

**NORTHERN HEALTH AUTHORITY
RESIDENTIAL CARE SERVICE AGREEMENT
DRAFT Schedules**

List of Schedules

- A. Services
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SCHEDULE A

SERVICES

1. **Facility**

The Service Provider will provide the Services in the facility known as:

Name: _____

Address: _____

2. **Description of Services & Service Delivery**

2.1 “**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:

- (a) Skilled care with professional supervision consistent with the level of care required;
- (b) Development and maintenance of a care plan for each Client;
- (c) Assistance with activities of daily living;
- (d) Administering and monitoring medications;
- (e) Meals, including therapeutic diets and tube feeding, and monitoring of food intake or therapeutic diets;
- (f) Social work and rehabilitation services (including occupational therapy and physical therapy)
- (g) Ongoing physical, social and therapeutic recreational programs to meet the needs of Clients;
- (h) 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; and
- (i) Prudent maintenance or management of Client cash resources (up to a maximum of \$250).

- 2.2 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.
- 2.3 In connection with its obligation to provide the Services on a continuous basis, the Service Provider will notify the Authority 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 capital improvements or upgrades to the Facility) and will cooperate with the Authority to develop and implement a plan that will mitigate any effects of such interruption.
- 2.4 The Service Provider may deliver additional services that are outside the scope and the authority of the Authority and that involve other governments, government agencies, or other public or private sector organizations, provided that the delivery of such additional services will not negatively affect the delivery of the Services under this Agreement. The Service Provider will inform the Authority of any other funded or non-funded program and services to be offered in the Facility or any significant changes thereto prior to such programs, services or changes thereto commencing and will ensure that these programs, services and changes will not negatively affect the provision of the Services.

Services Purchased

- 2.1 The Service Provider will provide the Services for a total of _____ Client beds which equals _____ annualized Client bed days based on an occupancy rate of 100%.
- 2.2 On the provision of such notice period as the Authority may determine to be reasonable in the circumstances, the Authority may temporarily or permanently adjust the number of Client beds provided by the Service Provider, and/or the designations of those Client beds, if applicable, both as set out in this Agreement:
- (a) if the Facility is undergoing redevelopment, provided that the redevelopment plan for the Facility has been approved by the Authority; or
 - (b) if the Authority awards the Service Provider additional beds and/or changes the designation of Services for some or all Client beds (i.e. to respite services) and/or changes the type of program for some or all Client beds (i.e. to hospice); or
 - (c) in accordance with Ministry Policies, including the Ministry's Residential Care Services policy currently entitled "managing changing need" as set out in the Home and Community Care Policy Manual and any amendment to or replacement of that policy from time to time; or
 - (d) otherwise at the Authority's discretion.
- 2.3 If the Service Provider has additional beds available in the Facility in excess of that number described in Section 2.1 of this Schedule A, then the following terms will apply:

- (a) the Authority 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 the Authority in good faith, and the Temporary Services purchased 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 need and the availability of such additional beds;
- (b) the Service Provider will provide the Temporary Services to each Client on the terms and conditions set out in this Agreement, or as mutually agreed by the Authority and Service Provider, with respect to the provision of Services; and
- (c) the Service Provider will not require any standard minimum or maximum time period for the purchase of the additional beds or the Temporary Services.

3. Client Placement and Referral Process

- 3.1 The Authority will determine and refer Eligible Persons to the Service Provider and the Service Provider will provide the Services to all such Eligible Persons at the Facility.
- 3.2 The Service Provider will inform the Authority of any vacant Client bed on the day that it becomes vacant.
- 3.3 The Service Provider will discuss, plan and cooperate with the Authority, with respect to any relocation of a Client out of the Facility.

SCHEDULE B**PAYMENT FOR SERVICES AND FINANCIAL, STATISTICAL AND OTHER DATA REPORTING****1. Payment for Services****2. Adjustment regarding Client Contribution**

2.1 The Ministry or any other ministry of the Province or the Authority 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.

2.2 The Service Provider will collect the Client Contribution from each Client.

2.3 The Service Provider acknowledges that the Authority

3. Adjustment regarding Occupancy Rate

3.1 The amount of the Funds assumes that the occupancy rate for the Facility (based on Client bed days as outlined in Schedule A and as adjusted in accordance with Section 2.2 of Schedule A) will be maintained at no less than 98.5%, and the Authority may adjust such Funds downwards if the occupancy rate for the Facility drops below 98.5%.

