

SERVICES AGREEMENT

BETWEEN

VANCOUVER COASTAL HEALTH AUTHORITY

and

SILVERSTONE CARE CENTRE LIMITED PARTNERSHIP, represented by its
general partner, Silverstone Care Centre Ltd.



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**SERVICES
AGREEMENT**

THIS AGREEMENT made the 27 day of April, 2016

BETWEEN:

VANCOUVER COASTAL HEALTH AUTHORITY, a regional health board designated under the *Health Authorities Act* (British Columbia) having an address at 601 West Broadway, 11th Floor, Vancouver, British Columbia V5Z 4C2

("VCH")

AND:

SILVERSTONE CARE CENTRE LIMITED PARTNERSHIP, a limited partnership organized under the *Partnership Act* (British Columbia), represented by its general partner, Silverstone Care Centre Ltd., a corporation incorporated under the *Business Corporations Act* (British Columbia) with an address at s.19(1) [REDACTED] North Vancouver, British Columbia s.19(1) [REDACTED]

(the "Service Provider")

WHEREAS:

- A. VCH has the authority to enter into agreements relating to the delivery of health care services, including residential care services within the Province of British Columbia.
- B. On May 28, 2015, VCH issued the Request for Solutions (the "RFS") in phase 2 of the Request for Qualifications and Solutions, RFQS 2015-BISS-001 "New-Build and/or Renovated Residential Complex Care Beds for Coastal Community of Care (Sunshine Coast)". The solution proposal submitted on behalf of the Service Provider was selected and the Service Provider will build the Facility pursuant to the Project Development Agreement between the Service Provider and VCH.
- C. In connection with the RFS, the Service Provider also was selected to (1) operate an adult day program for older adults at the Facility and (2) operate a hospice as an extension to the Facility. To the extent that additional operational services may be required to operate the adult day program, they will be set out in a separate services agreement between the Service Provider and VCH. The operation of the hospice will be covered by a separate services agreement between the Service Provider and VCH.
- D. The Service Provider has, and will have as of the Effective Date and throughout the Term of this Agreement, the expertise and resources to provide the Services.
- E. On the Effective Date, subject to the Service Provider completing the construction and licencing of the Facility and Occupancy of the Facility being attained, all in accordance with the terms of the Project Development Agreement, the Service Provider will commence providing the Services and VCH will provide the funding on the terms and conditions set out in this Agreement.

F. VCH and the Service Provider acknowledge the importance of working together in a spirit of consultation, collaboration, openness, fairness and transparency in connection with the delivery of the Services and wish to enter into this Agreement to set out the manner in which the Service Provider will provide the Services during the Term of this Agreement.

G. If VCH terminates the Project Development Agreement pursuant to Section 12 of the Project Development Agreement, this Services Agreement also will be terminated immediately and VCH will have no obligation to provide funding for the Services or make any other payments to the Service Provider.

H. The parties wish to enter into this Agreement to set out the terms and conditions pursuant to which the Service Provider will provide the Services and do such other acts and things as are described in this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES in consideration of the execution of the Project Development Agreement by the Service Provider as well as the mutual covenants, promises and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties to this Agreement agree as follows:

1. INTERPRETATION

1.1 Definitions

"60% Period" has the meaning set out in Section 3(a)(i) of Schedule B;

"75% Period" has the meaning set out in Section 3(a)(ii) of Schedule B;

"Accreditation" means accreditation with the Canadian Council on Health Services Accreditation or compliance with the standards of another equivalent quality assurance process approved by VCH, as described in Section 7.5;

"Agreement" means this Services Agreement, including the Schedules, Exhibits and other attachments to this Agreement, as it or they may be amended or supplemented from time to time, and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement and not to any particular Section or other portion of this Agreement;

"Applicable Law" means all statutes, ordinances, regulations, municipal by-laws, treaties, judgments and decrees applicable to any Person, property or event relating to this Agreement;

"Capital Maintenance Plan" means a plan for the ongoing repair, restoration and maintenance of the Facility which requires significant capital investment, as opposed to routine operating expenditures;

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

"Client Bed Days" has the meaning set out in Section 3(a) of Schedule A;

"Client Contribution" has the meaning set out in Section 4(a) of Schedule B;

“Confidential Information” has the meaning set out in Section 10.2;

“Default Notice” has the meaning set out in Section 12.3(a);

“Deferred Occupancy Payment” has the meaning set out in Section 2(a) of Schedule B;

“Designated Contact” means, with respect to reports to be made under Section 2.1(p) of this Agreement, the Person or Persons designated by VCH from time to time to receive such reports;

“Effective Date” means the date Occupancy is achieved;

“Eligible Person” means an individual who meets the Ministry’s eligibility criteria, as established from time to time, for admission to residential care;

“Emergency” means any serious sudden or unexpected event, circumstance or crisis with dangerous or potentially serious health or safety implications for Clients or posing a threat to the continuity of Services, including, without limitation, fire, earthquake, flood, other natural disaster, act of terrorism, civil disturbance, war, labour disruption, outbreak of communicable disease, or pandemic (including influenza);

“Extension Notice” has the meaning set out in Section 9(a)(iii) of Schedule B;

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

“Financial Records” has the meaning set out in Section 4.1(b);

“Financial Reports” has the meaning set out in Section 4.2;

“First Notice” has the meaning set out in Section 9(a)(i) of Schedule B;

“Funding Amendment” has the meaning set out in Section 3.3;

“Funding Letter” has the meaning set out in Section 3(b) of Schedule B;

“Funds” has the meaning set out in Section 3(b)(i) of Schedule B;

“Guarantor” has the meaning set out in Section 9.1;

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

“HEABC” means the Health Employers Association of British Columbia;

“Holdback” has the meaning set out in Section 9(a)(iv) of Schedule B;

“Home and Community Care Policy Manual” means the policy manual published by the Ministry outlining its requirements relating to the provision of the Services, the Facility or the Service Provider

which is available online at <http://www2.gov.bc.ca/gov/topic.page?id=8F569BDA913540DCAB75145DBB6070CE>, as it may be amended or replaced by the Ministry from time to time;

“**HSCIS**” means the Health Sector Compensation Information System;

“**Incident**” means an event or circumstance which could have resulted, or did result, in unnecessary harm to a Client;

“**Letter of Acceptance**” has the meaning given to it in the Project Development Agreement;

“**Loss**” has the meaning set out in Section 8.2;

“**Medical Health Officer**” means a Medical Health Officer within the meaning of the *Health Act* (British Columbia);

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

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

“**Occupancy**” has the meaning given to it in the Project Development Agreement;

“**Payment Demand**” has the meaning set out in Section 12.4;

“**Payment Request**” has the meaning set out in Section 12.4;

“**Per Diem Adjustment**” has the meaning set out in Section 5(b) of Schedule B;

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

“**Personal Information**” means personal information (as defined in the *Freedom of Information and Protection of Privacy Act*) which is collected, acquired, or obtained by or on behalf of VCH, in relation to providing the Services;

“**Personnel**” means any persons employed or engaged by the Service Provider to provide the Services, including its servants, employees, officers, independent contractors, subcontractors, volunteers, agents and representatives;

“**Project Developer**” is the Service Provider, Silverstone Care Centre Limited Partnership, represented by its general partner, Silverstone Care Centre Ltd.;

“**Project Development Agreement**” means the project development agreement between the Service Provider and VCH dated of even date herewith pursuant to which the Service Provider has agreed to construct the Facility;

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

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

“Redevelopment” means the renewal through upgrading, rebuilding, conversion to alternate health care service use or decommissioning of the Facility when it does not, in whole or in part, meet the physical plant requirements necessary to satisfactorily support the Services or when it has become redundant in a particular geographic area, but does not include routine maintenance which does not cause an interruption in the continuity of the Services;

“Remedial Plan” has the meaning set out in Section 12.3(b)(ii);

“Remedy Period” has the meaning set out in Section 12.3(a);

“Required Occupancy Threshold” has the meaning set out in Section 5(a) of Schedule B;

“RFS” has the meaning set out in Recital B;

“Schedule B Adjustment” has the meaning set out in Section 3.3;

“Second Notice” has the meaning set out in Section 9(a)(ii) of Schedule B;

“Service Delivery Area” means the defined geographic region over which VCH has responsibility to deliver health care services as set out in the *Health Authorities Act*;

“Service Provider” has the meaning set out on the first page of this Agreement;

“Service Records” has the meaning set out in Section 4.1(a);

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

“Significant Event” has the meaning set out in Section 14.1;

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

“Staffing Plan” has the meaning set out in Section 7 of Schedule B;

“Temporary Services” has the meaning set out in Section 3(c)(i) of Schedule A;

“Term” has the meaning set out in Section 12.1;

“Transition Period” has the meaning set out in Section 12.8(b);

“Transition Plan” has the meaning set out in Section 12.8(a);

“VCH Per Diem Base Rate” has the meaning set out in Section 1(b) of Schedule B;

“VCH Per Diem Rate” has the meaning set out in Section 1(b) of Schedule B;

“**VCH Personnel**” means any persons employed or engaged by VCH, including its servants, employees, officers, independent contractors, subcontractors, volunteers, agents and representatives; and

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

1.2 Interpretation

- (a) The word “including” when following any general term or statement will not limit the general term or statement to the specific matter immediately following the word “including” or to similar matters, and the general term or statement will be construed as referring to all matters that reasonably could fall within the broadest possible scope of the general term or statement; and
- (b) Unless otherwise specified, each reference to a statute is deemed to be a reference to that statute, and to the regulations made under that statute, as amended or re-enacted from time to time, and each reference to a statute is a reference to a British Columbia statute.
- (c) In the event of conflict or inconsistency between the main body of this Agreement and the Schedules hereto except for Schedule E, the main body of this Agreement will govern to the extent of the conflict and to the extent permitted by Applicable Law. In the event of conflict or inconsistency between the main body of this Agreement or any other Schedule hereto and Schedule E, Schedule E will govern to the extent of the conflict.
- (d) Wherever in this Agreement the context so requires, the singular number will include the plural number and vice versa.
- (e) The division of this Agreement into paragraphs, sections, subsections and other subdivisions and the insertion of headings are for convenience of reference only and will not affect or be utilized in the construction or interpretation hereof.
- (f) The invalidity or unenforceability of any provision of this Agreement will not affect the other provisions hereof and this Agreement will be construed in all respects as if such invalidated provisions were omitted.
- (g) This Agreement is not intended to, and does not in any way change the ownership or governance of the Service Provider or the Facility. The Service Provider remains a separate legal entity and an independent contractor to VCH.
- (h) This Agreement is not intended to, and does not create an employment or agency relationship between the parties hereto, and the Service Provider will not in any manner whatsoever commit or purport to commit VCH to the payment of any money to any Person or to any other obligation.

2. SERVICES & SERVICE PROVIDER'S OBLIGATIONS

2.1 Service Provider's Obligations

The Service Provider will:

- (a) provide the Services to Clients in the Facility in accordance with the terms and standards of this Agreement, VCH Policies, Ministry Policies;
- (b) ensure that the Services are made available to VCH on a continuous and consistent basis throughout the Term;
- (c) take such reasonable and prudent measures as are necessary to control and prevent health or safety risks to Clients, Personnel, VCH Personnel or members of the public, including such measures as may be required by: (i) VCH; (ii) the licenses, permits and other authorizations referred to in Section 5(b); (iii) Applicable Law; and (iv) prudent management practices;
- (d) in addition to its other disclosure obligations in this Agreement, comply with all reasonable requests made by VCH for the development or delivery, or both, to VCH of information or written plans, including the development and delivery to VCH of a Capital Maintenance Plan or a Redevelopment Plan, or both, in form and content satisfactory to VCH, acting reasonably;
- (e) consult with VCH regarding any plans for the Redevelopment of the Facility or any plans to change capacity or alter service delivery in the Facility, and will only implement mutually agreed upon changes in accordance with mutually agreed upon timeframes;
- (f) ensure (and the Service Provider hereby represents) that it does and will at all times own or, except for any subcontracting permitted hereunder, have the exclusive right to use the Facility;
- (g) participate with VCH to develop, and then implement, such changes as VCH may require: (i) in order to add or alter residential care capacity, improve the quality of residential care across all or part of the Service Delivery Area; and/or (ii) in connection with the revision of VCH's service delivery models to achieve its long-term goal of delivering health care services in an easily accessible and highly integrated manner across the continuum of care. Without limiting the generality of the foregoing, such required changes may include changes to the nature of the Services and the method of delivery of such Services;
- (h) cooperate with VCH to improve the delivery of health care in accordance with the Patient Care *Quality Review Board Act* (British Columbia) and:
 - (i) inform Clients about VCH's patient care quality office, where appropriate, as an option for resolving concerns about the quality of the Services; and
 - (ii) provide all reasonable assistance (including by promptly providing any available information or records) requested by VCH in relation to any care quality complaint under the *Patient Care Quality Review Board Act* (British Columbia);

- (i) take reasonable measures to prevent Incidents, including collaborating with VCH on preventive initiatives relevant to the Services and the Service Provider will, in accordance with any protocols or policies issued by VCH from time to time:
 - (i) promptly notify VCH of the Incident;
 - (ii) cooperate with any instructions given by VCH relating to the Incident or the delivery of the Services under this Agreement during the Incident; and
 - (iii) investigate the Incident to determine how to prevent a further occurrence of the Incident and improve the quality of the Services, or cooperate with VCH and/or participate in any investigation of the Incident led by VCH;
- (j) take (and will cause its Personnel and directors to take) steps to ensure avoidance of conflicts of interest between the interests of the Service Provider or its Personnel or its directors, on the one hand, and those of VCH, on the other. If the Service Provider or any of its Personnel or directors become aware of any possibility of any such conflicts, the Service Provider will promptly disclose such possible conflicts to VCH;
- (k) provide the Services in a manner consistent with the values and philosophy expressed in VCH Policies;
- (l) comply with all VCH Policies and protocols, including those concerning physician-assisted dying;
- (m) intentionally omitted;
- (n) if there are private pay beds in the Facility, discuss and agree the location of such beds with VCH;
- (o) engage in Emergency management and business continuity planning to prepare and implement systems and policies consistent with VCH Policies to address Emergency events including:
 - (i) providing for the self-sufficiency of the Facility;
 - (ii) ensuring the maintenance of adequate supplies of food, water, equipment (including alternate power sources) and other necessities of life are kept in adequate supply;
 - (iii) coordinating Emergency plans, systems and protocols with local municipal, fire, emergency and law enforcement authorities;
 - (iv) developing specific plans to manage the evacuation of the Facility and relocation of Clients; and
 - (v) engaging in such other planning activities and implementation as may be required to provide for the safety of Clients and continuity of the Services;
- (p) maintain and support a reporting process and ensure timely reporting by the Service Provider to the Designated Contact of issues or incidents:
 - (i) relating to efficiency of operations and risk management, including the following and other events of like seriousness: (A) labour disruption, acts of God or nature, or other incidents seriously threatening the stability of the Service Provider's operations or the continuity of Services; (B) legal proceedings relating to the competence or quality of care delivered by the Service Provider; and (C) the laying of any criminal charge against, or conviction of, the Service Provider or any one or more of its officers, directors or

senior managers relating to the trustworthiness of such Person(s) or the potential for such Person(s) to endanger the health or safety of Clients;

- (ii) that give rise to a breach or potential breach of Section 10 or Schedule E of this Agreement;
 - (iii) that give rise to any breach of Applicable Law that could result in any liability of or penalty or sanction against VCH; and
 - (iv) that may materially adversely affect the ability of the Service Provider to meet its obligations to provide the Services on the terms set out herein and are not otherwise provided for in subsections (i) to (iii) of this Section 2.1(p); and
- (q) enter into services agreements with VCH for the operation of an adult day program at the Facility and a hospice at the extension to the Facility.

