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**COMPREHENSIVE CLEANING AND ENVIRONMENTAL  
SERVICES CONTRACT  
BETWEEN  
PROVINCIAL HEALTH SERVICES AUTHORITY  
AND  
COMPASS GROUP CANADA (HEALTH SERVICES) LTD.  
AND  
COMPASS GROUP USA INVESTMENTS LLP  
MAY 14th, 2003**

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**AND**

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# COMPREHENSIVE CLEANING AND ENVIRONMENTAL SERVICES CONTRACT

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# COMPREHENSIVE CLEANING AND ENVIRONMENTAL SERVICES CONTRACT

THIS AGREEMENT made as of the 14<sup>th</sup> day of May, 2003

BETWEEN:

**PROVINCIAL HEALTH SERVICES AUTHORITY**, having its administrative offices at 700 – 1380 Burrard Street, Vancouver, B.C., V6Z 2H3

(the "Customer")

AND:

**COMPASS GROUP CANADA (HEALTH SERVICES) LTD.**, a company extra-provincially registered in British Columbia having its head office at 3700 North Fraser Way, Suite 100, Burnaby, B.C., V5J 5H4

(the "Contractor")

AND:

**COMPASS GROUP USA INVESTMENTS LLP**, having an address at 2400 Yorkmont Road, Charlotte, NC 28217

(the "Covenantor")

WHEREAS:

- A. The Customer, acting as agent for, and on behalf of Children's & Women's and B.C. Cancer Agency, issued a Request for Proposal dated January 20, 2003 for comprehensive cleaning and environmental services at the facilities located on Children's & Women's site, the B.C. Cancer Agency site and the Sunny Hill Health Centre for Children site;
- B. The Contractor is the preferred supplier for such services and the Customer, acting as agent for Children's & Women's and B.C. Cancer Agency wishes to enter into this Contract in order to set out the terms and conditions upon which the Contractor will provide its services;
- C. The Covenantor is related to the Contractor in that they are both ultimately directly or indirectly owned by the same parent and has become party to this Contract for the purpose of jointly and severally covenanting with the Contractor to indemnify the Customer in the manner hereinafter provided;

**NOW THEREFORE** in consideration of the sum of one dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged the parties agree as follows:

**ARTICLE 1  
DEFINITIONS AND INTERPRETATION**

1.1 **Definitions.** In this Contract unless something in the subject matter or the context is inconsistent therewith, the capitalized terms herein will have the meanings set out below:

- (a) **"B.C. Cancer Agency"** means British Columbia Cancer Agency Branch;
- (b) **"Branch Societies"** means the Customer's branch societies incorporated under the *Society Act* including without limitation B.C. Cancer Agency and Children's & Women's and **"Branch Society"** means any one of them;
- (c) **"Children's & Women's"** means Children's & Women's Health Centre of British Columbia Branch;
- (d) **"Change Order"** means an instrument issued by the Customer signed by both the Customer Representative and the Contractor authorizing either alterations of, additions to, or deletions from the Services and/or the Contract Price;
- (e) **"Contract"** means this agreement including the Appendices to this agreement, as amended from time to time with the written approval of the parties, and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Contract not to any particular Article or Section or other portion of this Contract;
- (f) **"Contractor's Manager"** means the person or persons designated by the Contractor from time to time pursuant to Section 4.8;
- (g) **"Contract Price"** means the fixed price for the Services described in Section 6.1;
- (h) **"CPI"** means the Consumer Price Index (all items for Regional cities) for the City of Vancouver, Province of British Columbia (or any index published in substitution for the CPI or any other replacement index agreed to by the parties acting reasonably, if it is no longer published) published by Statistics Canada or by any successor or any other governmental agency including a provincial agency. In the case of any required substitution the parties, acting reasonably shall be entitled to make all necessary conversions for comparison purposes;
- (i) **"Customer Representative"** means the Customer's senior director, customer care or such other person as may be designated from time to time by the Customer as the Customer's Representative by notice in writing given to the Contractor;
- (j) **"Effective Date"** means the 18<sup>th</sup> day of October, 2003 or such other date as the parties may mutually agree upon;

