, visual, written, electronic, magnetic or other form, and includes all

analyses, compilations, studies or other documents prepared or obtained by the Service Provider that contain or otherwise reflect such information, documents, reports, records and materials.

"Effective Date" means the date on page 1 of this Agreement.

"Essential Services" means any component of the Services that in the opinion of AHS are critical to the care, health or safety of Clients, as well as those essential services identified in any Service Schedule.

"Event of Default" means the breaches of this Agreement set out in Sections 10.1 and 10.2

"FOIP" means the *Freedom of Information and Privacy Protection Act (Alberta)*.

"Force Majeure" means the occurrence of an event beyond the reasonable control of a party that interferes with, delays or prevents performance of the obligations of a party, provided that (i) the non-performing party is without fault in causing or failing to prevent such occurrence, and such occurrence cannot be circumvented through the use of reasonable alternative sources, workaround plans or other means and (ii) in the case of Force Majeure claimed by the Service Provider, the Service Provider not be excused from its business continuity and disaster recovery and Essential Services obligations in Sections 12.2 and 12.3. Subject to the foregoing, an event of Force Majeure includes, (i) explosions, fires, flood, earthquakes, catastrophic weather conditions or other elements of nature or acts of God, (ii) acts of federal, provincial or local governmental authorities or courts, or (iii) acts of war (declared or undeclared), acts of terrorism, insurrection, riots or civil disorders and does not include a failure to perform as a result of a party's lack of funds or financial ability or capacity to carry on business, as a result of labour dispute affecting such party or as a result of a pandemic or similar form of epidemic.

"Health Information" means the following information whether oral, visual, written, electronic, magnetic or other form:

- (a) Client information, including medical histories, Client charts or medical records, diagnostic, treatment and care information, and registration information as defined under the HIA;
- (b) Personnel information, including but not limited to, employees' personal or medical histories, compensation or other terms of employment, actual or proposed promotions, hirings, resignations, disciplinary actions, terminations or reasons therefore, training methods, performance or other employee information;
- (c) health provider information as defined under the HIA; and
- (d) any and all analysis, compilations, studies or other document that contains or otherwise reflects the information in this definition.

"HIA" means the *Health Information Act (Alberta)*.

"Losses" means any and all claims, actions, demands, losses, damages (excluding consequential and indirect damages), liabilities, costs and expenses (including legal fees on a solicitor and his or her own client basis), including losses for injury to or death of persons

whomsoever and for damage to, loss of or destruction of property (whether that of AHS, the Service Provider or a third party).

"Notice" means a written notice delivered in accordance with this Agreement.

"Personal Information" means information about an identifiable individual, including: the individual's name, home or business address or telephone number; the individual's race, national or ethnic origin, colour or religious or political beliefs or association; the individual's age, sex, marital status or family status; an identifying number, symbol or other particular assigned to the individual; fingerprints, blood type or inheritable characteristics; information about a physical or mental disability; information about the individual's education, finances, employment or criminal history, including criminal records where pardon has been given; anyone's opinions about the individual; and the individual's personal views or opinions, except if they are about someone else.

"Personnel" means directors, officers, employees, agents, servants, volunteers and contractors of a party, as the context requires.

"Reporting Requirements" means the reports described in each Service Schedule that the Service Provider prepares and delivers to AHS by the deadlines specified in each Service Schedule.

"Service Fees" means 1/12th of the annual funding set out in each Service Schedule, as amended.

"Service Schedule" means each Schedule containing a detailed description of the Services created under Section 5.4.

"Services" means the services provided by the Service Provider under this Agreement, as more particularly described in each Service Schedule.

"Standards" means all standards, guidelines and directives issued by Alberta Health relevant to the Service Provider or the Services.

"Subcontractor" means any third party, other than a supplier, engaged by the Service Provider to perform any of the Services on behalf of the Service Provider.

"Term" has the meaning set out in Section 8.1

SCHEDULE B AHS POLICIES

Alberta Health Services is established and governed by a range of documents including legislation, bylaws, guidelines, directives and policies. The AHS Policies applying to contracted service providers are listed and briefly explained below. Contracted service providers must, at a minimum, be familiar with the governance documents listed and must comply, or develop policies that are consistent with, the requirements contained therein.

AHS shall provide contracted service providers with the AHS Policies, and amendments to such policies, electronically. The AHS Policies provided by AHS constitute part of this Agreement.

1. Alberta Health Services Bylaws:

Conflict of Interest Bylaw

- Promotes a standard of conduct to preserve and enhance public confidence in the integrity, objectivity, and impartiality of AHS' decision-making processes, and assist persons acting on behalf of AHS to avoid, mitigate or manage Conflict of Interest situations.

Code of Conduct

- The AHS Code of Conduct outlines the values, principles, and standards to guide the behaviour of persons acting on behalf of AHS.