3. FUNDING FOR THE SERVICES

3.1 VCH Funding Obligation

VCH will not be obligated to provide any funding to the Service Provider unless the following conditions have been met:

- (a) VCH has issued a Letter of Acceptance to the Service Provider as required under the Project Development Agreement;
- (b) the Service Provider has obtained all documents and licenses necessary to allow for lawful occupancy and operation of the Facility as required under the Project Development Agreement; and
- (c) Occupancy has occurred pursuant to the terms of the Project Development Agreement.

3.2 Funds

Subject to compliance by the Service Provider with the terms and conditions herein, starting from the Effective Date of this Agreement, VCH will pay the Service Provider the Funds for the Services for the Client(s) in accordance with the terms of Schedule B and subject to the terms of this Agreement, including all its Schedules. The Service Provider will accept payment of the Funds in full satisfaction of the financial obligations of VCH under this Agreement.

3.3 Funding Adjustments

VCH may from time to time throughout the Term, by notice to the Service Provider, adjust the Funds or amend the terms upon which the Funds are provided either as contemplated by Schedule B (which adjustment is referred to herein as a “**Schedule B Adjustment**”) or otherwise if VCH determines that such adjustment or amendment is necessary or desirable, such as a change in funding arising from an increase or decrease in the funding allocation to VCH by the Ministry (which amendment and/or adjustment is referred to herein as a “**Funding Amendment**”). A Schedule B Adjustment will be binding on such date as VCH may specify by notice to the Service Provider. A Funding Amendment will be

binding on the Service Provider on such date as VCH may specify by notice to the Service Provider, provided that such date will be at least 60 calendar days after the date such notice is sent.

3.4 Procedure for Funding Adjustments

Prior to making:

- (a) a Schedule B Adjustment pursuant to Section 3.3 or Section 5 of Schedule B; and/or
- (b) a Funding Amendment,

VCH will review and discuss with the Service Provider or with a group of similarly affected service providers, in writing or in person, the impact of the proposed change(s) on the number or type of Clients, the extent and level of Services to be provided and the amount payable for the Services, provided however that notwithstanding the foregoing the decision regarding whether to implement such a Schedule B Adjustment and/or a Funding Amendment and at what time will be at the sole discretion of VCH.

3.5 Funding Adjustment Plan

Following notification by VCH of a Schedule B Adjustment or a Funding Amendment, VCH may request that the Service Provider develop a plan that minimizes the negative effects of such adjustment or amendment on the Service Provider, the Clients and VCH, and the Service Provider will develop and implement a mutually agreed upon plan within a mutually agreed upon period of time.

3.6 Timing for Funding Adjustment

Any Schedule B Adjustment or Funding Amendment may be made any number of times throughout the Term and may include an increase or decrease in the amount of the Funds. A Schedule B Adjustment may be made with retroactive effect, but a Funding Amendment may not be made with retroactive effect.

3.7 Reporting

The Service Provider will comply with Schedule B, including the financial, statistical and other data reporting requirements set out in Schedule B.

3.8 No VCH Liability

- (a) VCH will not be responsible or liable for any operating or working capital deficits incurred in the Service Provider's operations as a result of this Agreement or otherwise.
- (b) VCH has no responsibility for or other obligation with respect to the Service Provider's financial or borrowing arrangements with its creditors, investors, lenders, guarantors or insurers, under this Agreement or otherwise. Notwithstanding the foregoing, VCH may consider reasonable requests on reasonable notice by the Service Provider to confirm in writing to third parties its funding arrangements with the Service Provider, subject to such terms and conditions or additional agreements as may be determined and/or required by VCH in its sole discretion.

- (c) The Service Provider will not in any manner whatsoever commit or purport to commit VCH to the payment of any money except in accordance with the terms of this Agreement.

3.9 Purpose

Funds provided by VCH to the Service Provider pursuant to this Agreement will be utilized for the provision of the Services to Clients and for no improper purpose.

3.10 Set Off

VCH may withhold or set off against any payment due to the Service Provider any charge, liability or indebtedness owed by the Service Provider to VCH or which under this Agreement is to be paid by or charged to the Service Provider. For certainty, VCH's rights under this Section 3.10 include any amounts which VCH may withhold or set off pursuant to its rights under Section 4.1 of the Project Development Agreement.

3.11 Taxes

- (a) It is the Service Provider's responsibility to pay all business and revenue taxes, assessments and charges.
- (b) The Service Provider will apply for and obtain, from the appropriate taxation authorities, any available refund, credit, rebate or remission of federal, provincial or other tax or duty imposed on the Service Provider as a result of this Agreement that VCH has paid or reimbursed to the Service Provider or agreed to pay or reimburse to the Service Provider under this Agreement, and immediately on receiving or being credited with any such amount, the Service Provider will remit that amount to VCH.
- (c) The Service Provider will reimburse to VCH any federal, provincial or other tax or duty that is collected by the Service Provider from VCH that is not required under Applicable Law to be remitted to the appropriate taxation authorities, and is not in fact remitted to the appropriate taxation authorities under Applicable Law.
- (d) If the Service Provider is not a resident in Canada, the Service Provider acknowledges that VCH may be required by law to withhold income tax from the Funds and then to remit that tax to the Receiver General of Canada on the Service Provider's behalf.

3.12 Reservation of Funding

Notwithstanding any other provision of this Agreement, the payment of Funds by VCH to the Service Provider pursuant to this Agreement is subject to funding being available from the Ministry of Health in the fiscal year of VCH during which the payment becomes due. VCH reserves the right to amend this Agreement, if subsequent to providing VCH with its funding, the Ministry of Health or other government funding bodies increases or decreases the funding allocation to VCH.

4. RECORDS AND FINANCIAL STATEMENTS

4.1 Records

The Service Provider will maintain throughout the Term and for a period of seven (7) years following the termination of the Agreement:

- (a) suitable and proper accounts, reports, correspondence, documents and other records relating to this Agreement and the Services, including without limitation, copies of all requests for Services issued by VCH to the Service Provider, and reports made by the Service Provider under this Agreement (collectively, the “**Service Records**”); and
- (b) a complete and accurate set of time records and books of account, invoices, receipts and vouchers of expenses relating to the Funds payable by VCH for the Services, in accordance with Canadian accounting standards for not for profit organizations or for private enterprises, as applicable, as may be applicable (collectively, the “**Financial Records**”).

4.2 Financial Reports

The Service Provider will comply with the reporting requirements set out in Schedule B, including the provision of financial reports in such format as may be required by VCH (the “**Financial Reports**”).

4.3 Financial Statements

The Service Provider shall also submit financial statements in accordance with the following and Section 8 of Schedule B:

- (a) If VCH pays to the Service Provider an amount that is \$1,000,000 or more in total annual payments on account of the Funds, the Service Provider shall prepare and submit an annual audited financial statement prepared in accordance with Canadian accounting standards for not for profit organizations or for private enterprises, as applicable, within 120 days following the end of the Service Provider's fiscal year. The annual audited financial statement shall include at a minimum, the Auditor's Report, Statement of Financial Position, Statement of Operations, Statement of Changes in Net Assets Statement of Cash Flows, and Notes to the Financial Statements.
- (b) If VCH pays to the Service Provider an amount that is less than \$1,000,000 in total annual payments on account of the Funds, the Service Provider shall provide an annual financial statement prepared in accordance with Canadian accounting standards for not for profit organizations or for private enterprises, as applicable, as set out in Section 4.3(a) above, excluding the Auditor's Report.

4.4 Change of Format

VCH will give at least three (3) months written notice of any change in the format of Financial Reports or financial statements requested by VCH under this Section 4.

5. LEGISLATION AND POLICY REQUIREMENTS

The Service Provider will, at all times:

- (a) comply with all Applicable Law, Ministry Policies and VCH Policies; and
- (b) at its sole expense obtain, comply with all terms and requirements of, and maintain in good standing, all licenses, permits and other authorizations required by Applicable Law or as otherwise required in accordance with the terms of this Agreement.

6. LABOUR AND EMPLOYMENT

6.1 Dual Employment

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

- (a) an employee of or in an employment relationship of any kind with VCH; or
- (b) in any way entitled to any terms or conditions of employment or any employment benefits of any kind whatsoever from VCH under any collective agreement or otherwise including private programs or coverage and statutory programs or coverage, whether under Applicable Law, health plan contributions, or otherwise.

Without limiting the generality of the foregoing, VCH will have no liability or responsibility for the withholding, collection or payment of income taxes, employment insurance, statutory or other taxes or payments of any other nature on behalf of, or for the benefit of, the Service Provider or any other Persons in connection with the provision of the Services.

6.2 Service Provider's Personnel

The Service Provider is the sole decision-making authority regarding planning for and managing its Personnel with respect to the Facility and the Services. The Service Provider will comply, and will ensure that any subcontractors comply, with all applicable municipal, provincial and federal laws relating to its Personnel, including without limitation, all applicable workers' compensation and occupational health and safety laws. Without limiting the foregoing, the Service Provider will: ensure that all persons providing the Services are covered by workers compensation insurance, keep its WorkSafeBC (Workers' Compensation Board of BC) account active and in good standing at all times during the Term, and be solely responsible for all premiums, assessments and other costs associated with doing so. Upon the request of VCH, the Service Provider will provide to VCH a clearance letter from WorkSafeBC indicating that the Service Provider is active and in good standing and has no outstanding premiums, assessments, fines, penalties or debts.

6.3 New Positions at the Facility

When the Service Provider decides to recruit employees in connection with the performance of the Services at the Facility, the Service Provider agrees to liaise with VCH in using reasonable efforts to bring such employment opportunities to the attention of those regular VCH Shorncliffe and Totem Lodge employees whose qualifications and experience are appropriate for the position(s) being filled. From the date that is five months prior to the Effective Date until the date that is three months after the Effective Date, the Service Provider agrees to interview all qualified regular VCH Shorncliffe and Totem Lodge employees who submit applications for new positions at the Facility. For certainty, the Service Provider will not be obligated to hire any current or former VCH employees to work at the Facility.

6.4 Labour and Employment Rights

With respect to the Facility and the Services, the Service Provider has the full and exclusive rights of an employer with respect to its Personnel including the right:

- (a) to participate in a ratification vote in respect of a collective agreement;
- (b) to control the selection, retention, discipline, layoff and termination of Personnel;
- (c) to develop employee and personnel policies and practices;
- (d) to direct participation with the HEABC; and
- (e) if applicable, but without limitation to VCH's rights pursuant to Section 12, to contract out services in accordance with Applicable Law provided that:
 - (i) the Service Provider notifies VCH of its intention and plan regarding such contracting out; and
 - (ii) any plans to contract out any of the Services require the prior written approval of VCH, which approval will not be unreasonably withheld.

6.5 Professional Personnel

The Service Provider will at all times comply with all medical, nursing and other professional staff governance requirements binding upon the Service Provider from time to time (such as reporting requirements) and will ensure that the Services are provided only by or under the supervision of competent and qualified Personnel meeting the professional qualifications required by Applicable Law.

6.6 Criminal Record Checks

- (a) Prior to employing or engaging any individual (including volunteers) to provide any part of the Services, the Service Provider will, at its expense, implement all appropriate and/or required pre-employment screening mechanisms, including causing criminal records checks to be made in respect of each individual currently employed, contracted or otherwise engaged by the Service Provider to provide the Services and/or having contact with Clients. Without limiting the foregoing, the Service Provider will comply with the *Criminal Records Review Act* (British Columbia). The Service Provider will not permit anyone who has not been cleared by a criminal

record check or who is otherwise determined by the Service Provider to be a potential risk to the Clients, to work directly with or to have or potentially have unsupervised access to the Clients or their records. Upon written request, the Service Provider will provide VCH written confirmation that: (a) criminal record checks have been initiated; (b) criminal record checks were completed prior to work beginning or prior to unsupervised access to the Clients or their records; (c) the Service Provider has acted on instructions from VCH and in accordance with the *Criminal Records Review Act* (British Columbia); and (d) all other related procedures have been followed.

- (b) If any of the individuals referred to in Section 6.6(a) moved to British Columbia within the last 10 years, the Service Provider will make all reasonable efforts to obtain a criminal record check from the jurisdiction in which he or she was previously resident.

6.7 Training

The Service Provider will ensure that all Personnel maintain a level of training appropriate for the provision of quality care.

6.8 Service Provider's Responsibility for Personnel

The Service Provider is fully responsible and accountable for the acts and omissions of its Personnel. The Service Provider will ensure and enforce at its expense for the benefit of VCH compliance with and performance of the terms and conditions of this Agreement by all the Service Provider's Personnel. Any failure on the part of the Service Provider's Personnel to comply with the terms and conditions of this Agreement will be treated as and will constitute failure by the Service Provider under this Agreement. No delegation or subcontract to or with any member of the Personnel, whether or not consented to by VCH, will relieve the Service Provider from any of its obligations under this Agreement or impose any obligation or liability upon VCH to any subcontractor or other person.

7. PERFORMANCE MANAGEMENT SYSTEM AND ACCREDITATION

7.1 Performance Management

Without limitation to its obligations to be responsible for the quality of the Services pursuant to Section 2, the Service Provider will comply with Schedule C and Exhibit 1 (Schedule C), and VCH and the Service Provider will review and assess the Services provided by the Service Provider according to VCH's performance management system described therein.

7.2 VCH Access

The Service Provider will allow VCH Personnel at any time on at least 24 hours' notice to the Service Provider (or without notice where, in the sole discretion of VCH, the health or safety of a Client or Clients, Personnel, VCH Personnel or members of the public is or may be jeopardized by the Service Provider's non-compliance with this Agreement), to monitor and have access to the Facility and to any Client in the Facility in order to:

- (a) assess the condition of a Client;
- (b) review documentation evidencing the Service Provider's licensing;

- (c) assess the condition of the Facility, including any suitability risks relating to the Facility; and/or
- (d) to ensure compliance with the terms of this Agreement.