- (k) **"Effective Date Audit"** means the quality assurance audit to be performed within one week prior to the Effective Date in accordance with the provisions of Appendix H;
- (l) **"Facilities"** means all the buildings and building areas located on the Children's & Women's Health Centre of British Columbia site, located at 4500 Oak Street, Vancouver, BC (excluding the Ambulatory Care Building and Brock Fahmi Building), the B.C. Cancer Agency Vancouver Cancer Centre building at 600 West 10<sup>th</sup> Avenue, Vancouver, BC, and the Sunny Hill Health Centre for Children site located at 3644 Slocan Street, Vancouver, BC, and **"Facility"** means any one of them;
- (m) **"Proposal"** or **"Contractor's Proposal"** means the Contractor's proposal dated February 19, 2003 to provide cleaning and environmental services for the Facilities including all schedules or appendices thereto;
- (n) **"Quality Standards"** means the required quality standards and response times set forth in this Contract for the performance of the Services by the Contractor as set out in Appendix B;
- (o) **"RFP"** means the Request for Proposal issued by the Customer on January 20, 2003 for comprehensive cleaning and environmental services at the Facilities;
- (p) **"Service Levels"** means the specific performance measurements that indicates a standard of service, including description of areas, tasks and frequency of cleaning which must be attained, or bettered as expressed in Appendices B, C and D;
- (q) **"Services"** means all duties, obligations and responsibilities of the Contractor set forth in this Contract including, without limitation those described in the Appendices to this Contract;
- (r) **"Term"** means the term of this Contract including any extension provided for pursuant to this Contract.

1.2 **Interpretation.** The division of this Contract into Articles, Sections and Subsections and the insertion of headings is for convenience only and shall not affect the construction or interpretation of this Contract or be used to define or limit the scope, extent or intent of this Contract. Unless otherwise specified:

- (a) each reference in this Contract to an Article, Section or Appendix is to an Article, Section or Appendix of this Contract;
- (b) each reference to a statute is deemed to be referenced to that statute and to the regulations made under that statute as amended or re-enacted from time to time;
- (c) words importing the singular include the plural and vice versa and words importing gender include all genders;

- (d) references to time of day or date mean the local time or date in Vancouver, British Columbia;
- (e) the word "including" when following any general term or statement will not be construed as limiting 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.

- 1.3 **Capitalized Terms.** Any capitalized term not defined in Section 1.1 but defined within the body of this Contract shall have the meaning so given to it.
- 1.4 **Accounting Terms.** All accounting terms not specifically defined shall be construed in accordance with Canadian generally accepted accounting principles.
- 1.5 **Appendices.** The following attached appendices are incorporated in this Contract and are deemed to be part of this Contract and any references to this Contract shall mean this Contract including such appendices:

- Appendix A - Description of Facilities
- Appendix B - Scope of Work, Quality Standards & Response Times
- Appendix C - Service Specifications by Area and/or Location
- Appendix D - Waste Management Specifications
- Appendix E - Summary Costing Sheets
- Appendix F - Facilities Equipment Inventory List
- Appendix G - FOIPPA - Privacy Requirements
- Appendix H - Penalty and Incentive Bonus Program

## **ARTICLE 2 WARRANTIES AND REPRESENTATIONS**

- 2.1 **Contractor Representations.** The Contractor warrants and represents to the Customer with the intent that it may rely thereon in entering into this Contract that:
  - (a) the Contractor is an entity validly existing under the laws of its jurisdiction of incorporation and has all necessary power and authority to enter into this Contract and to carry out its obligations hereunder;
  - (b) the making of this Contract and the completion of the transactions contemplated hereby and the performance of and compliance with the terms hereof does not conflict with or result in a breach of or constitute a default under the constating documents of the Contractor or any other agreement or instrument to which the Contractor is bound;
  - (c) there are no consents required in connection with the execution and delivery of this Contract or the completion of the transactions, performance of and

compliance with the terms of this Contract by the Contractor which have not been obtained as of the date hereof;

- (d) this Contract has been duly executed and delivered by the Contractor and is a legal, valid and binding obligation of the Contractor, enforceable against the Contractor in accordance with its terms;
- (e) all information, statements and documents submitted to the Customer in connection with this Contract and all representations of fact and future performance made by the Contractor in its Proposal are true and correct; and
- (f) the Contractor is duly registered as an employer under the *Workers Compensation Act* and is in good standing with respect to all filings and the payment of assessments or contributions required to be made under that Act.

**2.2 Covenantor Representations.** The Covenantor represents and warrants to the Customer with the intent that it may rely thereon in entering into this Contract that:

- (a) the Covenantor is an entity validly existing under the laws of its jurisdiction of incorporation and has all necessary power and authority to enter into this Contract and to carry out its obligations hereunder;
- (b) the making of this Contract and the completion of the transactions contemplated hereby and the performance of and compliance with the terms hereof does not conflict with or result in a breach of or constitute a default under the constating documents of the Covenantor or any other agreement or instrument to which the Covenantor is bound;
- (c) there are no consents required in connection with the execution and delivery of this Contract or the completion of the transactions, performance of and compliance with the terms of this Contract by the Covenantor which have not been obtained as of the date hereof;
- (d) this Contract has been duly executed and delivered by the Covenantor and is a legal, valid and binding obligation of the Covenantor, enforceable against the Covenantor in accordance with its terms;

and, upon execution of this Contract, the Covenantor shall deliver an opinion of its US external counsel with respect to the matters warranted in Section 2.2(d) in form and content satisfactory to the Customer, acting reasonably.