2. Alberta Health Services Policies:

Corporate Accountability and Financial Stewardship

- *Communications (Internal and External) (#1106)*
Communication on behalf of AHS, whether internal or external, shall consistently and accurately reflect AHS' mission, goals, values, principles, mandate, strategic direction, and visual identity.
- *Social Media (#1139)*
This policy sets out the requirements for the development and maintenance of official AHS social media pages.

Information and Technology Management

- *Access to Information (Physical, Electronic, Remote) (#1105)*
Sets out requirements and responsibilities for physical, administrative and technical access controls at all AHS facilities containing information and storage, IT resources, information, and information systems. The purpose of the controls is to protect the security of AHS IT resources, facilities, and to safeguard health and personal information.
- *Contractor Requirements for Security and Privacy of Information and IT Resources (#1107)*
Outlines to contractors and individuals negotiating, or managing contracts on behalf of AHS the security requirements for using or accessing AHS Information or IT resources.
- *Transmission of Information by Facsimile or Electronic Mail (#1113)*

This policy outlines the conditions by which information in the custody or control of AHS may be transmitted by facsimile or electronic mail.

- *Delegation of Authority and Responsibilities for Compliance with FOIPP and the HIA (#1108)*
This policy sets out the delegation of authority and responsibilities to ensure the collection, use, access and disclosure of personal information and health information in the custody or control of AHS complies with applicable legislation.
- *Collection, Access, Use, and Disclosure of Information (#1112)*
This policy outlines the requirements for the collection, access, use or disclosure of personal and health information in the control or custody of AHS in compliance with applicable legislation.
- *Information Technology Acceptable Use (#1109)*
Sets out acceptable use of AHS IT resources. All users are required to comply with applicable AHS policies and procedures regarding information and IT resource security, access and use, and privacy, and confidentiality.
- *Records Management (#1133)*
This policy sets out the requirements for managing and protecting the integrity of records created and maintained by, or on behalf of AHS.
- *Records Retention Schedule (#1133-01)*
The Records Retention Schedule governs how AHS electronic, email and paper documents/ records are organized, how long records are retained, and when records must be destroyed or archived.
- *Procedure: Records Destruction (#1133-02)*
This procedure outlines requirements to minimize the risks associated with the destruction of official records by ensuring records are destroyed safely, securely, and at the correct time.
- *Procedure: Transitory Records (#1133-03)*
Sets out the framework for the management of transitory records to ensure this type of record is not unnecessarily retained in AHS resources. Includes appendices outlines how to identify and manage transitory records.
- *Procedure: Legal Hold (#1133-04)*
This procedure sets out the requirements and responsibilities to preserve and secure AHS records during litigation and outlines the responsibilities for initiating, notifying, tracking, and removal of legal holds.

Patient Safety

- *Hand Hygiene (#PS-02) and Hand Hygiene Procedure (#PS-02-01)*
This policy and procedure standardize hand hygiene practice expectations and strengthen these to support patient safety.
- *Patient Concerns Resolution (#PRR-02)*
This policy is to facilitate a Patient Concerns Resolution Process within Alberta Health Services that is accessible, fair, consistent, transparent and timely.

Supportive Work Environment

- *Occupational Exposure to Blood and Body Fluids (#1111)*
The process for reporting and investigating incidents of exposure to blood and body fluids is outlined.
- *Workplace Abuse and Harassment (#1115)*
The policy outlines the process for reporting and investigating workplace abuse and harassment allegations.
- *Workplace Health and Safety (#1121)*
This policy provides a safe and healthy work environment that protects the health and safety of all employees and other persons acting on behalf of AHS.

3. Alberta Health Services Directives:

Duties and Reporting Under the Protection for a Persons in Care Act

- The Directive sets out the duties and reporting requirements in the new *Protection for Persons in Care Act* (Alberta) to ensure persons acting on behalf of AHS comply with the Act.

**SCHEDULE C
SERVICE SCHEDULE(S)**

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Template

SCHEDULE C-●-●

SERVICE SCHEDULE

[● INSERT NAME OF SERVICE PROVIDER]

CONTINUING CARE

[● INSERT SERVICE TYPE]

[● INSERT SCHEDULE C]

Template

**SCHEDULE D-1
LAND (FREEHOLD)**

1. Definitions

Capitalized words not defined in this Schedule have the same meaning as in the Agreement and Schedule "C".