7.3 Observation of Services Delivery

The Service Provider will permit VCH to observe, assess, audit, review or examine the delivery of the Services under this Agreement, from time to time as may be required by VCH.

7.4 Audits

VCH may from time to time, for the purpose of ensuring compliance with this Agreement and upon reasonable advance notice to the Service Provider, arrange for the audit, review or examination of the Service Provider's financial and non-financial documents and records relating to: (a) the Services; (b) this Agreement; and/or (c) the Service Provider's business to the extent that such business documents and records are determined by VCH, acting reasonably, to be related or ancillary to the purpose of ensuring compliance with this Agreement. Such audit, review or examination will be carried out by a representative of VCH or a duly authorized independent Chartered Accountant or Chartered Professional Accountant. The Service Provider will fully cooperate, permit and provide reasonable assistance to facilitate any audit, review or examination under this Section 7.4.

7.5 Accreditation

The Service Provider is required at all times during the Term and at its own cost to: (a) be accredited with the Canadian Council on Health Services Accreditation; or (b) meet the standards of another equivalent quality assurance process approved by VCH (each of which is defined as "Accreditation"). If on the Effective Date the Service Provider does not hold a current accreditation certificate or meet the standards of such other VCH-approved quality assurance process, the Service Provider will: (a) begin such Accreditation process within 1 year following the Effective Date; (b) achieve Accreditation within 2 years following the Effective Date; and (c) maintain Accreditation throughout the remainder of the Term. The Service Provider will provide VCH with the information set out in Schedule C and Exhibit 1 (Schedule C) and such other information as VCH may require in connection with its compliance with this Section 7.5.

8. INSURANCE AND INDEMNIFICATION

8.1 Insurance

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

- (a) at all times throughout the Term and any Transition Period, comply with Schedule D, including maintaining the insurance described therein; and
- (b) maintain such risk management practices as a prudent and reasonable Person providing services similar to the Services would maintain;

8.2 Indemnification

The Service Provider must indemnify VCH, VCH Personnel and VCH's board members from and against any and all losses, claims, damages, actions, causes of actions, costs and expenses (including legal fees on a solicitor and own client basis) that any of them may sustain, incur, suffer or be put to at any time (each, a "Loss"), to the extent that the Loss is directly or indirectly caused or contributed to by: (a) any act or omission of, or breach of this Agreement by, the Service Provider or any of its Personnel; (b) the provision of the Services; or (c) the operation of the Facility except for liability arising solely and directly out of any independent negligent act by VCH under this Agreement.

9. GUARANTEE

9.1 Obligation to Procure Guarantee

The Service Provider will procure that Trellis Seniors Services Ltd. (the "Guarantor") on the date hereof enter into a guarantee of the Service Provider's obligations under this Agreement in favour of VCH in the form set out in Schedule F and will procure that such guarantee will be maintained in full force and effect from the date of this Agreement until the date that is five (5) years from the date following the Effective Date. If for any reason the guarantee does not remain in full force and effect, the Service Provider will procure an alternative or additional guarantee, substantially in the form set out in Schedule F, from an organization with an equivalent net worth to that of the Guarantor as of the date of this Agreement.

9.2 Guarantor's Financial Information

The Service Provider will also procure that the Guarantor will, at VCH's request, provide VCH with such information that VCH may reasonably require for the purposes of calculating the Guarantor's tangible net worth.

10. PERSONAL INFORMATION AND CONFIDENTIAL INFORMATION

10.1 Personal Information

The Service Provider will comply with Schedule E of this Agreement, which governs the treatment and handling of "personal information" as defined therein. In addition, if applicable, the Service Provider will comply with the *Personal Information Protection Act* (British Columbia).

10.2 Confidential Information

"**Confidential Information**" means any and all information, whether or not the information is labeled or described as "confidential", of which the Service Provider becomes aware, or which the Service Provider receives, including information relating to VCH's organization, operations, business, facilities, assets, services, contracts, procurements, financials, personnel, patients, residents, clients, service providers, suppliers, contractors, plans, designs, strategies and specifically includes this Agreement, any reports generated by the Service Provider under this Agreement, and any other information relating to the Services or this Agreement. Where the Service Provider is in doubt about whether certain information is Confidential Information, the Service Provider will treat the information as Confidential Information.

10.3 Excluded Matters

The following will not be considered Confidential Information: (a) information which is in or enters the public domain through no fault or act of the Service Provider as documented in writing; (b) information which was independently developed by the Service Provider without the use of or reliance on Confidential Information as documented in writing; and (c) information which was provided to the Service Provider by a third party under no duty of confidentiality to VCH as documented in writing.

10.4 Confidentiality Obligations

The Service Provider will protect and treat all Confidential Information with the same degree of care as it uses to protect its own confidential information of like importance, but in no event with less than reasonable care. The Service Provider will not, without the prior written consent of VCH, either before, during or after the Term:

- (a) publish, release or disclose any Confidential Information, or permit any Confidential Information to be published, released or disclosed, to any person; or
- (b) use or exploit, directly or indirectly, any Confidential Information for any purpose other than for the fulfilment of the Service Provider's obligations under this Agreement.

10.5 Ownership

All Confidential Information is and will continue to be the property of VCH. Upon termination of this Agreement, the Service Provider will, at the option of VCH, return or destroy all Confidential Information. For certainty, any Client information, including charts and related documentation, is and will continue to be the property of VCH.

10.6 Privacy

The Service Provider acknowledges that VCH is subject to the provisions of the *Freedom of Information and Protection of Privacy Act* (British Columbia), as amended from time to time, and consequently, may be required by law to disclose the contents of this Agreement and/or communications between the parties.

11. DISPUTE RESOLUTION

11.1 Dispute Process

Subject to Section 11.2, in the event of a dispute relating to this Agreement, VCH and the Service Provider will use reasonable efforts to resolve the dispute in a cooperative and timely manner while minimizing any detrimental impact of such dispute on the delivery of the Services.

11.2 Excluded from Dispute Process

Disputes relating to the following matters will not be subject to the dispute resolution process set out in Section 11.1: (a) the termination of this Agreement or the process to terminate this Agreement; (b) matters governed by Section 14; (c) the placement of Eligible Persons; (d) the funding provisions of

this Agreement or the Funds, including regarding any Schedule B Adjustment or Funding Amendment; (e) a Significant Risk; or (f) matters governed by Applicable Law.

12. TERM AND TERMINATION

12.1 Term

This Agreement will commence on the Effective Date and will continue unless or until terminated by agreement of the parties or in accordance with this Section 12 (the “**Term**”). For certainty, this Agreement will be of no effect if VCH terminates the Project Development Agreement prior to Occupancy and VCH will have no obligations under this Agreement.

12.2 Immediate Termination

VCH may terminate this Agreement by providing a written notice to the Service Provider specifying the effective date of such termination, which effective date may be immediate, upon the occurrence of any of the following events:

- (a) any license, permit or other authorization referred to in Section 5(b) is terminated, suspended, revoked or expires;
- (b) the health or safety of a Client or Clients, Personnel, VCH Personnel or members of the public is or may be jeopardized;
- (c) a public administrator is appointed for the Facility; an order is made, a resolution is passed or a petition is filed for the Service Provider’s liquidation or winding up; the Service Provider commits an act of bankruptcy, makes an assignment for the benefit of its creditors or otherwise acknowledges its insolvency; a bankruptcy petition is filed or presented against the Service Provider or a proposal under the *Bankruptcy and Insolvency Act* (Canada) is made by the Service Provider; a compromise or arrangement is proposed in respect of the Service Provider under the *Companies’ Creditors Arrangement Act* (Canada) or any legislation of similar purport; a receiver or receiver-manager of any of the Service Provider’s property is appointed; or the Service Provider ceases, in VCH’s reasonable opinion based on generally accepted accounting principles, to carry on, or be capable of carrying on, business as a going concern; or
- (d) an event giving rise to termination of this Agreement by VCH in accordance with Section 9 of Schedule B or Section 4 of Schedule C;
- (e) an event giving rise to termination of this Agreement in accordance with Schedule E; or
- (f) if VCH objects to a Significant Event but the Service Provider determines to continue with the Significant Event or the Significant Event occurs in any event.

12.3 Termination following default

If the Service Provider has failed to comply with a term or condition of this Agreement other than those specified in Section 12.2, then the following will occur:

- (a) VCH will notify the Service Provider in writing of the nature of the default (the “**Default Notice**”) and the period of time, as determined by VCH at its sole discretion, within which such default must be remedied by the Service Provider (the “**Remedy Period**”).
- (b) The Service Provider will either:
 - (i) remedy such default within the Remedy Period; or
 - (ii) if such default cannot reasonably be remedied within the Remedy Period, then the Service Provider will promptly notify VCH in writing that this is the case and will deliver to VCH a plan (the “**Remedial Plan**”) satisfactory to VCH for rectification of such default, which plan will include a time frame within which such default will be rectified.
- (c) If VCH does not agree to the Remedial Plan, then this Agreement will terminate on the last day of the Remedy Period unless the Service Provider remedies such default to the satisfaction of VCH before such date. If VCH agrees to a Remedial Plan, then this Agreement will terminate on the expiration of the time frame for rectification of such default set out in the Remedial Plan unless the Service Provider remedies such default to the satisfaction of VCH prior to the expiration of such time frame.

12.4 Termination for Non-Payment

The Service Provider may terminate this Agreement if VCH fails to pay any undisputed amount due to the Service Provider hereunder in accordance with the payment obligations in this Agreement, provided that the Service Provider will provide VCH with written notice of such non-payment with a 30 day deadline for payment (the “**Payment Request**”). If non-payment continues after such 30 day deadline, then the Service Provider will provide VCH with written notice of the continued non-payment (the “**Payment Demand**”). If non-payment continues for 30 days after receipt by VCH of the Payment Demand, then the Service Provider may terminate this Agreement upon the provision of no less than 60 days written notice to VCH.

12.5 Termination without cause

Either party may at any time and for any reason terminate this Agreement upon 365 days’ prior written notice to the other party.

12.6 Obligations Continue

From the date that notice of termination is given by either party under this Section 12 to and including the effective date of the termination, the parties will perform their obligations under this Agreement in accordance with its terms.

12.7 VCH’s Rights to Cure Service Provider’s Breach or Default

Without limitation to any other rights available to VCH hereunder or otherwise in such circumstances, VCH may, at its option, on the happening of any breach by the Service Provider of this Agreement, take any actions, whether in its own name or in the name of the Service Provider, that may reasonably be required to cure the default, in which case all payments, costs and expenses incurred in connection

therewith will be payable by the Service Provider to VCH on demand and may be set off against any present or future sums owing by VCH to the Service Provider.

12.8 Transition

- (a) If requested to do so by VCH following termination of this Agreement, the Service Provider will promptly provide to VCH a transition plan, in form and content satisfactory to VCH, to ensure the orderly transfer of Clients and wind-up of the Services in preparation for the termination of this Agreement (the “**Transition Plan**”). The Service Provider will commence the implementation of the Transition Plan on such date as VCH may determine and thereafter will complete implementation of the Transition Plan on terms satisfactory to VCH.
- (b) VCH may request that the Service Provider continue to provide the Services after the effective date of termination of this Agreement for such period of time as VCH may deem necessary (the “**Transition Period**”) in order to ensure the welfare of the Clients. If VCH makes such a request, then notwithstanding the termination of this Agreement:
 - (i) the Service Provider will provide the Services on the terms set out in, and will otherwise comply with and be bound by, this Agreement during such Transition Period; and
 - (ii) VCH will pay to the Service Provider such amount as the Service Provider may be entitled to receive pursuant to this Agreement for Services provided during the Transition Period and otherwise will be under no further obligation to the Service Provider.

12.9 Termination Obligations

Upon termination of this Agreement:

- (a) VCH will, within 60 days of such termination, pay to the Service Provider any unpaid portion of the Funds which corresponds with the portion of the Services that was completed to VCH's satisfaction before the effective date of such termination; and
- (b) the Service Provider will, within 60 days of such termination, repay to VCH the portion of any paid Funds which corresponds with the portion of the Services that VCH has notified the Service Provider in writing was not completed to VCH's satisfaction before the effective date of such termination.

12.10 Discharge of VCH Liability

The payment by VCH of the amount described in Section 12.9(a) discharges VCH from all liability or obligation to the Service Provider in connection with this Agreement or its termination. VCH may as a condition of final payment under Section 12.9(a) require the Service Provider to execute and deliver a release and discharge in favour of VCH.

13. AMENDMENT

13.1 No Amendment

No amendment of or departure from the terms and conditions of this Agreement will be effective unless evidenced by an agreement executed by both parties.

13.2 Unilateral Amendment

Notwithstanding Section 13.1, VCH may, by providing notice of such amendments to the Service Provider in writing, unilaterally amend all or any part of this Agreement and/or any document contemplated hereby:

- (a) if changes to Applicable Law or Ministry Policy require such amendment; and/or
- (b) if a specific provision of this Agreement or a document contemplated hereby effectively gives VCH the right to do so (such as but not limited to amendments that would arise from the exercise by VCH of its rights make changes relating to: (i) the Services as contemplated by Section 2(a)(x) of Schedule A; (ii) Client beds as contemplated by Section 3 of Schedule A; (iii) occupancy rates as contemplated by Section 5 of Schedule B; (iv) the performance management system as contemplated by Section 1 of Schedule C; and (v) the performance indicators as contemplated by Exhibit 1 (Schedule C)).

The Service Provider will comply with such amended requirements within such period of time as may be set out in this Agreement or, if no such time is set out herein, within such period of time as VCH, acting reasonably, may in its notice require.

14. NO ASSIGNMENT, TRANSFER, SALE ETC.

14.1 Assignment by Service Provider

The Service Provider will not undertake any of the following events (each a “**Significant Event**”) or permit a Significant Event to occur without the prior written approval of VCH, which approval will not be unreasonably withheld:

- (a) subcontracting any of the Services;
- (b) directly or indirectly: (i) transfer, sell or otherwise dispose of all or a material part of its rights or interest in the Service Provider to another Person; (ii) sell, transfer, lease, sublease or otherwise dispose of all or a material part of its rights or interest in the Facility or in the assets used for or in connection with the provision of the Services to another Person; or (iii) dispose of voting, effective or de facto control of the Service Provider to another Person;
- (c) amalgamate, merge, consolidate or enter into an arrangement with another Person;
- (d) assign, either directly or indirectly, this Agreement or any of its rights or obligations under this Agreement; or

- (e) pledge, encumber, hypothecate or otherwise grant, create or permit to be created a security interest, charge, encumbrance or lien in this Agreement in whole or in part or any rights received hereunder.