### **ARTICLE 3 CONTRACT TERM**

- 3.1 Term.** This Contract shall be in full force and effect on and from the Effective Date until the end of the Term unless earlier terminated as herein provided. The initial Term of the Contract shall be for a period of five (5) years commencing at 0001 hours on the Effective Date and ending at 2359 hours on the last day of the fifth (5<sup>th</sup>) year next following the Effective Date, subject to earlier termination as herein provided.

- 3.2 **Extension of Term.** The Customer shall have the option to extend the Term for a further term of up to two (2) years commencing on the last day of the Initial Term, by delivering notice in writing to the Contractor no later than six (6) months prior to the expiry of the initial Term. Upon delivery by the Customer to the Contractor of such written notice, the Term of this Contract shall be extended for such further period of time, up to a maximum of two (2) years, as is provided for in such notice ("Extended Term") on the same terms and conditions as set forth in this Contract except for the Contract Price which shall be determined by mutual agreement of the parties. If the parties have not mutually agreed on the Contract Price for the Extended Term three (3) months prior to the commencement of the Extended Term, then the Contract Price for the Extended Term shall be decided by binding arbitration under Article 23 provided that the Contract Price shall not be less than the annual Contract Price payable during the last year of the Term and shall not be greater than the annual Contract Price payable during the last year of the Term plus an amount equal to the percentage increase in the CPI over the Term. Until the Contract Price has been determined as provided herein, the Customer shall pay the annual Contract Price then in effect and upon such determination the parties shall make the appropriate adjustment without interest.

#### **ARTICLE 4 SERVICES**

- 4.1 **Provision of Services.** Commencing on the Effective Date, the Contractor shall furnish to the Customer the Services at each of the Facilities in accordance with the terms and conditions of this Contract. Should any services or materials be required by the Contractor in and for the proper performance and provision of the Services which:
- (a) are not expressly or completely described in this Contract; and
  - (b) are necessary for the proper performance and provision of the Services;
- such services or materials shall be deemed to be implied and required by this Contract, and the Contractor shall, at its expense, furnish such materials and perform such services as if they were specifically described in this Contract.
- 4.2 **Start-Up and Operating Plan.** The Contractor and the Customer acknowledge that the Contractor has developed and presented to the Customer and the Customer has approved a comprehensive start-up and operating plan that demonstrates how the Contractor will achieve a reasonably smooth and seamless transition from the existing service model(s) currently in place at each of the Facilities to the Contractor's service model. The Contractor will make any adjustments to its start-up and operating plan as reasonably required, from time to time, by the Customer.
- 4.3 **Transition Period.** To enable the Contractor to implement its start-up and operating plan the Contractor will, during the period following the execution of this Contract until the Effective Date, at its sole expense (save and except for costs which are specifically included as start-up costs to be paid by the Customer as set out in Appendix E), engage in a transition period for the purpose of performing detailed site visits, planning logistics related to performance of the Services, surveying Customer

current service levels and deficiencies, evaluation of cleaning and environmental (waste management) needs, initiating information technology implementation, recruiting and training its staff and otherwise preparing its operations for the performance of the Services under this Contract. During this period, the Customer will permit the Contractor to access the Facilities as reasonably required.

- 4.4 **General Standards.** The Contractor shall perform the Services to a standard of care, skill and diligence maintained by persons providing, on the highest commercial standard, similar services. The Services provided by the Contractor will meet or exceed the standards of the industry and published standards of cleanliness applicable to health facilities recognized by Canadian Health Care Accreditation organizations and applicable professional bodies. All Services will be provided to the complete satisfaction of the Customer and will be conducted in a manner that facilitates minimal inconvenience to staff, patients and the general public.
- 4.5 **Specific Requirements.** The Contractor's performance shall meet or exceed the required Service Levels and Quality Standards and shall be superior to the current service levels maintained by the Customer's cleaning operations in each of the Facilities. The buildings and building areas to be cleaned in each of the Facilities are those described in Appendix A. All Services will be provided strictly in accordance with the terms set forth in this Contract including without limitation Appendices B, C and D hereto. Such Services shall include all routine and special services necessary to ensure that the Service Levels and Quality Standards set forth in this Contract are exceeded at each of the Facilities.
- 4.6 **Monitoring Service Levels and Quality Standards.** The parties agree that the Quality Standards evaluated and scored as at the commencement of the Term is set out on a Facility by Facility basis on Appendix H and that the parties will conduct a further joint review and record those scores approximately one week prior to the Effective Date. The Contractor's adherence to the required Service Levels and Quality Standards outlined in Appendices B, C and D will be monitored by the Customer through observation, monitoring of progress towards targets, periodic audits, including audits by independent third parties acceptable to the Customer and Contractor, analysis of financial and operational reports and the investigation of complaints. Service Levels and Quality Standards deficiencies, depending upon their severity and frequency, will result in the application of pre-defined and pre-agreed financial penalties as set out in Appendix H with the Customer being entitled to exercise further remedies including, at the Customer's election, termination of this Contract all as more particularly set forth in Article 21. The Contractor acknowledges that the Customer requires that the Services be provided at continuous levels in accordance with the Service Level and Quality Standards, notwithstanding any work stoppage by the Contractor's employees or any labour dispute in accordance with Article 14, and that the provisions of Force Majeure and the rights of termination under Article 14 are reflective of this requirement.
- 4.7 **Staffing Commitment.** Unless otherwise agreed in writing by the Customer, the Contractor shall, at a minimum, provide the number of trained and certified housekeeping personnel to provide Services during the shifts, days of the week and hours per year identified in the Contractor's Proposal in order to perform the Services in accordance with the terms of this Contract. In the event the Contractor is