2. Facility

- a) The Service Provider shall provide the Services at or from the Facility.
- b) The Service Provider shall operate, maintain, repair and upkeep the Facility in accordance with the Applicable Laws, Standards and AHS Policies.
- c) The Service Provider shall make the Facility, including equipment and supplies, available to accommodate the Clients. The Service Provider acknowledges that common areas within the Facility, parking areas and support services facilities (including the kitchen, washroom, and social and entertainment areas) are required to provide the Services. If the Service Provider wishes to exclude Clients from any areas of the Facility, it will obtain the prior written consent of AHS, such consent not to be unreasonably withheld.
- d) The Service Provider shall, at its sole cost and expense, obtain and maintain all licenses, permits and approvals which are or may be required by law in connection with development and construction at the Facility and in connection with the Services at the Facility.
- e) If applicable, the Service Provider shall maintain complete and accurate contract documentation, financial statements and accounting records for all development and construction work undertaken at the Facility.

3. Transfer

- a) The Service Provider shall not assign, sublet, transfer, dispose, mortgage, charge, part with or share possession of all or substantially all of the Facility (each such event, a "Transfer") to any person without the prior written consent of AHS, such consent not to be unreasonably withheld.
- b) AHS' consent to a Transfer will be conditional on the Service Provider, AHS and the lender or the transferee, as applicable, entering into such agreements required by AHS that will in AHS' opinion, ensure continuous delivery of the Services in accordance with this Agreement.
- c) Upon request, the Service Provider shall reimburse AHS for all reasonable costs, including reasonable imputed internal costs incurred by AHS in reviewing any request for approval of a Transfer.

4. Rights of First Refusal

Without limiting AHS' rights under Section 3 and subject to Subsection 4 0, the Service Provider hereby grants rights of first refusal to AHS to acquire the Service Provider's interest in the Facility as follows:

- a) if during the Term the Service Provider receives any offer to purchase or lease all or substantially all of the Service Provider's interest in the Facility which the Service Provider proposes to accept ("Offer to Purchase"), the Service Provider will not accept the Offer to Purchase without first providing a copy of the Offer to Purchase to AHS and affording AHS 30 days within which to elect to acquire the Service Provider's interest in the Facility on the same terms and conditions as are contained in the Offer to Purchase [any terms and conditions not able to be identically matched being deemed to be sufficiently matched if reasonably equivalent alternatives ("Reasonable Equivalents") are proposed]. If within the 30-day period AHS indicates to the Service Provider that it wishes to acquire the Service Provider's interest in the Facility on the terms and conditions proposed (or Reasonable Equivalents), AHS and the Service Provider will, subject to receipt of Ministerial Consent, as defined in Subsection 4 d), complete the purchase or lease on the basis applicable. If AHS has not within the 30-day period indicated it wishes to purchase or lease the Service Provider's interest in the Facility, the Service Provider may sell or lease, if otherwise entitled under Section 3, on the basis set out in the Offer to Purchase;
- b) if the Service Provider proposes to offer to sell or lease all or substantially all of the Service Provider's interest in the Facility to any person ("Offer to Sell"), the Service Provider will not make an Offer to Sell without first providing a copy of the proposed Offer to Sell to AHS and affording AHS 30 days within which to elect to acquire the Service Provider's interest in the Facility on the same terms and conditions as are contained in the proposed Offer to Sell (or Reasonable Equivalents). If within the 30-day period AHS indicates to the Service Provider that it wishes to acquire the Service Provider's interest in the Facility on the terms and conditions proposed (or Reasonable Equivalents), AHS and the Service Provider will, subject to receipt of Ministerial Consent, complete the sale or lease on the basis applicable. If AHS has not within the 30-day period indicated it wishes to acquire the Service Provider's interest in the Facility, the Service Provider may, if otherwise entitled under Section 3, offer to sell or lease to third parties on the basis set out in the Offer to Sell;
- c) where the Service Provider receives an Offer to Purchase or makes an Offer to Sell (in either case, an "Offer") which AHS does not elect to match (including Reasonable Equivalents), and a sale or lease to the third party making or receiving the Offer is not completed within three months of notice of the Offer first being given to AHS, AHS' rights of first refusal contained in this Section 4 will again apply and be complied with prior to any sale or lease to a third party being completed; and
- d) the parties acknowledge that the ability of AHS to exercise its rights of first refusal and acquire all or substantially all of the Service Provider's interest in the Facility as set out in this Section 4 is subject to AHS obtaining the prior written consent of the Minister of Health for Alberta ("Ministerial Consent") and that AHS will be unable to complete such purchase or lease without first obtaining Ministerial Consent. If AHS is unable to obtain Ministerial Consent within 150 days of the Offer first being given to AHS (or such longer period of time as the parties may agree in writing), AHS will

not be bound to complete any such purchase or lease, and, in such event, neither party will have any further or other rights against the other in relation to the Offer. It is also understood that AHS' inability to obtain Ministerial Consent with respect to one Offer does not preclude AHS from exercising its rights of first refusal with respect to any other Offer (subject to obtaining Ministerial Consent for such other Offer).