14.2 Procedure for Significant Event

The Service Provider will seek the approval referred to in Section 14.1 at least 90 days before the date that it wishes to undertake or permit a Significant Event to occur. The Service Provider will provide VCH with all information and documents that VCH reasonably requests concerning the Significant Event. Within 45 days of receipt of notice from the Service Provider that it wishes to undertake a Significant Event, VCH will identify to the Service Provider and/or any Person who is a participant in or is relevant to the Significant Event any material amendments that VCH requires to the terms of this Agreement. VCH will only propose amendments to this Agreement that: (a) have been previously raised with the Service Provider; (b) are required by Applicable Law or Ministry Policies; or (c) are reasonably required in the circumstances.

14.3 VCH Considerations

In determining whether or not to grant its approval pursuant to Section 14.1, VCH may require the Service Provider and/or any other Person who is a participant in or is relevant to the Significant Event to execute and deliver, all in a form and content acceptable to VCH, acting reasonably:

- (a) an agreement evidencing the assignment and assumption of this Agreement; or
- (b) a new agreement to replace this Agreement; or
- (c) an amendment to this Agreement.

The Service Provider will be responsible for all costs related to negotiating and documenting the relationship among the Service Provider, VCH and/or any other Person who is a participant in or is relevant to the Significant Event, including all related legal fees and disbursements of VCH.

14.4 Remedies

If the Service Provider breaches any of this Section 14, then in addition to the other rights and remedies of VCH hereunder or otherwise at law or equity, as VCH may at its discretion determine, VCH may invoke the remedies set out in Section 4(b) of Schedule C.

14.5 VCH Assignment

VCH may assign this Agreement (or any part hereof) to any successor of VCH as part of a regional or provincial reorganization or consolidation of health services.

15. NO LICENCE OR INTERFERENCE WITH STATUTORY POWERS

15.1 No Licence

This Agreement does not operate as a permit, license, approval or other statutory authority which the Service Provider may be required to obtain from the Province or any of its agencies or from VCH in order

to provide the Services. Nothing in this Agreement is to be construed as interfering with the exercise by the Province, the Ministry, or their respective agencies or VCH or any Medical Health Officer of any statutory power or duty. Without limiting the generality of the foregoing, the Service Provider acknowledges that:

- (a) nothing hereunder in any way:
 - (i) obligates VCH or a Medical Health Officer to issue or renew, or constitutes consent or approval by VCH or a Medical Health Officer to issue or renew, a license to operate the Facility;
 - (ii) constitutes any other consent or approval, pursuant to any Applicable Law by VCH or any official or other authorized Person under Applicable Law (including any Medical Health Officer) in respect of a license, permit or approval to operate the Facility; and
- (b) any obligations of the Service Provider contained herein will be in addition to any requirements under Applicable Law.

16. COMMUNICATIONS

16.1 Regular Communications

The Service Provider will participate with VCH in regular communication through meetings between their respective representatives, as required, to discuss priority access, complaints, Incidents and any other issues related to the delivery of Services. VCH will provide feedback to the Service Provider on the Service Provider's delivery of the Services and its performance under this Agreement, and will provide opportunities for the Service Provider to provide feedback to VCH.

16.2 Public Communications

VCH acknowledges that the Service Provider is expected to communicate with the public on general issues pertaining to the Services and the Facility. Communication regarding other matters, such as public health and safety issues affecting a wider community, to the extent that such matters may impact VCH, will be planned and undertaken only with the prior written approval of VCH.

17. MARKETING AND PROMOTION

17.1 Obligations

Except to the extent that VCH is required by Applicable Law to do so or to the extent necessary in order for VCH to assist Clients and their families in making referral decisions or decisions regarding the Services (which includes disclosing such information on the website of VCH) neither party will involve the other party, or use its name, trademarks or logos, in any marketing, advertising or promotional materials or activities or otherwise without the prior written consent of the other party. In addition, the Service Provider will not involve any Client in any marketing, advertising or promotional materials or activities without obtaining the prior written consent of each such Client or the Client's legal representative.

18. GENERAL PROVISIONS

18.1 Enurement

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

18.2 Entire Agreement

This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties hereto pertaining to the subject matter hereof, including any documents prepared in respect of any procurement process leading up to the execution of this Agreement.

18.3 Cumulative Rights

All rights and remedies of each party hereto will be cumulative and may be exercised singularly or concurrently, and are without limitation to the rights and remedies of such party at law or equity.

18.4 Governing Law

This Agreement and each of the other documents contemplated by or delivered under or in connection with this Agreement are governed exclusively by and are to be enforced, construed and interpreted exclusively in accordance with, the laws of British Columbia and the laws of Canada applicable in British Columbia which will be deemed to be the proper law of this Agreement without regard to conflict of laws requirements. The parties hereto hereby attorn to the exclusive jurisdiction of the courts of British Columbia.

18.5 Survival

The obligations in this Agreement that by their nature should survive termination hereof, including the obligations of the Service Provider set out in Section 1.2(g), Section 1.2(h), Section 3.8, Section 3.10, Section 3.11, Section 4.1, Section 6.1, Section 7.4, Section 8.2, Section 9, Section 10, Section 11, Section 12.7, Section 12.8, Section 12.9, Section 12.10, Section 16, Section 17, and Section 18.4, Section 18.5, Section 19, Schedule E and any other terms and conditions of this Agreement which, by their terms or nature, are intended to survive any expiry or termination of this Agreement, will survive termination of this Agreement for any reason whatsoever, either by VCH, the Service Provider or their respective successors and permitted assigns.

18.6 No Waiver

No waiver of any provision hereof is binding unless it is in writing and signed by the parties except that any provision which gives rights or benefits to a particular party may be waived, signed only by the party that has rights under, or holds the benefit of, the provision being waived if that party promptly sends a copy of the executed waiver to the other party. No failure to exercise and no delay in exercising any right or remedy hereunder will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision hereof will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

18.7 Authorization

Where the Service Provider is a corporation, the signatory or signatories signing this Agreement on behalf of the Service Provider represent and warrant that they have been duly authorized by the Service Provider to enter into and execute this Agreement on its behalf.

18.8 Time of Essence

Time is of the essence of this Agreement.

18.9 Severability

If any provision of this Agreement is invalid or unenforceable to any extent, the remainder of this Agreement will not be affected or impaired and will be valid and enforceable to the extent permitted by law.

18.10 Further Assurance

Each party will perform the acts, execute and deliver the writings, and give the assurances as may be reasonably necessary to give full effect to this Agreement.

18.11 Joint and Several Liability

If the Service Provider is comprised of more than one Person, then each of the persons comprising the Service Provider will be bound jointly and severally by the terms, covenants and agreements herein on the part of the Service Provider.

19. NOTICES

19.1 Notice

Any notice required or permitted to be given under this Agreement will be in writing and may be given by delivering, sending by electronic facsimile transmission or other means of electronic communication capable of producing a printed copy, or sending by prepaid registered mail posted in Canada, the notice to the address or number of the Service Provider and VCH contact persons set out below, or to such other address or number as any party may specify by notice in writing to the other party.

If to VCH:

Vancouver Coastal Health Authority
Lions Gate Hospital, Corporate Office
231 East 15th Street
North Vancouver, British Columbia V7L 2L7
Telephone: 604-988-3131 ext. 4485 Email: keith.mcbain@vch.ca
Fax: 604-731-3847

Attention: Director of Residential Care Contracts with a copy to: General Counsel / Chief Privacy Officer

If to Service Provider:

Silverstone Care Centre Limited Partnership
c/o Silverstone Care Centre Ltd.

s.19(1)

North Vancouver, British Columbia s.19(1)

Tel: 778-928-1182

Email: mary.mcdougall@trellisgroup.ca

Attention: Mary McDougall, President

19.2 Delivery

Any notice delivered or sent by electronic facsimile transmission or other means of electronic communication capable of producing a printed copy on a business day will be deemed conclusively to have been effectively given on the day the notice was delivered, or the transmission was sent successfully to the number set out above, as the case may be. Any notice sent by prepaid registered mail will be deemed conclusively to have been effectively given on the third business day after posting; but if at the time of posting or between the time of posting and the third business day thereafter there is a strike, lockout, or other labour disturbance affecting postal service, then the notice will not be effectively given until actually delivered.

19.3 Change of Address or Representative

Either party, may from time to time, advise the other party by notice in writing of any change of address or representative of the party giving such notice, and from and after the giving of such notice the address or representative therein specified will, for the purposes of this Section 19, be conclusively deemed to be the address or representative of the party given in such a notice.

20. EXECUTION

20.1 Under Seal

VCH and the Service Provider specifically confirm that this Agreement is executed under seal in order to evidence the intention of both parties that the terms and conditions herein are legally enforceable and binding.

20.2 Counterparts

This Agreement may be signed in any number of counterparts, each of which is an original, and all of which taken together constitute one single document. The execution of this Agreement by any of the parties may be evidenced by way of an electronic transmission of a copy of such party's signature and the copy of such signature will be deemed to constitute the original signature of such party with the same force and effect as if the party had delivered an original of its signature.

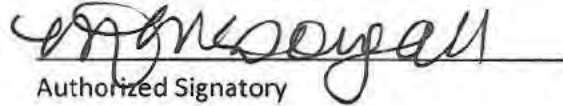
[Signature page follows]

IN WITNESS WHEREOF the Parties hereto have executed this Agreement under seal on the day and year first written above.

**VANCOUVER COASTAL HEALTH AUTHORITY, by
an authorized signatory**

**SILVERSTONE CARE CENTRE LIMITED
PARTNERSHIP, by an authorized signatory of
its general partner, Silverstone Care Centre
Ltd.**


Authorized Signatory


Authorized Signatory

*Mary Ackebusen, President and Chief Executive
Officer*
Print Name and Title

Mary McSorrell, President
Print Name and Title



[Signature page to Sechelt Services Agreement]

**SCHEDULE A
SERVICES**

1. Facility

The Service Provider will provide the Services in the facility (the “**Facility**”) (to be) known as:

Name: Silverstone Care Centre

Address: Such civic address as will be determined by the District Municipality of Sechelt, British Columbia following the subdivision of 2.4 acres of land in Silverstone Heights which is legally described as:

PID 015-861-660, DL 1384, GROUP 1, NEW WESTMINSTER LAND DISTRICT, EXC: PT ON PL 14180, PL BCP31726 (Roll 570 03402.000), and PID 024-694-118, LOT A DL 4295A, GROUP 1, NEW WESTMINSTER DISTRICT PLAN LMP4391, EXC. PLAN BCP31726 AND EPP31745 (6013 Sunshine Coast Hwy, Roll 570 06385.005).

2. Description of Services & Service Delivery

- (a) “**Services**” means the provision of 24 hour supervision and continuous professional care (which care is currently known as “complex care” but will be as defined by the Ministry from time to time) services in a care facility environment. The Services will include, but will not be limited to, the following:
- (i) skilled care with professional supervision consistent with the level of care required, including professional nursing supervision;
 - (ii) development and maintenance of a care plan for each Client;
 - (iii) assistance with activities of daily living;
 - (iv) administering and monitoring medications;
 - (v) meals, including therapeutic diets and tube feeding, and monitoring of food intake or therapeutic diets;
 - (vi) social services and rehabilitation services;
 - (vii) ongoing physical, social and therapeutic recreational programs to meet the needs of Clients;
 - (viii) routine laundry service for the Client’s bed linens, towels, washcloths, and all articles of personal clothing that can be washed without special attention to the laundering process;

- (ix) Receipt and prudent management of small amounts of cash resources from Clients (in such amounts as the Ministry Policies may specify from time to time) for sundry comfort items; and/or
 - (x) such other services as VCH may from time to time require.
- (b) The Service Provider will deliver the Services in a manner that provides a respectful, supportive and enabling environment for individuals who can no longer reside at home and that recognizes the dignity and worth of each Client and provides the best possible quality of living and end of life. The philosophy of care will be a client-centered model which ensures that the Client's clinical and treatment needs are met within a framework of dignity, respect and client choice, consistent with the philosophy set out in VCH Policies.
- (c) In connection with its obligation to provide the Services on a continuous basis, the Service Provider will notify VCH promptly after it becomes aware of any event that may cause an interruption in the continuity of the Services (including an interruption resulting from any Redevelopment) and will cooperate with VCH to develop and implement a plan that will mitigate any effects of such interruption.
- (d) The Service Provider may deliver additional services and programs that are outside the scope and the authority of VCH and that involve other governments, government agencies, or other public or private sector organizations, provided that the delivery of such additional services or programs will not negatively affect the delivery of the Services under this Agreement. The Service Provider will inform VCH of any other funded or non-funded programs and services to be offered in the Facility or any significant changes thereto prior to the commencement of such programs, services or changes and will ensure that these programs, services and changes will not negatively affect the provision of the Services.

3. Services Purchased

- (a) The Service Provider will provide the Services for a total of 125 Client beds which equals 44,941 annualized Client bed days (the annualized Client bed days, adjusted in accordance with Section 3(b) of this Schedule A, are the "**Client Bed Days**") based on an occupancy rate of 98.5%.

If the parties agree that some of the Services will be specialty care services such as respite or convalescent services, then the parties will set out their agreement in writing with respect to such specialty care services in a new agreement or in a new schedule or schedules, which schedule(s) will immediately become incorporated into this Agreement by reference.
- (b) On the provision of not less than 60 days' notice, VCH may temporarily or permanently adjust the number of Client beds funded by VCH and/or the designations of those Client beds, if applicable:

- (i) if the Facility is undergoing Redevelopment (it being acknowledged by the Service Provider that any Redevelopment plan for the Facility is subject to prior consultation with VCH); or
 - (ii) if VCH awards the Service Provider additional or fewer beds and/or changes the designation of Services for some or all Client beds (e.g. to respite services) and/or changes the type of program for some or all Client beds (e.g. to hospice); or
 - (iii) otherwise at VCH's discretion provided that VCH has obtained the prior written approval of the Ministry.
- (c) If the Service Provider has beds available in the Facility in excess of that number described in Section 3(a) of this Schedule A, then the following terms will apply:
- (i) VCH may request that the Service Provider provide Services in respect of any or all of such additional beds from time to time to meet fluctuating needs for the Services (the "**Temporary Services**"). The Service Provider agrees to consider any such requests made by VCH in good faith. The Temporary Services purchased, the amount of funding to be provided by VCH to the Service Provider as payment for such Temporary Services and the period of time for which they are purchased will be as agreed to by the parties at the time of each such request, taking into account community needs and the availability of such additional beds;
 - (ii) other than as modified by agreement of the parties or as otherwise set out in Section 3(c) of Schedule A, the Service Provider will provide the Temporary Services to each Client on the terms and conditions set out in this Agreement governing the provision of the Services; and
 - (iii) the Service Provider may request a minimum or maximum time period for the purchase of the Temporary Services.

4. Client Placement and Referral Process

- (a) VCH will determine and refer Eligible Persons to the Service Provider and the Service Provider will provide the Services to all such Eligible Persons approved by VCH as Clients at the Facility.
- (b) The Service Provider will inform VCH of any vacant Client bed on the day that it becomes vacant.
- (c) Intentionally omitted.
- (d) The Service Provider will discuss, plan and cooperate with VCH with respect to any relocation of a Client out of the Facility.