required to provide additional personnel, supplies or equipment in order to perform the Services in accordance with the terms of this Contract, the Contractor shall provide such additional personnel, supplies or equipment solely at its own cost and expense and will not pass any charges, costs or expenses relating to such additional personnel, supplies or equipment on to the Customer, it being agreed that the Contractor bears the risk that it may have underbid the work, that the Contractor's prices are fixed, and that such prices shall not be increased unless such increases are specifically provided for in this Contract.

- 4.8 **Contractor's Manager.** As soon as practicable after execution of this Contract, and thereafter from time to time as the Contractor deems necessary, the Contractor shall designate one or more of its employees to be the Contractor's Manager for purposes of this Contract. The Contractor's Manager shall be responsible for managing this Contract on site at each of the Facilities. The Contractor shall upon designating such person(s) advise the Customer in writing of the name(s), address(es), telephone number(s), and facsimile number(s) of the Contractor's Manager.
- 4.9 **Contractor's Supervisors.** The Contractor shall provide daily on-site supervision at each of the Facilities and shall at all times appoint sufficient supervisory personnel to manage and direct its workforce and to ensure appropriate behaviour and safe performance of the Services at all times. The Contractor acknowledges that the Customer and its personnel shall not provide any supervisory direction or control in respect of the Contractor's employees.
- 4.10 **Quality Assurance Plan.** The Contractor acknowledges that the Service Levels and Quality Standards specified in this Contract exceed those provided by the service model currently in place and the Contractor agrees with the Customer that it shall meet or exceed the Service Levels and Quality Standards specified in this Contract for each of the Facilities. The Contractor shall develop, provide to the Customer, and maintain in effect throughout the Term, a quality assurance plan (the "Quality Assurance Plans") acceptable to the Customer for each Facility which will provide for a co-ordinated systematic approach to quality that will measure and assess the structure, process and the performance of the Services and will ensure deficiencies are corrected before the level of service becomes unacceptable to the Customer, including:
- (a) inspections by Contractor supervisors of randomly selected routines and cleanable spaces against the Service Levels and Quality Standards;
  - (b) specific indicators to assist in tracking the outcomes of the Services to be monitored on a periodic basis to ensure ongoing evaluation of cleaning operations;
  - (c) quality thresholds or benchmarks of evaluation; and
  - (d) Contractor supervisor follow-up to ensure immediate correction of deficiencies.

The Contractor will implement any changes in its Quality Assurance Plans which may be required for the Contractor to exceed the performance requirements contained in this Contract and will make any adjustments to its Quality Assurance

Plans as may reasonably be required by the Customer from time to time to ensure the Contractor's performance requirements are met. All documentation used for the quality control program shall be made available on a regular basis for review by the Customer Representative.

- 4.11 **Quality Assurance Reports.** The Contractor shall provide the Customer Representative on a monthly basis with a comprehensive report detailing adherence to Service Levels and Quality Standards, quality monitoring scores, Quality Assurance Plans activity, and other matters relating to the Contractor's performance to the standards required by this Contract as may reasonably be requested by the Customer.
- 4.12 **Joint Review Committee.** The Customer and the Contractor will establish a committee (the "Joint Review Committee") comprised of the Customer Representative, the Contractor's Manager, one of either the Contractor's Regional Manager or Regional Vice President, Customer supervisory personnel representing key Customer departments including representatives from nursing, infection control and quality assurance and key Contractor supervisory personnel. The Joint Review Committee will meet monthly or at such other times as the parties may agree to assess the state of the delivery of the Services by the Contractor, to address outstanding issues relating to the performance of the Services that have not previously been resolved informally and to set goals for the ensuing two month period. At each meeting of the Joint Review Committee the Contractor will present to the Customer, and will solicit feedback from the Customer with respect to, a written report containing information prepared by the Contractor regarding the Contract including:
- (a) progress review;
  - (b) systems review;
  - (c) future planning;
  - (d) organizational review; and
  - (e) quality indicators.
- 4.13 **Right of Inspection.** The Customer may, at its cost, retain an independent third party who will have the right to conduct announced and unannounced tests and inspections to enable the Customer to verify that the Services are being performed in accordance with the terms of the Contract. The Customer also reserves the right to conduct any test or inspection it may deem advisable to assure supplies and equipment conform to the specifications set out in the Contract.
- 4.14 **Manage External Service Contracts.** The Contractor will without cost to the Customer manage on behalf of the Customer its present and future service contracts relating to housekeeping and environmental services including all present and future contracts entered into by both the Customer and Children's & Women's and B.C. Cancer Agency including without limitation general waste, biomedical waste, pest control, laundry, chemical waste disposal, shredding, external window cleaning and power washing contracts. The Contractor will manage such external service