The Service Provider will abide by such procedures with respect to the determination by the Authority of the occupancy rate of the Facility as may be determined by the Authority from time to time, and will report to the Authority regarding its occupancy rate as and when required by the Authority.

Calculation by the Authority of the occupancy rate to be maintained by the Service Provider will exclude:

- (a) vacancies that are due to temporary absences of Clients as defined in the Home and Community Care Policy Manual;
- (b) vacancies that are due to an Authority approved temporary closure to admission of Clients (e.g. due to redevelopment);
- (c) vacancies that are due to a Medical Health Officer order of temporary closure to admission of Clients (e.g. due to an infectious outbreak);
- (d) beds designated as beds for Clients receiving Temporary Services;
- (e) beds designated as beds for Clients receiving respite services, if applicable;

- (f) beds designated as other specialty beds by the Authority from time to time; and
- (g) such other vacancies or exclusions as the Authority may approve from time to time.

4. Adjustment regarding Staffing

- 4.1 The Service Provider will promptly prepare and implement a staffing plan, satisfactory in form and content to the Authority, 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 (the “**Staffing Plan**”). The Service Provider will comply with the Staffing Plan, including delivering the worked direct care hours set out therein, at all times. If the Service Provider fails to comply with the Staffing Plan, including the delivery of the worked direct care hours, the Authority may adjust the amount of the Funds downwards.

5. Financial, Statistical and Other Data Reporting Requirements

- 5.1 The Service Provider will provide the Authority with the following financial, statistical and other data reports:
- (a) its operating budget, within 60 days of request by the Authority for same;
 - (b) semi-annual (or for such other period of time as the Authority determine) financial reports, within 45 days of the end of the applicable reporting period;
 - (c) approved facility activity reports, within 14 days of receipt of the facility activity report by the Service Provider;
 - (d) complete 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;
 - (e) audited client trust account, within 120 days of the financial year end of the Service Provider; and
 - (f) such additional financial, statistical or data reporting requirements as the Authority may require, including preliminary and final budgets and cash flow projections.

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.

- 5.2 If the Service Provider is a member of HEABC, then the Service Provider will provide the Ministry, and will otherwise comply, with all reporting requirements associated with the Health Sector Compensation Information System (HSCIS).

5.3 If the Authority implements new information systems or other technology, the Service Provider will report such data as the Authority may from time to time require in connection therewith, in such format and medium and at such times as the Authority may from time to time require.

6. **Failure to Comply with Reporting Requirements**

6.1 If the Service Provider fails to comply with the financial, statistical and other data reporting requirements set out in this Schedule B, then the Authority may, in addition to any other rights and remedies it may have hereunder or otherwise at law or equity, withhold funding in accordance with the following:

- (a) the Authority will provide written notice of such non-compliance to the Service Provider with a 14 day deadline for compliance (the “**First Notice**”);
- (b) if the non-compliance is not rectified to the Authority’s satisfaction within the 14 day deadline set out in the First Notice, then the Authority 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 the Authority determines that there are extenuating circumstances which are the cause of such continued non-compliance;
- (c) if the non-compliance is not rectified to the Authority’s satisfaction within 14 days of receipt by the Service Provider of the Second Notice or within the additional time to comply established by the Authority pursuant to subsection (b) above, as applicable, then the Authority may withhold funding from the next and each subsequent regularly scheduled instalment until such non-compliance is rectified to the Authority’s satisfaction. The amount that will be withheld will be up to a maximum of 40% of the instalment and the actual amount withheld will be determined by the Authority 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 amounts withheld will not be repaid to the Service Provider, with the exception of a maximum of two reduction instalments which may be recoverable by the Service Provider at the discretion of the Authority; and
- (d) continued non-compliance past 90 days of receipt by the Service Provider of the Second Notice may result in the Authority terminating this Agreement in accordance with Section 10.2(a) of the main body of this Agreement.