**SCHEDULE B
PAYMENT AND FINANCIAL, STATISTICAL AND OTHER DATA REPORTING**

1. Payment Contingent Upon Occupancy, VCH Per Diem Rate, Client Contribution Rate
 - (a) The Service Provider will not be entitled to any payment under this Agreement if Occupancy of the Facility is not achieved.
 - (b) Subject to the attainment of Occupancy of the Facility and the provisions of Sections 2 and 3(a) of this Schedule B, VCH will pay the Service Provider the “**VCH Per Diem Rate**” on the Effective Date, which is defined as the sum of ^{s.17(1),} ~~s.21(1)~~ per Client per day (the “**VCH Per Diem Base Rate**”) plus annual funding adjustments, if any, similar to those that VCH makes to its funding of other contracted residential care service providers up to the Effective Date. For the VCH 2016-2017 fiscal year, the annual funding adjustment is confirmed to be \$2.10 per Client per day. For the VCH 2017-2018 fiscal year, the annual funding adjustment is estimated to be \$1.50 per Client per day. The annual funding adjustment for the 2018-2019 fiscal year has not been estimated as of the date of this Agreement. VCH will communicate annual funding adjustments in writing to the Service Provider. On the Effective Date, VCH will adjust the VCH Per Diem Base Rate consistent with the annual funding adjustments, if any, that VCH has made to its funding of other contracted residential care service providers for the VCH 2016-2017, 2017-2018 and 2018-2019 fiscal years. Thereafter, if VCH makes an annual adjustment to the funding for its other contracted residential care service providers further to Section 3.3 of the main body of the Agreement, it will adjust the VCH Per Diem Rate accordingly.
 - (c) ~~s.17(1), s.21(1)~~
 - (d) The anticipated Client Contribution for a Sunshine Coast resident is estimated to be \$48.50 per Client per day (and at an occupancy rate of 98.5% it will be \$47.77 per Client per day).
2. Deferred Occupancy Payment
 - (a) If the Service Provider achieves Occupancy of the Facility within 31 calendar days from the date for Occupancy set as a Project Milestone in the Project Development Agreement (or such other date for Occupancy as may be agreed by VCH and the Project Developer in accordance with the terms of the Project Development Agreement), VCH may, at its sole and absolute discretion, pay the Service Provider an amount for achieving timely Occupancy (the “**Deferred Occupancy Payment**”). If paid, the Deferred Occupancy Payment will be the amount that is equal to 60% of the sum that VCH would pay for 125 Clients at the VCH Per Diem Rate for 28 days, as estimated by the following equation:

~~s.17(1), s.21(1)~~

For certainty, the VCH Per Diem Rate on the Effective Date may be different and the foregoing equation is only an estimate of the Deferred Occupancy Payment should VCH exercise its discretion to make such payment.

- (b) Within 10 calendar days following the Effective Date, VCH will determine whether it will pay the Service Provider the Deferred Occupancy Payment. For certainty, the Deferred Occupancy Payment, if any, will be paid at the VCH Per Diem Rate as of the Effective Date, including any adjustments made in accordance with Section 1(b) of this Schedule B.

3. Payment for Services

- (a) Subject to the attainment of Occupancy of the Facility, VCH will commence paying the Service Provider the Funds as follows:
- (i) from the date of Occupancy until the earlier of (x) the date that the Facility has been occupied by 75 Clients or, unless if in the reasonable opinion of VCH the Service Provider is responsible for the delay (y) 30 calendar days following the date of Occupancy (the “**60% Period**”), VCH will pay the Service Provider 60% of the sum that it would pay for the Services for 125 Clients at the VCH Per Diem Rate for that period;
 - (ii) from the end of the 60% Period until the earlier of (x) the date that the Facility has been occupied by 113 Clients or, unless if in the reasonable opinion of VCH the Service Provider is responsible for the delay (y) 45 calendar days from the date of Occupancy (the “**75% Period**”), VCH will pay the Service Provider 75% of the aggregate sum that it would pay for the Services for 125 Clients at the VCH Per Diem Rate for that period; and thereafter
 - (iii) VCH will pay the Service Provider the aggregate sum for the Services for 125 Clients at the VCH Per Diem Rate, subject to the Per Diem Adjustment.
- (b) Within 60 days following the Effective Date, VCH will deliver to the Service Provider a funding letter or series of supplemental or amending funding letters that will set out the amount of the Funds for the Client Bed Days for such part of the Term as may be specified therein (all of which letters are collectively referred to as the “**Funding Letter**”). The Funding Letter will set out:
- (i) the maximum annual Funds, estimated to be s.17(1), s.21(1) (the “**Funds**”) based upon the VCH Per Diem Rate (currently estimated at s.17(1), s.21(1) but subject to any annual funding adjustments under Section 1(b) of this Schedule B) x the number of Clients (125) x 365 days; and
 - (ii) the total annual Client Contributions, estimated to be \$2,179,620.31 based upon the estimated Client Contribution (\$48.50) x the number of Clients (125) x 365 days at 98.5% occupancy. Further to Section 4(c) of this Schedule B, VCH either will top-up funding for any shortfall in Client Contributions compared to the estimated total of \$2,179,620.31 or will clawback any additional revenues above this amount.

- (iii) VCH will be responsible for the total annual estimated funding equal to s.17(1), s.21(1) less the total estimated Client Contribution (\$2,179,620.31) for an estimated total annual sum of s.17(1), s.21(1) (subject to any annual funding adjustments under Section 1(b) of this Schedule B).
 - (c) Following the Effective Date, VCH will pay the appropriate allocation of the Funds to the Service Provider in regular bi-weekly instalments of equal portions of the Funds referenced in the Funding Letter by way of electronic fund transfer, subject to adjustment in accordance with the terms of this Agreement.
 - (d) The Service Provider will not be entitled to receive any compensation for the performance of the Services during any year in excess of the amount set out in the Funding Letter unless otherwise agreed to in writing by VCH.
4. Adjustment Regarding Client Contribution
- (a) The Ministry or any other ministry of the Province or VCH may from time to time determine, and will advise the Service Provider of, the amount that each Client contributes to the cost of the Services provided to him or her (the “**Client Contribution**”) and may at any time increase or decrease the amount of the Client Contribution on written notice to the Service Provider.
 - (b) The Service Provider will collect the Client Contribution from each Client.
 - (c) The Service Provider acknowledges that VCH may adjust the Funds upward or downward on a dollar-for-dollar basis to reflect each Client Contribution that is payable to the Service Provider.
5. Adjustment Regarding Occupancy Rate
- (a) The amount of the Funds payable under this Agreement is based on the assumption that the occupancy rate for the Facility (based on one occupied bed for each Client Bed Day) will be maintained at no less than 98.5% or such higher threshold as VCH may determine from time to time (such required occupancy threshold, as determined from time to time, is the “**Required Occupancy Threshold**”). The following will be excluded from a determination of whether the Required Occupancy Threshold is achieved:
 - (i) all privately funded beds;
 - (ii) vacancies that are due to temporary absences of Clients as defined in the Home and Community Care Policy Manual;
 - (iii) vacancies that are due to a VCH-approved temporary closure to admission of Clients (e.g. due to Redevelopment);
 - (iv) vacancies that are due to a Medical Health Officer order of temporary closure to admission of Clients (e.g. due to an infectious outbreak);
 - (v) beds designated as beds for Clients receiving Temporary Services, if applicable;

- (vi) beds designated as beds for Clients receiving respite services, if applicable;
 - (vii) beds designated as other specialty beds by VCH from time to time; and
 - (viii) such other vacancies or exclusions as VCH may approve from time to time.
- (b) If the Required Occupancy Threshold is not achieved in any quarter (or such longer period as may be determined by VCH), then VCH may, at its discretion, adjust downward future payments to the Service Provider by way of claim or setoff against Funds otherwise payable under this Agreement. The amount of the downward adjustment will be determined by multiplying the number of excess vacant beds (being those vacant beds which are not otherwise excluded from the calculation of Required Occupancy Threshold) by a per diem amount (the “**Per Diem Adjustment**”) determined by VCH and communicated to the Service Provider at the commencement of the Agreement and periodically thereafter throughout the Term.
6. Intentionally omitted
7. Adjustment Regarding Staffing Plan
- (a) The Service Provider has prepared and delivered (or, if it has not done so as at the date hereof, it will promptly prepare and deliver) to VCH a plan to support the delivery of Services in accordance with the terms of this Agreement, which plan will include the required number of worked direct care hours to be provided to each Client each day and which, if not delivered as at the date hereof, will be satisfactory in form and content to VCH (the “**Staffing Plan**”). The Service Provider will implement and comply with the Staffing Plan, including delivering the worked direct care hours set out therein. If the Service Provider fails to implement or comply with the Staffing Plan, including the delivery of the worked direct care hours, then without limitation to its other rights hereunder, including its rights of termination, VCH may adjust the amount of the Funds downward in accordance with the following paragraph. For certainty, on the Effective Date the staffing plan must provide a minimum of 2.8 hours per resident per day Direct Care, plus 0.25 hours per resident per day of Allied Health services and a skill mix at or about 10:22:68 (RN:LPN:RCA), unless otherwise agreed in writing by VCH.
- (b) If the Service Provider fails to comply with the Staffing Plan in any quarter (or such longer period of time as VCH may determine), then without limitation to its other rights hereunder, including its rights of termination, VCH may adjust payment for the Services on a quarterly basis (or on the basis of such longer period of time as VCH may determine):
- (i) based on the value of the required direct care hours that were not delivered by the Service Provider, which value will be as determined by VCH if the failure to comply relates to a failure to deliver required direct care hours; and/or
 - (ii) in such manner as VCH may determine if the failure to comply relates to any other breaches of the Staffing Plan not referred to in subsection (a) above.

- (c) The Service Provider will abide by such procedures with respect to the determination by VCH of compliance with the Staffing Plan as may be determined by VCH from time to time, and will report to VCH regarding the Staffing Plan, including reporting regarding direct care hours, as and when required by VCH.

8. Financial, Statistical and Data Reporting Requirements

- (a) The Service Provider will provide VCH, and where applicable the Ministry, with the following:
 - (i) its operating budget, within 60 days of request by VCH for same;
 - (ii) its semi-annual (or for such other period of time as VCH may determine) financial reports, within 45 days of the end of the applicable reporting period;
 - (iii) its completed facility activity reports, within 14 days of receipt of the facility activity report by the Service Provider;
 - (iv) its completed audited financial statements specific to the Services (including the management letter from the auditors to the Service Provider and the Service Provider's response to such management letter), within 120 days of the financial year end of the Service Provider, in accordance with Section 4.3 of the main body of this Agreement;
 - (v) its client trust account report (prepared and approved by an accounting firm), within 120 days of the financial year end of the Service Provider; and
 - (vi) such additional financial, statistical or data reporting requirements or information regarding the Service Provider, the registered owner of the Facility and/or other related parties as and when VCH or the Ministry may reasonably require, including preliminary and final budgets, cash flow projections and financial statements.
- (b) The reporting deadlines, reporting period definitions, reporting formats, and delivery information for submitting such reports will be confirmed to the Service Provider annually in writing.
- (c) The Service Provider will provide the Ministry and will otherwise comply with all reporting requirements and deadlines associated with the HSCIS.
- (d) If VCH implements new information systems or other technology, the Service Provider will report such data as VCH may from time to time require in connection therewith, in such format and medium and at such times as VCH or the Ministry may from time to time require.

9. Failure to Comply with Reporting Requirements

- (a) If the Service Provider fails to comply with the financial, statistical and other data reporting requirements set out in this Schedule B, then VCH may, in addition to any

other rights and remedies it may have hereunder or otherwise at law or equity, withhold payment of the Funds or terminate this Agreement, or both, in accordance with the following:

- (i) VCH will provide written notice of such non-compliance to the Service Provider with a 14 day deadline for compliance (the “**First Notice**”);
- (ii) if the non-compliance is not rectified to VCH’s satisfaction within the 14 day deadline set out in the First Notice, then VCH will either provide written notice of continued non-compliance to the Service Provider (the “**Second Notice**”) or may elect to provide the Service Provider with additional time to comply if VCH determines that there are extenuating circumstances which are the cause of such continued non-compliance;
- (iii) if VCH has provided the Service Provider with additional time to comply as contemplated by subsection (b) above and the non-compliance is not rectified to VCH’s satisfaction within such additional time to comply, then VCH will provide written notice of such continued non-compliance to the Service Provider (the “**Extension Notice**”);
- (iv) if the non-compliance is not rectified to VCH’s satisfaction within 14 days of receipt by the Service Provider of the Second Notice or the Extension Notice, as applicable, then VCH may withhold payment of the Funds from the next and each subsequent regularly scheduled instalment until such non-compliance is rectified to VCH’s satisfaction. The amount withheld (the “**Holdback**”) will be up to a maximum of 40% of the applicable instalment and the actual amount withheld will be determined by VCH at its sole discretion having regard to the amount of time of the non-compliance and the number and/or type of non-compliance incidents. The Holdback will not be paid to the Service Provider unless the non-compliance at issue is rectified to VCH’s satisfaction within such additional period of time, if any, as VCH may at its sole discretion elect to provide, in which case, VCH will pay to the Service Provider an amount equal to the Holdback minus an amount determined by VCH at its sole discretion to compensate it for any costs, including internal costs, that it may have incurred in connection with such non-compliance. Any amounts that are withheld and not paid to the Service Provider pursuant to this subsection (d) will be retained by VCH as liquidated damages and not as a penalty; and
- (v) if the non-compliance continues for 90 days after the date that the Service Provider receives the Second Notice or the Extension Notice or after the date that the additional period of time referred to in subsection (d) above expires, as applicable, VCH may terminate this Agreement in accordance with Section 12.2 of the main body of this Agreement.

SCHEDULE C
PERFORMANCE MANAGEMENT FRAMEWORK

1. Performance Management System

- (a) The Service Provider will comply with the performance management system, including any performance indicators and outcome-based measures, developed by VCH and as amended by VCH from time to time. Without limiting the generality of the foregoing, the Service Provider will comply with all requirements imposed by VCH in this Agreement, and will provide such information as VCH may request, relating to the following matters, which requirements comprise part of the performance management system of VCH: (a) financial and statistical reports; (b) facility suitability review, Capital Maintenance Plans and/or Redevelopment plans; (c) Accreditation; (d) facility quality improvement process; and (e) the performance indicators set out in Exhibit 1 (Schedule C). The Service Provider agrees to work with VCH and all service providers providing residential care services in the Service Delivery Area to develop other performance indicators as may be required from time to time by VCH.
- (b) The Service Provider will deliver to VCH at such times as VCH may require all data and other information as VCH may require in connection with its performance management system, including reports and data relating to performance indicators and outcome-based measures. Such data and other information will be provided by the Service Provider in sufficient detail so as to permit VCH to assess, for example, the quality of the Services, system effectiveness, client focus, financial management and viability of the Service Provider.
- (c) The Service Provider acknowledges that the performance management system of VCH governing the provision of the Services is currently under development. The Service Provider further acknowledges that it will be required to comply with the provincial performance management system currently under development (including all subsequent amendments thereto), which provincial performance management system may include a provincial audit process to ensure that the Services are provided in accordance therewith, as and when such provincial performance management system is developed, and such provincial performance management system will be incorporated into and form part of this Schedule C. In particular, the Service Provider will be required to comply with any quality indicators resulting from the provincial implementation of the current version of interRAI residential assessment instrument or any successor or substitute assessment tool designated by VCH.
- (d) VCH will provide to the Service Provider, on a quarterly basis or at such times as VCH otherwise requires, an analysis of indicator comparative data reflecting individual facility and system functioning which will be used by the parties for facility specific and systemic improvement initiatives.