contracts on behalf of the Customer and will monitor performance and ensure Services are provided in accordance with invoices submitted to the Customer for payment. The Contractor will not terminate such service contracts without the prior written approval of the Customer.

## **ARTICLE 5 CHANGE IN SERVICES**

- 5.1 General Right to Adjust Service Levels.** Due to the nature of the healthcare sector including the potential for continued reorganization of patient care, construction of new facilities, closure or partial closure of existing facilities and transfer of responsibility for patient care from one facility to another, the Customer reserves the right to adjust the Services to be provided by the Contractor pursuant to the terms of this Contract in order to support its operational requirements from time to time and in such event the Services provided and the amounts payable to the Contractor shall be adjusted in accordance with the terms of this Contract.
- 5.2 Additional Services.** From time to time additional services may be required by the Customer and the Customer may add additional facilities, sites or services to the Services required by this Contract including without limitation present or future facilities or sites of the Customer or any of its Branch Societies or agencies, upon giving the Contractor not less than thirty (30) days prior written notice. In such event the Contractor will provide such Services as are specified in the notice and the Contract Price will be increased accordingly. The amount of such increase shall be determined taking into account any increase in capital or labour costs based on the costs specified in Appendix E or if such costs are not specified in Appendix E, as negotiated by the parties and such services shall thereafter be considered "Services" for all purposes of this Contract. The intention of this Section 5.2 is that the Customer shall be entitled at its option to require that the Contractor provide additional services at its Facilities or Services at other hospitals, cancer clinics or facilities of the Customer or its Branch Societies or agencies whether now existing, or constructed or acquired subsequent to the Effective Date, in order to obtain the favourable pricing set forth in this Contract for such hospitals, cancer clinics and facilities of the Customer or its Branch Societies and agencies throughout the Term of this Contract.
- 5.3 Reduction in Services.** The Customer reserves the right upon giving not less than thirty (30) days prior written notice to the Contractor to delete any Facility, or any areas or parts thereof from the Services to be performed by the Contractor and to reduce or delete Services due to renovation, or if the use of any such areas is reduced or eliminated, or for any other reasons whatsoever in the sole discretion of the Customer. In such event the Contractor will reduce or delete such Services as are specified in the notice, and the Contract Price will be reduced accordingly. The amount of reduction shall be determined taking into account any reduced capital or labour costs based on the costs specified in Appendix E and will be pro-rated for partial amounts as applicable. In the event of a reduction or deletion of any Services or of any area or part thereof, or any Facility, the Customer shall be under no obligation to pay any amount to the Contractor for such Services other than for Services actually rendered in respect of such area or Facility up to the time the

Contractor is notified in writing of the reduction or deletion in Services and the Contractor shall not be entitled to any damages arising out of such reduction or deletion in Services.

- 5.4 **Re-scheduling of Work.** From time to time the Contractor's work may be subject to interruption or interference resulting from various renovation or maintenance projects. The Customer Representative shall give the Contractor prior notification of such projects with the Contractor making the appropriate adjustments in the scheduling of its work. Reasonable notice of such interruption or interference shall be given by the Customer to the Contractor.
- 5.5 **Universal Closure Days.** The Facilities (excluding British Columbia Cancer Agency) presently observe 10 scheduled universal closure days and also certain recognized statutory holidays each calendar year. Some areas may remain open and will require minimal cleaning on such days. Where there is a reduction in Services on such closure days or statutory holidays or where there are more than 10 universal closure days (or in the case of British Columbia Cancer Agency, if it observes any universal closure days), the Contractor will be required to reduce the costs associated with such Services and the Contract Price will be reduced accordingly. Where there are fewer universal closure days than currently observed, and as a result the Contractor is required to provide additional Services, the Contract Price shall be increased accordingly. The amount of such increase or reduction shall be determined taking into account any increased or reduced capital or labour costs based on the costs specified in Appendix E and will be pro-rated for partial days as applicable.