SCHEDULE C**PERFORMANCE MANAGEMENT FRAMEWORK****1. Performance Management System**

- 1.1 The Service Provider will comply with the performance management system, including any performance indicators and outcome-based measures, developed by the Authority and as amended by the Authority from time to time pursuant to Section 11 of the main body of this Agreement. Without limiting the generality of the foregoing, the Service Provider will comply with the performance indicators set out in Schedule C-1. The Service Provider agrees to work with the Authority and all service providers providing residential care services in the region to develop other performance indicators as may be required from time to time by the Authority.
- 1.2 The Service Provider will deliver to the Authority at such times as the Authority may require all data and other information as the Authority may require in connection 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 the Authority to assess, for example, the quality of the Services, system effectiveness, client focus, financial management and general health of the Service Provider.
- 1.3 The Service Provider acknowledges that the performance management system of the Authority governing the provision of the Services is currently under development and as a result, this Schedule C and Schedule C-1 will be amended by the Authority from time to time. For example, the Service Provider acknowledges that it will be required to comply with the provincial performance management system currently under development, 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 interRAI residential assessment instrument (version 2.0).
- 1.4 The Authority will provide to the Service Provider 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

- 2.1 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 the Authority's performance management system described in this Schedule C. The Service Provider will share its process and results with the Authority on an annual basis as a part of the regular review process.

3. Accreditation

- 3.1 Upon request by the Authority, the Service Provider will provide the Authority with such information regarding its Accreditation status as the Authority may require, including:
- (a) informing the Authority of the target date for its first or next accreditation survey
 - (b) informing the Authority of the outcome of such each survey; and
 - (c) if full Accreditation has not yet been achieved, outlining an action plan, in form acceptable to the Authority, to achieve such full Accreditation.

4. Management of Performance Issues

- 4.1 Without limitation to any other rights of the Authority hereunder, including any rights pursuant to Section 6.2 of the main body of the Agreement and Section 4.2 of this Schedule C, if the performance management system established by the Authority demonstrates, or the Authority otherwise determines, that the Service Provider is performing below a standard acceptable to the Authority, including the standards set out in Schedule C-1, then the Authority will notify the Service Provider of the issue(s). The Service Provider will cooperate fully with the Authority and will be required to either develop and implement a plan of action to address the performance and/or compliance issue(s), or to follow a plan provided by the Authority, as the Authority may elect. The plan will include a completion date acceptable to the Authority and will be approved and monitored by the Authority. The Service Provider will, at the Authority's request, provide a written report detailing and confirming its implementation of such plan. If the Service Provider:
- (a) fails to follow through with the approved plan in such time and manner acceptable to the Authority and the Authority determines that the health or safety of any Client is at risk;
 - (b) fails to make the required adjustments or changes to meet the Authority's requirements;
 - (c) repeatedly performs below a standard acceptable to the Authority; or
 - (d) demonstrates a lack of ability or willingness to address any performance and/or compliance issue(s) identified by the Authority,

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

- (e) on the provision of such notice period as the Authority may determine to be reasonable in the circumstances, adjust the number of Client beds provided by the Service Provider to the Authority hereunder;
- (f) invoke the remedy set out in Section 4.2 of this Schedule C; or

- (g) terminate this Agreement in accordance with Section 10.2(a) of the main body of the Agreement.

4.2 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 Schedule C-1, as they may be amended by the Authority from time to time, or as otherwise required by the Authority in connection with its performance management system, or in the event of a breach by the Service Provider of Section 4.1 of this Schedule C, then, in substitution for or in addition to the other rights and remedies of the Authority hereunder or otherwise at law or equity, as the Authority may at its sole discretion determine, the Authority may invoke the following remedy:

- (a) the Authority will provide written notice of such non-compliance to the Service Provider with a 14 day deadline for compliance (the “**First Notice**”);
- (b) if the non-compliance is not rectified to the Authority’s satisfaction within the 14 day deadline set out in the First Notice, then the Authority 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 the Authority determines that there are extenuating circumstances which are the cause of such continued non-compliance;
- (c) if the non-compliance is not rectified to the Authority’s satisfaction within 14 days of receipt by the Service Provider of the Second Notice or within the additional time to comply established by the Authority pursuant to subsection (b) above, as applicable, then the Authority may withhold funding from the next and each subsequent regularly scheduled instalment until such non-compliance is rectified to the Authority’s satisfaction. The amount that will be withheld will be up to a maximum of 40% of the instalment and the actual amount withheld will be determined by the Authority 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 amounts withheld will not be repaid to the Service Provider, with the exception of a maximum of two reduction instalments which may be recoverable by the Service Provider at the discretion of the Authority; and
- (d) continued non-compliance past 90 days of receipt by the Service Provider of the Second Notice may result in the Authority terminating this Agreement in accordance with Section 10.2(a) of the main body of this Agreement.