5. Information Caveat

AHS shall be entitled to register this Agreement and AHS' interest under this Agreement at the Alberta Land Titles Office and the Service Provider shall undertake reasonable further acts as required by AHS to permit AHS to register its interests but shall, as reasonably required by the Service Provider postpone the same to any registration required in connection with the Service Provider's financing and shall discharge the same upon the expiry of the Term.

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**SCHEDULE D-2
LAND (NON-FREEHOLD)**

1. Definitions

Capitalized words not defined in this Schedule have the same meaning as in the Agreement and Schedule "C". The following definitions apply to this Schedule D:

"Owner" means the registered owner of the Facility lands.

2. Facility

- a) The Service Provider shall provide the Services at or from the Facility.
- b) The Service Provider shall, or shall cause the Owner to, operate, maintain, repair and upkeep the Facility in accordance with the Applicable Laws, Standards and AHS Policies.
- c) The Service Provider shall make the Facility, including equipment and supplies, available to accommodate the Clients. The Service Provider acknowledges that common areas within the Facility, parking areas and support services facilities (including the kitchen, washroom, and social and entertainment areas) are required to provide the Services. If the Service Provider wishes to exclude Clients from any areas of the Facility, it will obtain the prior written consent of AHS, such consent not to be unreasonably withheld
- d) The Service Provider shall, or shall cause the Owner to, at its sole cost and expense, obtain and maintain all licenses, permits and approvals which are or may be required by law in connection with development and construction at the Facility and in connection with the Services at the Facility.
- e) If applicable, the Service Provider shall, or shall cause the Owner to, maintain complete and accurate contract documentation, financial statements and accounting records for all development and construction work undertaken at the Facility.

3. Transfer

- a) The Service Provider shall not assign, sublet, transfer, dispose, mortgage, charge, part with or share possession of all or substantially all of its leasehold interest in the Facility (each such event, a "Transfer") to any person without the prior written consent of AHS, such consent not to be unreasonably withheld.
- b) AHS' consent to a Transfer will be conditional on the Service Provider, Owner, AHS, assignee and lender, as applicable, entering into such agreements required by AHS that will in AHS' opinion, ensure continuous delivery of the Services in accordance with this Agreement.

- c) Upon request, the Service Provider shall reimburse AHS for all reasonable costs, including reasonable imputed internal costs incurred by AHS in reviewing any request for approval of a Transfer.

4. Relationship with Owner

- a) The Service Provider shall by lease or other means, secure possession of sufficient of the Facility and for sufficient length of term as will ensure continuous delivery of the Services in accordance with this Agreement. The Service Provider shall use reasonable efforts to have the Owner, or if the Owner is an affiliate of the Service Provider, the Service Provider shall require the Owner, to enter into an agreement with AHS that will in AHS' opinion ensure the continuation of the lease of the Facility and continuous delivery of the Services in accordance with this Agreement.
- b) If the Service Provider's lease is or will be subordinate to the Owner's mortgage financing, the Service Provider will make reasonable efforts to enter into a Non-Disturbance Agreement with the Owner's lender to ensure that the Service Provider will continue to enjoy possession of the Facility in the event that the Owner is in default to the lender.

SCHEDULE E INFECTION PREVENTION AND CONTROL

1.1 Standards

The IPC Standards in force on the Effective Date include, but are not limited to, the following, all as amended, published or adopted by the applicable regulating body after the Effective Date:

- (a) the Alberta Health Infection Prevention and Control standards, which, at the Effective Date, include
 - (i) Standards for Infection Prevention and Control Accountability and Reporting (May 12, 2011);
 - (ii) Standards for Cleaning, Disinfection and Sterilization of Reusable Medical Devices for all Health Care Facilities and Settings (June 2012) (the "Sterilization Standards");
 - (iii) Standards for Single-Use Medical Devices (February 18, 2011);
 - (iv) Standards for Prevention and Management of Methicillin-Resistant Staphylococcus aureus (January 16, 2008); and
 - (v) Infection Prevention and Control Information Sheet, Manufacturer/Distributor Reprocessing Information (June 16, 2008).
- (b) the Alberta Health letter to Regulatory Body Registrars dated April 17, 2008, which specifies that: "Reusable medical devices may only be distributed or imported by a body that holds an Establishment License issued by Health Canada."

1.2 Service Provider Obligations

- (a) The Service Provider shall obtain copies of the IPC Standards described in Section 1.1(a) of this Schedule from time to time during the Term from the Minister's website at <http://www.health.alberta.ca/newsroom/pub-infection-prevention.html>
- (b) The Service Provider shall obtain information about the approval and licensing of reusable medical devices under Section 1.1(b) of this Schedule from Health Canada or by consulting Health Canada's website at: www.hc-sc.gc.ca/dhp-mps/legislation/md-im_e.html

1.3 Infection Prevention and Control (IPC) Reporting

The Service Provider shall provide AHS with a report on IPC related indicators from time to time upon request by AHS.