## ARTICLE 6 PRICE AND PAYMENT

- 6.1 **Contractor's Fees.** In full consideration for the complete performance of the Services in a timely manner and in full compliance with this Contract, the Customer shall pay the Contractor at the times and manner provided the fixed Total Annual Costs for the Services set forth in the Summary Costing Sheets for each of the Facilities attached as Appendices E1, E2 and E3 to this Contract, as may be adjusted in accordance with the terms of this Contract ("Contract Price").
- 6.2 **Goods and Services Tax.** The Customer will, in addition to any charges under this Contract, pay any goods and services tax payable in respect of the Services provided by the Contractor under this Contract in accordance with the requirement under the *Excise Act* (Canada). The Contractor agrees to assist the Customer in the recovery of any goods and services tax credits and agrees to reasonably support any requests for tax interpretation or rulings that may assist the Customer to reduce expenses. The Contractor agrees that any reduction in the goods and services taxes collected by the Contractor that are paid to the Contractor shall be reimbursed to the Customer.
- 6.3 **Provincial Sales Tax.** The Customer will, in addition to any charges under this Contract, pay any provincial sales tax (if any) payable in respect of the Services provided by the Contractor under this Contract in accordance with the requirements under the *Social Service Tax Act* (British Columbia). The Contractor agrees to assist

the Customer in the recovery of any provincial sales tax refunds or rebates and agrees to reasonably support any requests for tax interpretation or rulings that may assist the Customer to reduce expenses. The Contractor agrees that any reduction in the provincial sales taxes collected by the Contractor that are paid to the Contractor shall be reimbursed to the Customer.

- 6.4 **Customer Billing and Invoice Requirements.** The Contractor shall submit invoices on the first day of each month during the Term, or at such other intervals as may be agreed to by the parties from time to time, detailing the work for which the Contractor claims payment pursuant to this Contract and setting out the amount claimed based on the fixed Total Annual Costs set forth in Appendices E1, E2 and E3. The invoices in respect of Services to be provided to Children's & Women's and B.C. Cancer Agency will be billed separately and shall be submitted in a format acceptable to the Customer. Specific charges by date and location shall be identified. Such invoices will be submitted to the Customer, Attn: Finance Dept, Accounts Payable. Invoices shall match the Contract terms sequence of Services listed. The invoice must show the Services being invoiced for, and the goods and services tax number and Contractor contact name and phone number for invoice problem resolution should the need arise. Goods and services taxes and provincial sales taxes (if any) shall also be shown as separate line items on the invoice. Amounts payable by the Customer will be paid to the Contractor within forty-five (45) days of receipt of a proper invoice for the amount payable. All invoices not paid within forty-five (45) days will bear interest at the rate of one (1%) percent per month. The Customer will not be considered in default of payment terms if the payment process is delayed due to incorrect pricing.
- 6.5 **Invoices for Additional Services.** The Contractor shall not perform any services over and above those Services contemplated by this Contract without a Change Order or the prior written consent of the Customer. The Contractor shall submit to the Customer an invoice for any additional services performed over and above those contemplated by this Contract which have previously been authorized in writing by the Customer or with respect to which a Change Order has been issued by the Customer. All invoices for such additional Services which have been authorized by the Customer shall be invoiced at the prices established in accordance with Section 5.2 separately at the same time as the Contractor submits its regular invoices for Services.
- 6.6 **Maintain Books and Records.** The Contractor will keep suitable and proper accounts and records of all its reports, correspondence, documents and records relating to performance of the Services including quality control practices, performance levels in relation to Service Levels and Quality Standards and adherence to Health Canada's Infection Control Guidelines for a period of six (6) years following termination of this Contract. Such information shall at all reasonable times upon five (5) days written notice be open to audit and inspection by any authorized representative of the Customer and/or its external auditors (who may make copies thereof and take extracts therefrom) and the Contractor shall provide all reasonable facilities for such audits and inspections and shall furnish the Customer, its authorized representative and/or such external auditors with all such information as it may reasonably require. Such access shall be for the purposes of determining

the Contractor's compliance with the terms and conditions of this Contract, and for verification of all Services performed and in no event shall the Customer be entitled to access to any information and records of the Contractor not specifically related to performance of the Services or this Contract.