SCHEDULE "C-1"

RESIDENTIAL CARE PERFORMANCE INDICATORS

SCHEDULE D**INSURANCE REQUIREMENTS**

1. If the Service Provider is covered by the Health Care Protection Program of the Province (“HCPP”), then the Service Provider will provide, maintain and pay for any insurance it is required to provide by Applicable Law and which it, acting reasonably, considers necessary to cover any risks that it may assume as a result of entering into this Agreement, providing the Services, owning and operating the Facility and otherwise carrying on its business.
2. If the Service Provider is not covered by HCPP, then the Service Provider will, without limiting its obligations or liabilities herein and at its own expense, provide and maintain the following insurance with insurers licensed in British Columbia and in forms and amounts acceptable to the Authority:
 - (a) **Automobile Liability** on all vehicles owned, operated or licensed in the name of the Service Provider, in an amount no 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 the Authority 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 the Authority 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.
 - (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.
3. The Service Provider will provide the Authority 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 2 of this Schedule D will be in the form of the certificate of insurance attached as Schedule "D-1" (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 the Authority).
 4. All of the Service Provider's insurance, including HCPP insurance, will be endorsed to provide the Authority with 30 days prior written notice of cancellation.
 5. The Service Provider hereby waives all rights of recourse against the Authority with regard to damage to the Service Provider's property.
 6. The Service Provider will comply with the *Workers' Compensation Act* and in particular will obtain and maintain during the Term the necessary coverage for the Service Provider's employees, and will, upon request by the Authority provide particulars of such coverage.

SCHEDULE "D-1"

FORM OF INSURANCE CERTIFICATE

SCHEDULE E**CUSTODY AND CONTROL OF PERSONAL INFORMATION****1. Service Provider Subject to FOIPPA**

The Service Provider acknowledges that the Authority is a public body subject to the provisions of the *Freedom of Information and Protection of Privacy Act* (“**FOIPPA**”). The Service Provider agrees that in order to carry out its duties and obligations under this Agreement, the Service Provider may have access to Personal Information and that at all times during the Term the Service Provider, in dealing with the Personal Information and any Records will comply with the requirements of all Applicable Law including the requirements of FOIPPA and any order of or security requirements prescribed by the BC Information and Privacy Commissioner appointed under FOIPPA (the “**Commissioner**”), as if, and to the extent that, the Service Provider is bound by FOIPPA. For further clarification, the Service Provider acknowledges that, by virtue of this Agreement, it is subject to and bound by the requirements of FOIPPA, and agrees to take all necessary steps to understand and ensure it is fully compliant with its obligations under FOIPPA.

2. Control of and Rights in Personal Information and Records

Subject to Section 3 of this Schedule E and the provisions of FOIPPA, all right, title and interest in, and control of, all Personal Information and Records will remain with the Authority. No interest or any right respecting the Personal Information or Records, other than as expressly set out herein, is granted to the Service Provider under this Agreement by implication or otherwise.

3. Excluded Records

For greater clarification, this Schedule E (and specifically the provisions of Section 2 of this Schedule E) does not apply to any information, documents or records that:

- (a) do not contain Personal Information;
- (b) relate solely to the Service Provider’s internal administration finances or management, unless they contain Personal Information about an individual other than the Service Provider’s own employees, officers, directors, agents, service providers, suppliers or contractors;
- (c) relate solely to the Service Provider’s internal labour and employment matters, unless they contain Personal Information about an individual other than the Service Provider’s own employees, officers, directors, agents, service providers, suppliers or contractors; or
- (d) the Authority and the Service Provider have expressly agreed in writing fall outside the scope of this Schedule E.

4. Access to Personal Information and Records

The Service Provider is hereby granted temporary access to Personal Information and temporary custody or possession of the Records on the terms and conditions of this Agreement and for the sole and express purpose of fulfilling its obligations hereunder and for no other use. Except for standard electronic back-up procedures of the Service Provider disclosed to and approved by the Authority, the Service Provider will not copy or reproduce any Records without the Authority's prior written consent. The Service Provider must store back-up records off-site in Canada under conditions that are the same as or better than the originals. All Personal Information and Records must be stored in Canada and accessed solely in Canada, unless specifically authorized by the Authority or the Client, which authorization will only be given by the Authority if permitted by Applicable Law. The Service Provider will utilize reasonable security measures to ensure that the Personal Information and Records cannot be accessed, physically or electronically from any location outside of Canada. The Service Provider will not remove, physically, electronically or in other manner whatsoever from the authorized premises, any Records or Personal Information, without the Authority's prior written consent.

5. Return of Personal Information and Records Upon Request

Upon the request of the Authority for any reason whatsoever, the Service Provider will deliver to the Authority or destroy promptly, according to the Authority's instructions, all Records and will confirm that delivery or destruction to the Authority in writing. After a request is made under this Section, the Service Provider may not retain any Records or copies of Records for any purpose without the prior written consent of the Authority.