2. Service Provider's Quality Improvement Process

The Service Provider is required to develop and implement at all times its own systematic quality improvement process, which quality improvement process will be consistent with VCH's performance management system described in this Schedule C. The Service Provider will share its process and results with VCH on an annual basis as a part of the regular review process.

3. Accreditation

Upon request by VCH, the Service Provider will provide VCH with such information regarding its Accreditation status as VCH may require, including:

- (a) informing VCH of the target date for its first or next accreditation survey;
- (b) informing VCH of the outcome of each such survey; and
- (c) outlining an action plan, in form acceptable to VCH, to achieve Accreditation.

4. Management of Performance Issues

- (a) Without limitation to any other rights of VCH hereunder, including any rights pursuant to Section 7.2 of the main body of the Agreement and Section 4(b) of this Schedule C, if the performance management system established by VCH demonstrates, or VCH otherwise determines, that the Service Provider is performing below a standard acceptable to VCH, including the standards set out in Exhibit 1 (Schedule C), then VCH will notify the Service Provider of the issue(s). The Service Provider will cooperate fully with VCH and will be required either to develop and implement a plan of action to address the performance and/or compliance issue(s) or to follow a plan provided by VCH, as VCH may elect. The plan will include a completion date acceptable to VCH and will be approved and monitored by VCH. The Service Provider will, at VCH's request, provide a written report detailing and confirming its implementation of such plan. If the Service Provider:

- (i) fails to follow through with the approved plan in such time and manner acceptable to VCH and VCH determines that the health or safety of any Client is at risk;
- (ii) fails to make the required adjustments or changes to meet VCH's requirements;
- (iii) repeatedly performs below a standard acceptable to VCH; or
- (iv) demonstrates a lack of ability or willingness to address any performance and/or compliance issue(s) identified by VCH,

then, in substitution for or in addition to the other rights and remedies of VCH hereunder or otherwise at law or equity, as VCH may at its sole discretion determine, VCH may at its option:

- (v) on the provision of such notice period as VCH may determine to be reasonable in the circumstances, adjust the number of Client beds provided by the Service Provider to VCH hereunder;
 - (vi) invoke the remedy set out in Section 4(b) of this Schedule C; or
 - (vii) terminate this Agreement in accordance with Section 12.2 of the main body of the Agreement.
- (b) Further, in the event of a failure by the Service Provider to provide the data, reports or other information described in this Schedule C and Exhibit 1 (Schedule C), or as otherwise required by VCH in connection with its performance management system, or in the event of a breach by the Service Provider of Section 4(a) of this Schedule C or Section 14 of the main body of the Agreement, then, in substitution for or in addition to the other rights and remedies of VCH hereunder or otherwise at law or equity, as VCH may at its sole discretion determine, VCH may invoke the remedies set out in Section 9 of Schedule B.

**EXHIBIT 1 (SCHEDULE C)
RESIDENTIAL CARE PERFORMANCE INDICATORS**

The residential care performance indicators use a balanced score card system and measure key indicators in the following areas:

- Clinical utilization and outcomes
- Family perception/satisfaction
- System integration and change
- Financial performance and condition

and such other indicators and identified areas as may be determined by VCH from time to time.

**SCHEDULE D
INSURANCE REQUIREMENTS**

1. The Service Provider must, without limiting the Service Provider's obligation or liabilities and at the Service Provider's own expense, purchase and maintain throughout the Term the following insurances with insurers licensed in Canada in forms and amounts acceptable to VCH:
 - (a) **Automobile Liability** on all vehicles owned, operated or licensed in the name of the Service Provider, in an amount not less than \$5,000,000;
 - (b) **Comprehensive General Liability** in an amount not less than \$5,000,000 inclusive per occurrence, insuring against third party bodily injury, personal injury and/or property damage. The Service Provider will add VCH as an additional insured under this policy. Such insurance will include, but not be limited to:
 - (i) Product and Completed Operations Liability;
 - (ii) Owner's and Contractor's Protective Liability;
 - (iii) Blanket Written Contractual Liability;
 - (iv) Contingent Employer's Liability;
 - (v) Personal Injury Liability;
 - (vi) Non-Owned Automobile Liability;
 - (vii) Cross Liability;
 - (viii) Employees (and if applicable, Volunteers) as Additional Insureds;
 - (ix) Broad Form Property Damage; and
 - (x) if applicable, Tenant's Legal Liability in an amount adequate to cover a loss to premises of VCH occupied by the Service Provider;
 - (c) **Professional Liability** in an amount not less than \$5,000,000 inclusive, per occurrence insuring the Service Provider against liability resulting from errors and omissions in the performance of Services under this Agreement;
 - (d) **Property Insurance** on an all risk basis in respect of the Facility and any contents thereof providing coverage with a limit not less than the full replacement value thereof; and
 - (e) **Boiler and Machinery Insurance** on a broad form basis covering all insurable objects located in the Facility with coverage for any one occurrence or claim of not less than the full replacement value of the Facility and any contents thereof.
2. The Service Provider will provide VCH with evidence of all required insurance prior to the commencement of the Services and thereafter, within 30 days following each anniversary of

such commencement date. Evidence of the insurance coverage noted in Section 1 of this Schedule D will be in the form of the certificate of insurance attached Exhibit 1 (Schedule D) (or, if the Service Provider is covered by HCPP, will be in the form of written confirmation of such coverage in a form satisfactory to VCH).

3. All of the Service Provider's insurance, including HCPP insurance, will be endorsed to provide VCH with 30 days prior written notice of cancellation.
4. The Service Provider hereby waives all rights of recourse against VCH with regard to damage to the Service Provider's property.

**EXHIBIT 1 (SCHEDULE D)
FORM OF INSURANCE CERTIFICATE**

CERTIFICATE OF INSURANCE

Freedom of Information and Protection of Privacy Act The Personal information requested on this form is collected under the authority of and used for the purposes of contract review.

Part 1 To be completed by VCH and Service Provider

THIS CERTIFICATE IS REQUESTED BY AND ISSUED TO (Name of office):	Agreement Identification No.
VCH Contact Person Name and Title:	
Mailing Address	Postal Code
Contractor Name	
Contractor Address	Postal Code

Part 2 To be completed by the Insurance Agent or Broker

INSURED	NAME		
	ADDRESS	POSTAL CODE	
OPERATIONS INSURED	PROVIDE DETAILS		
TYPE OF INSURANCE	COMPANY NAME, POLICY NO. BRIEF DESCRIPTION	EXPIRY DATE YYYY/MM/DD	LIMIT LIABILITY/AMOUNT OF

This certificate certifies that policies of insurance described herein are in full force and effective as of the date of this certificate and comply with the insurance requirements of the Agreement identified above, except as follows:

AGENT OR BROKER COMMENTS:

AGENT OR BROKER	ADDRESS	PHONE NO
SIGNED BY THE AGENT OR BROKER ON BEHALF OF THE ABOVE INSURER(S)		DATE SIGNED

SCHEDULE E
HEALTH ORGANIZATION PRIVACY SCHEDULE

1. Background

Vancouver Coastal Health (“**HO**”) is a public body that is subject to the provisions of FIPPA relating to the collection, use, disclosure and security of Personal Information. HO and the Service Provider have entered, or will enter, into an agreement (the “**Agreement**”) that may involve the sharing, management or administration of Personal Information with or by the Service Provider. The purpose of this Schedule E is both to ensure that the Service Provider maintains adequate care of and security controls over the Personal Information and that the Service Provider is aware of and complies with the privacy protection provisions of FIPPA.

2. Definitions

In this Schedule:

“**Access Agreement**” means an agreement between the Service Provider and its Personnel requiring that Personnel comply with the requirements of this Schedule, FIPPA, and other Applicable Law;

“**Access Conditions**” means, in respect to access to Personal Information for a Permitted Purpose: (a) the Service Provider must ensure that access is limited to temporary access and storage for the minimum time necessary for the Permitted Purpose; (b) if such access is for the Permitted Purpose of data recovery, the Service Provider must ensure such access is limited to access and storage only after the system failure has occurred; and (c) such other conditions as may be imposed on access and disclosure for a Permitted Purpose pursuant to FIPPA;

“**Applicable Law**” means all present and future laws, statutes, ordinances, regulations, judgements, orders, rules, directions of any court or governmental authority that are enforceable in British Columbia or Canada, and includes FIPPA;

“**Authorized Site**” means the Service Provider’s head office in Canada or such other premises of the Service Provider as may be approved in writing by HO;

“**Commissioner**” means the Information and Privacy Commissioner for British Columbia;

“**Conflicting Foreign Order**” means any order, subpoena, directive, ruling, judgment, injunction, award or decree, decision, request or other requirement issued from a foreign court, agency of a foreign state or other authority outside Canada or any foreign legislation the compliance with which would or could potentially breach FIPPA;

“**Contact Information**” means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual;

“**Excluded Information**” or “**Excluded Records**” means information, documents or recorded information that (a) relate solely to the Service Provider’s internal administration, finances, management, or labour and employment matters, unless they contain Personal Information about an individual other than

Personnel or other third parties with whom the Service Provider has dealings unrelated to the subject matter of the Agreement; or (b) HO confirms in writing are excluded from the application of this Schedule;

“**FIPPA**” means the *Freedom of Information and Protection of Privacy Act* (British Columbia), and regulations enacted thereto, as amended from time to time;

“**Material Breach**” includes, without limitation, (i) non-compliance by the Service Provider with any provision of this Schedule relating to or resulting from the collection, use, disclosure, storage, disposal or destruction of any Personal Information or Records in contravention of FIPPA and/or this Schedule; and (ii) non-compliance by the Service Provider with any other provision of this Schedule that is not cured to the satisfaction of HO, acting reasonably, within 20 days after written notice is given to the Service Provider describing the breach in reasonable detail or otherwise within 20 days of the Service Provider becoming aware the breach;

“**Permitted Purpose**” means access to Records or Personal Information that is necessary for: (a) installing, implementing, maintaining, repairing, trouble-shooting or upgrading an electronic system or equipment used by HO or by the Service Provider to provide services to HO pursuant to the Agreement; or (b) recovery of data (including Personal Information) undertaken following the failure of an electronic system used by HO or by the Service Provider to provide services to HO; or (c) performance of the duties of Personnel while temporarily travelling outside of Canada;

“**Personal Information**” means recorded information about an identifiable individual, excluding Contact Information and Excluded Information, that is collected or created by the Service Provider or otherwise obtained or held by or accessible to the Service Provider as a result of the Agreement or any previous agreement between HO and the Service Provider dealing with the same subject matter as the Agreement;

“**Personnel**” means any employees, officers, directors, contractors, subcontractors, associates (as defined in FIPPA), representatives or other persons engaged by the Service Provider for the purposes of fulfilling the Service Provider’s obligations under the Agreement;

“**Privacy Representative**” means the designate of the Service Provider or HO with responsibility for compliance with FIPPA and this Schedule; and

“**Record**” includes books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which Personal Information is recorded or stored by graphic, electronic, mechanical or other means which are collected or produced by the Service Provider in the course of delivering services or otherwise performing its obligations under the Agreement, but does not include: (a) a computer program or any other mechanism that produces records or (b) Excluded Records.

3. Service Provider Subject to FIPPA

The Service Provider agrees that, in relation to the collection, use, disclosure, storage, security and destruction of Personal Information and Records, it is subject to and will comply with the requirements of FIPPA and this Schedule, including any applicable order or security requirements prescribed by the Commissioner or a court and any written direction issued by HO under this Schedule. The Service Provider will ensure that it and its Personnel are familiar and remain current with respect to its and their obligations under FIPPA.

4. Control of and Rights in the Record(s)

As between HO and the Service Provider, all right, title and interest and control in and to all Records will remain with the HO. No proprietary right or other interest respecting the Records, other than as expressly set out herein, is granted to the Service Provider under this Schedule, by implication or otherwise. The Service Provider is granted temporary access to the Personal Information on the terms and conditions of this Schedule, for the sole and express purpose of fulfilling its obligations under the Agreement and for no other use or purpose. Where the Service Provider provides services under contract with one or more other public bodies in which such other public bodies also assert control over the same or overlapping Records, the HO will work with such other public bodies to resolve each other's rights and obligations with respect to such Records and the Service Provider will not be considered to be in breach of this Schedule by reason of its inability to provide unfettered control over the Records to the HO.

5. Collection of Personal Information

The Service Provider will only collect, acquire or hold Personal Information on behalf of HO as necessary for the performance of the Service Provider's obligations under the Agreement or as otherwise authorized by HO in writing. If the Service Provider is required by the Agreement to collect Personal Information on behalf of HO, the Service Provider will do so only in the manner prescribed by FIPPA. Specifically, the Service Provider will: (i) collect Personal Information directly from the individual to whom the information pertains; (ii) tell such individual the purpose and the legal authority for collecting it; and (iii) provide the individual with the title, business address and business telephone number of the person designated by HO to answer questions about the Service Provider's collection of Personal Information. The Service Provider may only collect Personal Information indirectly (i.e. other than directly from the individual that the information is about) as authorized in writing by the HO or as otherwise permitted by FIPPA.

6. Referral of Requests for Access or Correction

If the Service Provider receives a request under FIPPA for access to or correction of Personal Information from a person other than HO, the Service Provider will promptly advise the person to make the request to HO, unless the Agreement expressly requires the Service Provider to provide such access or process such correction or HO provides a written direction to the Service Provider to do so. The Service Provider will provide such person with the name and contact information for the HO Privacy Representative.

7. Cooperation in Responding to Requests for Access

Where HO communicates to the Service Provider that it has received a request for access to Personal Information, the Service Provider will, at its own expense, locate and supply to HO any and all Records in its custody that, in the opinion of HO, fall within the scope of the request. The Service Provider will comply with this obligation within a reasonable time frame that allows HO to comply with its obligations under FIPPA.

8. Accuracy and Correction of Personal Information

- (a) If the Service Provider engages in the collection, maintenance or updating of Personal Information or the creation of Records on behalf of HO under the Agreement, the

Service Provider will make every reasonable effort to ensure the accuracy and completeness of such Personal Information generally and as required by FIPPA.