- 6.7 **Expenses.** The Contractor shall be solely responsible for payment of all costs and expenses associated with the provision of the Services and the Customer will not be responsible for payment of any of such costs and expenses.
- 6.8 **Right to Withhold Payment and Set-Off.** The Customer may withhold and set-off from any payment any amount sufficient to indemnify the Customer against any lien or other third party claim that may arise in connection with the provision of Services, or by reason of the Contractor's failure to comply with any statutory or regulatory requirement, duty or obligation arising out of or relating to the performance of the Contract, or by reason of any other breach of this Contract by the Contractor. The Customer shall also have the right to withhold any payment hereunder which covers or purports to relate to that portion of the Services which has not been provided by the Contractor in accordance with the terms of this Contract until such time as the dispute is resolved. Any and all fees and charges which are the subject of a bona fide dispute shall not be subject to any late charges of the Contractor. The Customer may set-off any sum owing by the Customer to the Contractor against any fees for Services already paid to the Contractor for Services which have not been provided in accordance with this Contract.
- 6.9 **Firm Pricing.** The prices charged by the Contractor to the Customer as set forth in this Contract shall be fixed for the duration of the Term and shall not be subject to adjustment unless specifically provided for herein.
- 6.10 **Legislated Change in Labour Costs.** In the event the Province of British Columbia amends or enacts legislation during the Term which requires the Contractor to pay additional labour costs to its employees providing Services and such legislation results in an increase in the Contractor's labour costs for employees providing Services pursuant to this Contract of two (2%) percent or more, the Contractor shall be entitled to give written notice to the Customer identifying the additional labour costs which will be payable by the Contractor to such employees. For the purposes of this Section 6.10, the term "labour costs" means legislated increases in salaries, benefits and other costs required to be paid by an employer in British Columbia to an employee in British Columbia or on behalf of such an employee by such an employer. If there is any dispute between the Contractor and Customer as to the impact of such legislation on the Contractor's labour costs, such dispute may be referred to mediation or arbitration pursuant to the provisions of Article 23 for resolution. Upon (i) receipt of such written notice from the Contractor, or (ii) mutual agreement, or final determination by an arbitrator, as to the additional labour costs, the Customer may either elect to approve such additional labour costs and thereupon the Contract Price shall be adjusted accordingly or, alternatively, the Customer may elect to terminate this Contract pursuant to the provisions of Section 21.1. For greater certainty the parties agree that the provisions of this Section 6.10 do not apply to negotiated increases in wage rates, benefits or other labour costs for present or future employees of the Contractor or to increases in labour costs arising out of amendments to the Contractor's existing collective agreements or new

collective agreements with its employees unless such increases in labour costs are imposed on the Contractor pursuant to legislation enacted by the Province of British Columbia.

- 6.11 **Signing Bonus.** Within 30 days of the Effective Date, the Contractor shall pay the Customer on behalf of Children's & Women's and B.C. Cancer Agency the signing bonus set out in Appendix E-4 (the "Signing Bonus"). The Signing Bonus shall be amortized on a straight-line basis over the initial Term. In the event the Contract is terminated for any reason prior to the expiry of the initial Term, the Customer shall pay the unamortized balance of the Signing Bonus as at the date of termination. Such payment will take place within 30 days of the date of termination.

## **ARTICLE 7 EFFICIENCIES AND COMPETITIVE PRICING**

- 7.1 **Achieve Efficiencies.** The Contractor shall at its cost continuously develop and implement efficiencies in the performance of the Services during the Term through improved familiarity with the environment, redeployment of resources, work-load balancing and other strategies. The Contractor will identify all potential savings to the Customer including those which may be made by substituting alternative products, substituting new equipment or technology or reducing service levels. If the Contractor proposes the use of new equipment or new technology or proposes a reduction in service levels, it shall provide to the Customer a calculation of the corresponding direct savings to the Contractor and the cost of providing Service. The Customer will assess whether the change in equipment or technology or the reduction of service levels jeopardizes the Service Levels and Quality Standards required, and if it does, the Customer shall not be required to approve such changes. If the Customer approves such changes, the Contract Price will: (a) during the first year of the Term, be reduced by one hundred (100%) percent of the amount of the Contractor's direct savings in the cost of labour arising from the Contractor's reassessment of the number of the Contractor's personnel required to perform the Services and one hundred (100%) percent of the amount of the Contractor's direct cost savings as a result of the implementation of all other changes, including changes related to the cost of labour, and the parties shall amend this Contract accordingly; and (b) during the second year of the Term and thereafter in each and every year during the Term be reduced by fifty (50%) percent of the amount of the Contractor's direct savings in the cost of labour arising from the Contractor's reassessment of the number of the Contractor's personnel required to perform the Services and fifty (50%) percent of the amount of the Contractor's direct cost savings as a result of the implementation of all other changes, including changes related to the cost of labour, and the parties shall amend this Contract accordingly.
- 7.2 **Competitive Pricing.** If during the Term, the Contractor performs or agrees to perform cleaning and/or environmental (waste management) services which are substantially the same as the Services to other facilities in the health care industry in British Columbia, including without limitation other health authorities and hospitals which have substantially the same facilities or types of facilities (eg. acute care and/or long term care) as the Facilities (In this Section the "Other Services") at rates which are less than the rates payable by the Customer for the Services, the

Contractor shall forthwith notify the Customer of this fact in writing setting forth the Other Services the Contractor has performed or agreed to perform and the price at which the Contractor has performed or agreed to perform the Other Services compared to the prices payable by the Customer for the Services. Upon delivery of such notice, the Contract Price shall thereafter be reduced to the price at which the Contractor has agreed to provide the Other Services. The Contractor and Customer agree to act reasonably and in good faith in applying the provisions of this Section 7.2.