6. Use, Disclosure and Dissemination of Personal Information and Records

The Service Provider agrees to take all reasonable precautions to prevent any use, disclosure or dissemination of the Personal Information or Records in any manner that is not permitted by FOIPPA. If the Service Provider or anyone to whom the Service Provider transmits Personal Information or Records pursuant to this Agreement becomes legally compelled to disclose any of the Personal Information or Records, or becomes subject to legal proceedings in which any order or direction for compelled disclosure is sought by a third party, the Service Provider will provide the Authority's Information Privacy Coordinator with prompt written notice thereof.

In particular without limiting the foregoing, if the Service Provider or any of its employees, agents, representatives or Associates (as defined in FOIPPA) receives a demand for disclosure which is from, or appears to be from outside Canada, then the Service Provider must immediately notify (and cause its employees, agents, representatives or Associates to notify) the Minister of Management Services and the Information Privacy Coordinator of the Authority.

7. Privacy Representative

Immediately upon execution of this Agreement, the Service Provider will appoint a representative to be responsible for the Service Provider's compliance with this Schedule E to this Agreement and FOIPPA (the "**Privacy Representative**"). The Service Provider will grant its Privacy Representative sufficient authority to communicate and execute documents on behalf of the Service Provider as may be required

from time to time for this purpose. The Service Provider will promptly provide the Authority with the name of its Privacy Representative and will promptly notify the Authority of any change of its Privacy Representative.

8. Notice of Breach/Risk

- (a) The Service Provider will notify the Authority immediately of any disclosure of, or any risk of unauthorized access to, the Records or Personal Information by any Person not authorized by this Agreement to have such Records or Personal Information including full details of such disclosure or risk. The Service Provider will cooperate with the Authority in avoiding the risk, preventing the recurrence of such disclosure and, to the extent feasible, in recovering the disclosed Records or Personal Information, including any copies.
- (b) Any employee, agent or representative of the Service Provider who reports a foreign demand for information will be subject to the protections set forth in FOIPPA.

9. Employees, etc. of Service Provider bound by FOIPPA

In order to fulfill its obligations under this Agreement, it may be necessary for the Service Provider to grant employees, agents, representatives or Associates of the Service Provider access to Personal Information and Records. In this regard, the Service Provider agrees that it will:

- (a) only make Personal Information and Records available to its employees, agents, representatives or Associates to the extent it is necessary for the purpose of fulfilling the Service Provider's obligations under this Agreement;
- (b) not provide access to the Personal Information or Records to any employee, agent, representative or Associate while such employee, agent, representative or Associate is located (whether permanently or temporarily) or resident in a foreign jurisdiction; and
- (c) advise each of its employees, agents, representatives and Associates providing services on behalf of the Service Provider under this Agreement of, and do such things as may be necessary to ensure that each of them abides by, the terms of this Agreement that are applicable to them, including the requirement to abide by all Applicable Law, including FOIPPA and the requirements of this Agreement regarding Confidential Information.

The Service Provider specifically assumes all responsibilities for its employees, agents, representatives and Associates and for the breach by any of its employees, agents, representatives or Associates of any provision of FOIPPA.

In addition to any other indemnity provided hereunder, the Service Provider agrees to indemnify and save harmless the Authority, its members, directors, officers, employees and agents from and against any and all loss, cost, liability or expense (including legal fees on a solicitor and own client basis) sustained, suffered or incurred by the Authority, its members, directors, officers, employees and agents or any of them with respect to any actual or alleged breach by the Service Provider or its employees, agents,

representatives or Associates of any of the covenants or obligations under this Schedule E to this Agreement, or non-compliance by any of them with the provisions of FOIPPA.

10. Subcontractors

Notwithstanding Section 5.3(e) of the main body of this Agreement, the Service Provider acknowledges that it may not subcontract any of its obligations under this Agreement unless disclosure of Personal Information to such subcontractor is permitted under FOIPPA and such subcontractor agrees in writing to be bound by the terms of this Schedule E and FOIPPA on the same basis that the Service Provider is bound. If the consent of the Authority is required in connection with any such subcontracting, then without limitation to the discretion of the Authority in determining whether or not to grant such consent, the Authority will not provide its consent thereto unless it is satisfied that the foregoing conditions are fulfilled.