- (b) If HO directs the Service Provider to do so, the Service Provider will, in the manner specified by HO, correct or annotate any Records that are created, maintained or held by the Service Provider under the Agreement. If so directed, the Service Provider will also be responsible for providing notice of the corrected or annotated information to any person(s) specified by HO or who are entitled to receive such notice under FIPPA.

9. Protection of Personal Information

The Service Provider must protect Personal Information by making reasonable security arrangements against such risks as theft, loss or unauthorized access, collection, use, disclosure or disposal. Where appropriate, such as when the Service Provider's Personnel are working within HO's facilities, using its information systems or other technology (collectively, "HO Technology"), or otherwise accessing or using Records of HO, the Service Provider and all its Personnel will comply with:

- (a) HO's privacy, security & confidentiality policies;
- (b) terms of use, agreements, policies and guidelines applicable to the usage of HO Technology;
- (c) any directions that may be issued from time to time by the HO's system administrators or privacy/security officers regarding access to and use of HO Technology and information contained therein; and
- (d) other applicable policies of HO.

Without limiting the generality of the foregoing, the Service Provider will ensure that its security arrangements include the following:

- (e) ensuring that access to electronic Records:
 - (i) requires unique individual user identification;
 - (ii) includes appropriate controls for the issuance of changes to and cancellation of user identifications and authentication mechanisms;
 - (iii) requires that authentication codes and passwords are confidential, complex and are changed regularly (at least semi-annually);
 - (iv) is monitored by an automated, always-on auditing system which can be accessed by HO to review access to and use of Personal Information, which system creates an audit trail containing the date and time of access, identity of the user and the type and scope of information accessed, or at the sole discretion of the HO, work in cooperation with the HO to implement an appropriate system to audit access to Personal Information by the Service Provider and its Personnel in connection with the delivery of services under the Agreement;

- (v) requires multi-factor authentication for remote access to Personal Information, unless otherwise authorized by HO in writing;
- (f) maintaining and implementing systems to reasonably ensure that any Personal Information that is accessed or transmitted electronically (e.g., facsimile, email, internet) is secure against unauthorized access;
- (g) using encryption and password protection to secure Personal Information on mobile devices, removable media, and mobile backup media;
- (h) maintaining and implementing formal procedures to immediately terminate access to Personal Information by Personnel who have left the organization or a position that requires the access;
- (i) maintaining a process to track, audit and restrict access to Records by Personnel;
- (j) maintaining a process, to regularly assess and/or upgrade the security arrangements of the Service Provider to ensure consistency with evolving industry standards and the guidelines and policies of HO; and
- (k) such other specific data protection protocols and requirements as VCH may require.

10. Segregation of Data

The Service Provider will take reasonable steps to ensure that all Personal Information and Records are securely segregated from any information owned by the Service Provider or third parties, including physical segregation of Records or data on different hardware/systems and/or logical separation using separate database tables, access controls and password authorization to prevent unintended mixing of data or access by unauthorized parties and to enable Personal Information and Records under the control of HO under this Agreement to be identified and separated from those of the Service Provider or third parties.

11. Access, Use and Disclosure

The Service Provider will ensure that neither it nor its Personnel collects, creates, copies, reproduces, uses, stores, discloses or provides access to any Personal Information or otherwise removes Records from HO premises except in compliance with this Schedule and FIPPA and for purposes directly related to or necessary for the performance of the Service Provider's obligations under the Agreement, as authorized in writing by HO or as otherwise required by Applicable Law. The Service Provider will promptly take corrective action in response to any non-compliance of its Personnel with this Schedule and/or FIPPA.

12. Access by Personnel

The Service Provider will ensure that its Personnel are granted access to the Personal Information only where such access is necessary for the performance of the Service Provider's obligations or the exercise of its rights under the Agreement, and subject to the following terms:

- (a) Personnel will enter into an Access Agreement prior to being granted access to the Personal Information, and, upon HO request, such Access Agreement is subject to review and approval by the HO;
- (b) no access to Personal Information will be permitted while Personnel are physically located outside of Canada, except where access is for a Permitted Purpose and is compliant with the Access Conditions, or unless HO agrees in writing to permit such access;
- (c) the Service Provider will revoke the access rights of any person who engages in the unauthorized collection, use or disclosure of Personal Information or otherwise breaches the Access Agreement or FIPPA;
- (d) Access Agreements will be renewed or updated from time to time upon the amendment of this Schedule, changes in FIPPA or other Applicable Law, or otherwise at the reasonable request of HO;
- (e) the Service Provider will ensure all Personnel are familiar and comply with the obligations of the Service Provider under this Schedule and FIPPA; and
- (f) if requested by HO, the Service Provider will provide and conduct specific ongoing training for its Personnel regarding compliance with FIPPA and this Schedule.

13. Subcontractors

The Service Provider may not subcontract any of its obligations under this Schedule without the prior written consent of HO. The Service Provider acknowledges that any such consent will be conditional on the subcontractor's agreement to be bound by this Schedule and FIPPA, on the same basis that the Service Provider is bound.

14. Liability of the Service Provider for Personnel

The Service Provider specifically assumes all responsibility for the Personnel and for the breach by any one or more of them of any provision of FIPPA or this Schedule. The Service Provider hereby agrees to defend, indemnify and hold harmless the HO, and the members of its board, officers, employees and representatives of, from and against any and all loss, cost, liability, damage, fee, penalty or other expense, including legal fees (on a solicitor and own client basis) suffered or incurred by the HO, and its board members, officers, employees or representatives, or any of them, with respect to any breach or alleged breach by the Service Provider of any of its covenants or obligations under this Schedule or any non-compliance with the provisions of FIPPA or other Applicable Law.

15. Foreign Access and Storage

The Service Provider will not permit the Records or any Personal Information to be transported or transmitted to, stored in or accessed from any jurisdiction other than Canada, except where such transport, transmission, storage or access is:

- (a) for a Permitted Purpose, and (i) the Permitted Purpose is at all material times authorized by FIPPA, and (ii) the Service Provider strictly observes the Access Conditions and such other conditions as may be imposed by HO; and
- (b) for a purpose other than a Permitted Purpose that is permitted by FIPPA, and (i) the Service Provider has received the prior written approval of HO, and (ii) the Service Provider strictly observes any other conditions as may be imposed by HO.

16. Notice of Demands for Disclosure

- (a) The Service Provider will ensure that HO receives prompt written notice of any Conflicting Foreign Order or any other demand, order, subpoena, directive, decision, direction or other communication threatening or purporting to compel the disclosure or production of any Record, whether such demand is received by the Service Provider or its Personnel or any other person to whom the Service Provider has disclosed or provided access to Personal Information.
- (b) At the direction of HO, the Service Provider will pursue or will cooperate with HO in pursuing legal proceedings to challenge any Conflicting Foreign Order or other any other demand, order, subpoena, directive, decision or other instrument purporting to require or compel disclosure or production of any Record or access to any Personal Information. To the extent possible or permitted under Applicable Law, the Service Provider will delay compliance with any such requirement until notice has been given to HO in accordance with Subsection (a) and any legal proceedings commenced pursuant to this Section have concluded.
- (c) The Service Provider is responsible to ensure that it obtains such contractual rights or makes other such arrangements with its Personnel or such other third parties to whom it may grant access to Personal Information as may be necessary to enable it to comply with the provisions of this Section 16.

17. Storage of Records

- (a) The Service Provider must maintain and store the Records at an Authorized Site in Canada and will ensure that there are reasonable physical and electronic security measures in place at such site to protect against any unauthorized access to, theft, loss or disclosure of the Records.
- (b) Notwithstanding the foregoing, the Service Provider may, by written request, seek HO's approval to store or maintain Records at a facility other than an Authorized Site. The use of any such off-site facility by the Service Provider for the storage and maintenance of the Records will be subject to the Service Provider's strict compliance with any conditions imposed by HO from time to time. The Service Provider is responsible for ensuring that the conditions at off-site storage facilities are the same as or better than the conditions at the Authorized Site.

18. Privacy Representative

Upon execution of the Agreement, the Service Provider will appoint a Privacy Representative and such person will have sufficient authority to make decisions and execute documents on behalf of the Service Provider as may be required from time to time for the administration of this Schedule. The Service Provider will promptly provide the HO of the name of its Privacy Representative and will notify the HO of any change of its Privacy Representative.

19. Notice of Breach and Corrective Action

- (a) The Service Provider will provide HO with prompt written notice of any actual or anticipated Material Breach, including full particulars of such breach.
- (b) The Service Provider will co-operate fully with HO in preventing the occurrence or recurrence of any breach of this Schedule, including, if requested to do so: (i) by preparing a written proposal to address or prevent further occurrences; (ii) complying with the reasonable directions of HO; and (iii) taking all reasonable steps to recover or obtain any Records that have come into the custody or control of third parties contrary to FIPPA or this Schedule.

20. Audit, Inspection, Investigation & Cooperation

- (a) The Service Provider will permit HO and/or its representatives and agents to conduct periodic audits of Records related to performance by the Service Provider and the Personnel of the Service Provider's obligations under this Schedule. HO may, at any reasonable time and on reasonable notice to the Service Provider, enter on the Service Provider's premises to inspect any Records in the possession of the Service Provider or any of the Service Provider's information management policies or practices relevant to its management of Personal Information or its compliance with this Schedule, and the Service Provider must permit, and provide reasonable assistance to, any such inspection.
- (b) Upon request by HO, the Service Provider will, at its own cost, promptly provide any Records in its possession, custody or control to HO or its designate.
- (c) The Service Provider will, at its own cost, fully cooperate (including by providing access to Records and related documentation and information) with HO in the event of any audit, investigation, inquiry, complaint, suit or other legal proceeding regarding any actual or alleged breach of FIPPA or this Schedule, including but not limited to a Material Breach.

21. Default & Termination

- (a) Notwithstanding anything in the Agreement to the contrary, the Service Provider and the HO hereby agree that a Material Breach by the Service Provider will give rise to a right on the part of the HO to terminate the Agreement immediately upon written notice.
- (b) Without limiting the generality of the foregoing, the Service Provider agrees that in addition to any other rights or remedies the HO may have for a breach of this Schedule, HO has the right to an injunction or other equitable relief in any court of competent

jurisdiction enjoining a threatened, anticipated or actual breach of this Schedule or FIPPA by the Service Provider.

22. Change of Law & Amendment

- (a) In the event of any change in FIPPA or other Applicable Law that would necessitate a change to this Schedule in order to ensure compliance, HO, by written notice to the Service Provider, may amend this Schedule in such manner as the HO reasonably determines necessary to comply with such Applicable Law to the extent it is directly applicable and enforceable against the Service Provider. This provision is additional to any rights of the HO to terminate pursuant to this Section 22.
- (b) The Service Provider will promptly notify HO in writing of any fact or circumstance, including a change in law, which has, or may reasonably be expected to have, a material adverse impact on the Service Provider's ability to fully comply with this Schedule. Upon receiving such notice, HO may, at its option, exercise its rights under Subsection 22(c) below or immediately terminate the Agreement by notice in writing.
- (c) In the event of any change in the circumstances of either party, Applicable Law, including FIPPA, or any foreign laws applicable to the Service Provider or HO that would affect, in the reasonable opinion of HO, (i) either party's ability to perform its obligations under this Schedule, or (ii) the effectiveness or sufficiency of this Schedule in ensuring best practices and legal compliance, the parties will, at HO's option, enter into good faith negotiations in an effort to address any such issues by amendment to the Schedule or otherwise. If the parties are unable to reach agreement or the issues cannot reasonably be addressed by such agreement, then HO may terminate the Agreement upon the provision of reasonable written notice to the Service Provider.

23. No Withholding

The Service Provider will not be entitled to, and hereby waives any and all right to, withhold any Records from HO to enforce any alleged payment obligation or in connection with any dispute relating to the terms of the Agreement or any other matter between HO and the Service Provider.

24. Return or Destruction of the Record Upon Request

- (a) Except as otherwise specified in the Agreement, the Service Provider will retain the Personal Information and Records until it is provided with a written direction from HO regarding its return or destruction.
- (b) Upon the termination of the Agreement or, at any time upon the written request of HO, the Service Provider will promptly and at its own cost, (i) return or deliver all Records, including any copies thereof, to HO; or (ii) destroy, according to HO's instructions, all documents or other Records, including any copies thereof, in any form or format whatsoever in the Service Provider's possession constituting or based upon Personal Information and, upon HO request, will provide a completed Certificate of Destruction in a form satisfactory to the HO. After a request is made under this Section, the Service Provider will not retain any Records for any purpose without the prior written consent of HO. If, for any reason, the Service Provider fails to return or destroy any Record in

accordance with this Section 24, the Service Provider's obligations pursuant to this Schedule will continue in full force and effect.

- (c) Unless otherwise directed by HO, if the Service Provider is directed to destroy Records, the Service Provider will ensure that the destruction occurs as follows:
 - (i) Personal Information erasure will be accomplished by software erasure or by physical destruction of the media;
 - (ii) Software erasure and physical destruction will be at a minimum to NIST 800-88 standard, as updated, amended or replaced from time to time; and
 - (iii) Physical destruction of paper media will occur by burning, cross-cut shredding, or pulping.

25. General

- (a) If a provision of this Schedule or the Agreement (including any direction given by the HO under this Schedule) conflicts with a requirement of FIPPA, the conflicting provision of the Agreement (or direction) will be inoperative to the extent of the conflict.
- (b) Unless otherwise expressly provided in the Agreement, if a provision of this Schedule is inconsistent or conflicts with a provision of the Agreement, the conflicting or inconsistent provision in the Agreement will be inoperative to the extent of the conflict.
- (c) The Service Provider expressly acknowledges and agrees that this Schedule is binding on the Service Provider notwithstanding any Conflicting Foreign Order or the laws of any jurisdiction outside of Canada purporting to compel disclosure or production of the Records or otherwise conflicting with this Schedule. It is the responsibility of the Service Provider to ensure that its obligations under this Schedule will not come into conflict with any Conflicting Foreign Order or any foreign laws.
- (d) The Service Provider's obligations under this Schedule will continue despite the termination of the Agreement.
- (e) Except as otherwise provided in this Schedule, no amendments to this Schedule will be effective unless made in writing and agreed to by the parties.

**SCHEDULE F
FORM OF GUARANTEE**



Guarantee Sechelt
Services Agmt.doc

GUARANTEE AGREEMENT

THIS GUARANTEE is dated as of April ____, 2016.