11. Compliance Audits

In addition to any other rights of inspection the Authority may have under this Agreement or under Applicable Law, the Authority and/or its representatives and agents may conduct periodic audits of the performance by the Service Provider, its employees, agents, representatives, Associates and subcontractors if any under this Agreement and compliance under FOIPPA, and, in particular, the Authority may inspect any Personal Information and Records in the possession of the Service Provider or any of the Service Provider's information management policies or practices relevant to the management of Personal Information and Records or its compliance with this Schedule E and FOIPPA.

12. Default

Notwithstanding anything in this Agreement to the contrary, a breach by the Service Provider of any Sections of this Schedule E or of any provisions of FOIPPA which directly bind the Service Provider, will constitute a material default by the Service Provider and the Authority may terminate this Agreement immediately upon written notice to the Service Provider pursuant to Section 10.2(a) of the main body of this Agreement.

Without limiting the generality of the foregoing, the Service Provider agrees that in addition to any other rights or remedies the Authority may have for material breach of this Agreement, the Authority has the right to an injunction or other equitable relief in any court of competent jurisdiction enjoining a threatened or actual material breach of this Agreement by the Service Provider.

13. Termination

Upon termination or expiration of this Agreement, the Service Provider will request direction from the Authority, and will comply with such direction, regarding all Records or Personal Information and will confirm to the Authority in writing promptly thereafter that it has complied with such direction.

If for any reason any such Records or Personal Information remains in the Service Provider's possession, the Service Provider's obligations under this Schedule E with respect to all such Records or Personal Information will continue in force after the Agreement terminates or expires. The Service Provider may

not retain any Records or copies of Records for any purpose without the prior written consent of the Authority.

14. No Withholding

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

15. Location of Personal Information

The Service Provider may maintain Personal Information only at locations of the Service Provider as authorized in writing by the Authority. The Service Provider will maintain reasonable security measures or such other measures as may be required under FOIPPA, including a high level of physical security of rooms and premises which house Personal Information and Records, servers and systems processors and will restrict access to such areas to authorized personnel only.

16. Compliance With Request Under FOIPPA

The Service Provider will immediately notify the Information Privacy Coordinator of the Authority if it receives a request for access to information under FOIPPA, and will respond only in compliance with FOIPPA and in cooperation with and at the direction of the Authority. Without limiting the generality of the foregoing, the Service Provider will cooperate with and assist in any investigation of a complaint that Personal Information or Records have been used or disclosed contrary to FOIPPA or this Agreement.

The Service Provider will cooperate with and assist in any investigation of a complaint that Personal Information or Records have been used or disclosed contrary to FOIPPA or this Agreement.

17. Specific Covenants – Personal Information Handling

The Service Provider will undertake the following steps, as relevant and applicable to the electronic or paper record-keeping environment in the Service Provider's operation:

- (a) take a physical inventory, at least annually, of all Personal Information and Records, to identify any losses;
- (b) ensure that access systems require individual user identification to be unique and re-authenticated each time access is made to the Personal Information or Records;
- (c) implement appropriate controls for the issue, change, cancellation, and audit-process of user identifications and authentication mechanisms;
- (d) ensure that effective authentication codes and passwords are used;

- (e) maintain and implement formal procedures for terminated employees, agents or representatives who have had access to Personal Information or Records;
- (f) design and implement an automated, always-on auditing of electronic information system which can be accessed by the Authority to monitor access to and use of Personal Information, which system creates an audit trail that automatically records the identity of anyone who accesses Personal Information or Records, recording the date and time of access, and which flags access or access attempts that fall outside set criteria (e.g. access outside regular business hours).

18. Other Privacy Regulation

- (a) The Service Provider acknowledges that its compliance with FOIPPA and this Agreement in respect of Personal Information and Records will be in addition to and will not otherwise relieve the Service Provider from compliance with privacy laws of general application in the private sector having application to the Service Provider.
- (b) The Service Provider must comply with the provisions of this Schedule E despite any conflicting provisions of the Agreement or the laws of any jurisdiction outside Canada. Without limiting the foregoing the Service Provider and its employees, agents, representatives and Associates are not and will not, in connection with the provision of its services pursuant to this Agreement, be subject to an order, directive, ruling, judgement, injunction, award, decree, decision, direction, request or other requirement (collectively, a "**Directive**") issued pursuant to any foreign legislation. The Service Provider will immediately inform the Authority if the Service Provider or any of its employees, agents, representatives, or Associates receives a Directive and will comply with the Authority's direction regarding any response to or defence of any such Directive.