BETWEEN:

TRELLIS SENIORS SERVICES LTD., a corporation formed under the laws of British Columbia

(the “**Guarantor**”)

AND

VANCOUVER COASTAL HEALTH AUTHORITY, a health authority established under the laws of British Columbia

(“**VCH**”)

WHEREAS:

- A. On or about the same date as the date of this Guarantee, Silverstone Care Centre Limited Partnership, represented by its general partner, Silverstone Care Centre Ltd. (the “**Service Provider**”), entered into a Services Agreement (the “**Agreement**”) with VCH for the provision of residential care services at Silverstone Care Centre, a residential care centre, which the Service Provider will build.
- B. The Service Provider is an affiliate or business partner of the Guarantor.
- C. This Guarantee is made supplemental to the Agreement. It is a condition to the award of the Agreement that the Guarantor makes available this guarantee and, inter alia, in consideration of the benefit the Guarantor will realize from its affiliation with the Service Provider, the Guarantor has agreed to guarantee the due performance of the Agreement by the Service Provider for a period of five (5) years following the Effective Date of the Agreement.
- D. It is the intention of the parties that this Guarantee be executed under seal.

IT IS AGREED as follows:

- (1) Unless otherwise expressly stated, the words and expressions used in this Guarantee shall have the same meanings as are assigned to them in the Agreement.
- (2) In consideration of the Service Provider entering into the Agreement with VCH:
 - (a) the Guarantor irrevocably and unconditionally guarantees to VCH the due and punctual performance by the Service Provider of each and all of the obligations (including any indemnity obligations), warranties, duties and undertakings of the Service Provider under and pursuant to the Agreement when and if performance of such obligations, warranties, duties and undertakings become due according to the terms of the Agreement (taking into account any period for performance of such obligations, warranties, duties and undertakings expressly provided for in the Agreement) and the due payment and discharge of all such sums of money and liabilities due, owing or incurred or payable and unpaid by the Service Provider to VCH pursuant to the Agreement (taking into account any period for payment of such sums and liabilities expressly provided for in the Agreement) or as a result of any breach of the terms of the Agreement by the Service Provider (including all expenses, including reasonable legal fees and taxes incurred by

VCH in connection with VCH seeking to enforce any of the above). The Guarantor agrees with VCH that if at any time and from time to time the Service Provider fails to perform any obligation (including any indemnity obligations), warranties, duties, or undertaking under the Agreement or to make payment of any sum due and payable under the Agreement (taking into account any period for performance of such obligation, warranty, duty or undertaking or payment of such sum expressly provided for in the Agreement), the Guarantor shall promptly on receipt of a written demand from VCH and in any event within 5 Business Days, pay, perform or discharge such obligations, warranties, duties, undertakings and liabilities, as the case may be, as if such Guarantor instead of the Service Provider was expressed to be the Service Provider under the Agreement;

- (b) the Guarantor shall indemnify VCH, promptly on receipt of written demand from VCH and in any event within five (5) Business Days of receipt of such demand, in respect of any claim, demand, proceedings, liability, loss, damage, costs, charges or expenses (and any taxes arising thereon) arising out of any failure by the Service Provider to perform any of the obligations, warranties, duties and undertakings of the Service Provider or to pay and discharge each and all sums of money and liabilities due, owing, incurred or payable and unpaid by the Service Provider to VCH, in each case pursuant to the Agreement when and if such obligations, warranties, duties and undertakings become due and payable or performable according to the terms of the Agreement; and
 - (c) the Guarantor shall indemnify VCH, promptly on receipt of written demand from VCH and in any event within (five) 5 Business Days of receipt of such demand, against any loss or liability suffered by VCH as a result of any obligation, warranty, duty or undertaking guaranteed by the Guarantor being or becoming unenforceable, invalid or illegal as a result of any intentional act or omission of the Service Provider or the Guarantor that could reasonably have been expected to result in such unenforceability, invalidity or illegality (other than as a result of an act or omission of VCH) as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Service Provider's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal and provided further that the Guarantor shall not be obligated to perform any obligation to the extent that it would be illegal for it to do so.
- (3) This Guarantee will be maintained in full force and effect from the date hereof until the date that is five (5) years following the Effective Date of the Agreement (the “**Expiration Date**”).
- (4) The Guarantor shall not be exonerated by:
- (a) time being given to the Service Provider by VCH;
 - (b) any concession or arrangement or waiver or forbearance granted or made by VCH to or with the Service Provider;
 - (c) anything that VCH or the Service Provider may do or omit or neglect to do (including, without limitation, the assertion or failure or delay to assert any right or remedy of VCH or the pursuit of any rights or remedies by VCH or the giving by the Service Provider of any security or the release, modification or exchange of any such security or the liability of any persons, or any present or future law or regulation purporting to reduce or prejudice any of the obligations or liabilities of the Service Provider pursuant to the Agreement) which, but for this provision, might exonerate the Guarantor; or
 - (d) any unenforceability, illegality or invalidity of any provision or provisions of the Agreement or any of the Service Provider's obligations under the Agreement, or under

any other document or security so that this Guarantee shall be construed as if there were no such unenforceability, illegality or invalidity.

- (5) Without prejudice to VCH's rights against the Service Provider as principal obligor, the Guarantor shall be deemed a principal obligor in respect of its obligations under this Guarantee and not merely as surety. Accordingly, the Guarantor shall not be discharged nor shall its liability under this Guarantee be affected by any act or thing or means whatsoever by which its said liability would have been discharged or affected if it had not been principal obligor.
- (6) The Guarantor hereby authorizes (without need for further consent) the Service Provider and VCH to make any amendment, addendum or variation to the Agreement, the due and punctual performance of which amendment, addendum, variation or extension shall be likewise guaranteed by the Guarantor in accordance with the terms of this Guarantee. The obligations of the Guarantor under this Guarantee shall in no way be affected by any amendment, variation or addendum to, or extension of, the Agreement.
- (7) This Guarantee is a continuing guarantee from the date hereof until the Expiration Date and accordingly:
 - (a) it shall remain in operation and in full force and effect (notwithstanding any intermediate satisfaction by the Service Provider, the Guarantor or any other person) until all obligations and undertakings to be carried out or performed and all sums of money and liabilities now or at any future time due, owing, incurred or payable by the Service Provider under the Agreement from the Effective Date until the Expiration Date shall have been satisfied or performed or as the case may be discharged in full;
 - (b) it is not revocable;
 - (c) it is in addition to and not in substitution for any other security which VCH may at any time hold for the performance of such obligations; and
 - (d) it may be enforced against the Guarantor without first having recourse to any such security and without taking any steps or proceedings against the Service Provider, any other guarantor or any other person.
- (8) The obligations of the Guarantor are independent of the Service Provider. A separate action may be brought and prosecuted against the Guarantor whether or not any action is brought against the Service Provider and whether or not the Service Provider is joined in any such action or actions. In the event that VCH brings formal legal proceedings against the Service Provider in relation to the Agreement, the Guarantor will be bound by any final judgment made by the court in such proceedings. Notwithstanding anything else contained in this Guarantee, VCH shall not make a claim pursuant to this Guarantee unless the Service Provider is in default pursuant to the terms of the Agreement, notice of such default has been given to the Service Provider, and any cure period, if applicable, has elapsed in accordance with the Agreement.
- (9) Neither the liability of the Guarantor under this Guarantee nor the rights of VCH in relation to this Guarantee shall be discharged, released, reduced, impaired or affected by reason of:
 - (a) any release or stay of proceedings against the Service Provider pursuant to any law relating to bankruptcy, insolvency, restructuring or affecting creditors' rights;
 - (b) any failure to obtain, preserve or perfect any right against the Service Provider;
 - (c) the winding up, dissolution, administration, incapacity, lack of power or re-organisation of the Service Provider or any change in its status, function, control or ownership or any

lack or deficiency in the authority of any person acting on behalf of the Service Provider in connection with the Service Provider's obligations under the Agreement; or

- (d) any other act, event or omission which might, but for the provisions of this Guarantee, operate to discharge, impair or otherwise affect any of the obligations or liabilities of the Guarantor or any of the rights, remedies or powers conferred on VCH.
- (10) While any amount is payable by the Service Provider under the Agreement or any amount is payable by the Guarantor under this Guarantee, the Guarantor shall not:
- (a) by virtue of or in respect of any payment made, security realised or monies received for or on account of the Guarantor's liability under this Guarantee, be subrogated to, benefit from, succeed to or share in any rights, security or monies held or received by VCH or be entitled to any right of contribution or claim any right of indemnity, or exercise any other rights or legal remedies; or
 - (b) claim, recover, accept or prove as creditor or otherwise in competition with VCH in respect of any monies owing to it by the Service Provider in the event of any bankruptcy, liquidation or other insolvency proceedings relating to the Service Provider. The Guarantor shall give VCH the benefit of each such claim and proof and of all monies to be received in respect thereof and in the meantime hold the same in trust for VCH.
- (11) If any payment by the Service Provider or the Guarantor in respect of the obligations, warranties, duties and undertakings of the Service Provider under and pursuant to the Agreement prior to the Expiration Date is avoided or annulled or must be repaid as a result of insolvency or any similar event, the liability of the Guarantor will continue as if such payment had not occurred and to the extent necessary, the guarantee of the Guarantor will automatically be reinstated and the Guarantor shall indemnify and save VCH harmless from all related costs. For greater certainty, the Guarantor agrees that it will remain liable for the performance in full of such obligations even if the Service Provider is discharged from them by applicable legislation relating to bankruptcy, insolvency or reorganization.
- (12) The Guarantor assumes responsibility for being and keeping informed of the financial condition of the Service Provider and of all other circumstances bearing upon the risk of non-performance of the Service Provider's obligations, warranties, duties and undertakings under and pursuant to the Agreement prior to the Expiration Date which diligent inquiry would reveal, and agrees that VCH shall have no duty to advise the Guarantor of information known to it at any time regarding such condition or any such circumstances.
- (13) The Guarantor covenants that, on demand from VCH, it will perform all acts and execute all deeds and documents reasonably necessary to give full effect to the provisions of this Guarantee and to ensure that this Guarantee will be at all times enforceable against the Guarantor for all matters covered through the Expiration Date.
- (14) Any amount not paid when due under this Guarantee shall bear simple interest at the rate of one percent (1%) per month (or twelve percent (12%) per year) until paid, provided that such interest will not be in duplication of any interest payable pursuant to the Agreement and claimed under this Guarantee.
- (15) While any amount is payable by the Service Provider under the Agreement or any amount is payable by the Guarantor under this Guarantee, the Guarantor shall not:
- (a) by paying any sum due under this Guarantee or by any means or on any ground, claim or recover by the institution of proceedings or the threat of proceedings or otherwise such sum from the Service Provider;

- (b) claim any set-off or counterclaim against the Service Provider; or
- (c) prove in competition with VCH to claim or have the benefit of any security which VCH holds or may hold for any money or liabilities due or incurred by the Service Provider to VCH.

In case the Guarantor receives any sums from the Service Provider in respect of any payment made by the Guarantor under this Agreement, the Guarantor shall hold such monies in trust for VCH so long as any sums are due and payable (contingently or otherwise) under this Guarantee.

- (16) All sums payable under this Guarantee shall be paid in full free and clear of and without deduction of or withholding for or on account of any present or future taxes, duties and/or other charges, save where required by law.
- (17) No action or proceedings for any breach of this Guarantee shall be commenced against the Guarantor after the expiry of the limitation period in respect of the underlying obligation of the Service Provider under the Agreement.
- (18) The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this Guarantee shall not affect the validity, legality and enforceability of the remaining part or provisions of this Guarantee.
- (19) The Guarantor represents and warrants that this Guarantee is its legally binding obligation, enforceable in accordance with its terms, and that all necessary governmental, corporate and other consents and authorisations for the giving and implementation of this Guarantee have been obtained.
- (20) The Guarantor waives any demand for payment, presentment or notice.
- (21) Any notice or demand (“**Communication**”) under this Guarantee shall be in writing and may be given by delivering, sending by electronic facsimile transmission or other means of electronic communication capable of producing a printed copy, or sending by prepaid registered mail posted in Canada, the notice to the address or number of the Service Provider and VCH contact persons set out below, or to such other address or number as any party may specify by a Communication in writing to the other party:

If to VCH at:

Attention: Ron Van Halen
520 West 6th Avenue
Vancouver, BC V5Z 4H5
Email: Ron.Vanhale@vch.ca
Fax: 604-874-6736

If to the Guarantor at:

Attention: Mary McDougall
s.19(1) [REDACTED]
North Vancouver, British Columbia s.19(1) [REDACTED]
Email: mary mcdougall@trellisgroup.ca

Any Communication delivered or sent by electronic facsimile transmission or other means of electronic communication capable of producing a printed copy on a business day will be deemed conclusively to have been effectively given on the day the Communication was delivered, or the transmission was sent successfully to the number set out above, as the case may be. Any notice sent by prepaid registered mail will be deemed conclusively to have been effectively given on the

third business day after posting; but if at the time of posting or between the time of posting and the third business day thereafter there is a strike, lockout, or other labour disturbance affecting postal service, then the Communication will not be effectively given until actually delivered.

Any party may change its address for Communication to another address by prior Communication in writing to the other party.

- (22) This Guarantee shall be governed by the laws of the Province of British Columbia and the laws of Canada applicable therein without regard to conflicts of laws principles, and all actions or proceedings in respect of any claim arising out of or related to this Guarantee, whether in contract, tort, at law or in equity, shall be brought in the courts of the Province of British Columbia.
- (23) This Guarantee may be executed and delivered in any number of counterparts with the same effect as if the parties had all signed and delivered the same document, and all counterparts will be construed together to be an original and will constitute one and the same agreement. Any party may deliver and execute a copy of this Guarantee by facsimile or other electronic means but that party will immediately dispatch by delivery to the other parties an originally executed copy of this Guarantee.
- (24) Notwithstanding anything stated in this Guarantee above to the contrary, the terms, conditions, and obligations of this Guarantee, including all obligations to pay, perform or discharge the obligations and liabilities of Service Provider under the Agreement:

(a) shall not require the Guarantor to engage in any activity which, if done by Service Provider, would violate any obligation, representation, or warranty of Service Provider under the Agreement (including its Schedules) relating to the protection of Personal Information or to Service Provider's constating documents or corporate structure; or to compliance with Applicable Law;

(b) are applicable only up to and to the extent of Service Provider's obligations under the Agreement with no additional obligations or liability of any kind, provided that this provision shall not reduce the indemnity contained in Section (2)(c) of this Guarantee; and

(c) are subject to the same defenses, exemptions and exclusions that would be available to Service Provider under the Agreement. To the extent the terms of the paragraph are inconsistent with the terms of remainder of this Guarantee or the Agreement, the terms of this paragraph shall supersede and control.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS whereof this Guarantee has been executed under seal and delivered by the Guarantor the day and year first before written.

TRELLIS SENIORS SERVICES LTD.

By:

Its Authorized Signatory

Name:

Title:

Acknowledged and Agreed:

VANCOUVER COASTAL HEALTH AUTHORITY

By:

Its Authorized Signatory

Name:

Title:

[Signature page to Guarantee for Sechelt Services Agreement]