7.3 **Customer's Right To Make Inquiries.** The Customer may, from time to time conduct inquiries to monitor and enforce its rights under Section 7.2 and the Contractor hereby consents to other health authorities and hospitals providing relevant information to the Customer. The Contractor will provide specific consents and authorizations to such other health authorities and hospitals if requested by the Customer in order to facilitate such inquiries. The Contractor agrees to co-operate with the Customer in such inquiries.

7.4 **Statements.** The Contractor shall provide the Customer, within 90 days of the end of the Contractor's fiscal year, with a statement, certified as being true and accurate in all material respects by the Contractor's Chief Financial Officer:

- (a) identifying the cost savings, if any, to the Contractor arising out of the implementation of efficiencies in the performance of Services during the Contractor's previous fiscal year including supporting details such as number of positions, hours per year and annual salaries; and
- (b) certifying that the Contractor did not, during the previous fiscal year, perform or agree to perform Other Services at prices less than the prices specified in any notices given pursuant to Section 7.2; and
- (c) specifying in reasonable detail the aggregate cost savings, if any, to the Customer by reason of the operation of Sections 7.1 and 7.2 during the previous fiscal year;

and the Contractor shall pay to the Customer the aggregate amount of such cost savings, if any, as are specified in the statement (to the extent the benefit thereof has not already been received by the Customer by virtue of a prior reduction in the Contract Price) within 10 days of the delivery of such statement. Amounts not paid when due will bear interest at the rate of one (1%) percent per month until paid.

## ARTICLE 8 PENALTIES AND BONUS FOR PERFORMANCE

8.1 **Penalties and Incentive Bonus.** The Customer and the Contractor will implement the Penalties and Incentive Bonus Program described in Appendix H. A senior management staff member of the Contractor and the Customer Representative or designate shall together perform regular documented Quality Assurance inspections of the work sites on a regular basis, but not less than three (3) times per year. An independent company acceptable to both parties shall perform Quality Assurance audits on all work sites in accordance with the provisions of Appendix H and will submit their finding to the Customer and Contractor. These audits/inspections will

form the basis for determining the bonus and/or penalties as they relate to agreed upon Quality Standards.

- 8.2 **Complete Unsatisfactory Services.** In addition to any penalties provided for in Appendix H, if the Customer has not engaged another cleaner to perform the work, the Contractor shall perform to the satisfaction of and at no cost to the Customer, the complete Services required by this Contract in the area that the unsatisfactory performance occurred to the Service Levels and Quality Standards required under this Contract.
- 8.3 **Substitute Services.** Notwithstanding the commitment of the Contractor to provide continuous Services, the Customer shall have the right, without otherwise restricting its other remedies under this Contract or at law, to obtain substitute Services from a third party as a remedy for service delays or disruption at its sole discretion for the duration of the delay or disruption of the Services that are greater than six (6) hours late or which do not meet the Service Levels and Quality Standards with a substitute service from a third party. The substitute service will be engaged only for the purpose of meeting the shortfall or deficiency in Services provided by the Contractor. If the Customer chooses to obtain substitute services due to service delays or disruptions, the Contractor must reimburse the Customer for the difference, if any, between the contract price incurred by the Customer for the substitute services (which shall be a commercially reasonable contract price in the circumstances) and the charges specified in this Contract that the Customer would have owed the Contractor, if not for the service delay or disruption.

#### ARTICLE 9 DAMAGE TO FACILITIES

- 9.1 **Responsibility for Use of Products.** It shall be the responsibility of the Contractor to ensure that the application by the Contractor's staff of all products and equipment shall not damage the surface on which they are employed or any other surface. All damage resulting from the misuse of materials or equipment by the Contractor or its employees shall, at the option of the Customer, be repaired or paid for by the Contractor. The Customer may repair such damage and deduct the amount of such repairs from any amount owing under this Contract. Where possible, competitive quotes will be obtained by the Customer for such work. Where it is not practical or desirable to repair the damage, the Customer may estimate the cost of the damage and deduct the amount thereof from any payment to the Contractor.
- 9.2 **Cost of Repairs.** The Contractor shall be responsible for the cost of any damage caused to the Facilities or their contents in which the Services are performed whether such damage is attributable to use of equipment or materials on the part of the Contractor's employees, or any other type of damage caused by the Contractor's employees. The Customer may, at its option, repair all damage with materials to match existing materials, and deduct the cost of such repairs from any amounts owing to the Contractor under the terms of this Contract.
- 9.3 **Accelerated Deterioration.** If, in the opinion of the Contractor or its representative, accelerated deterioration of any portion of the work will result from its cleaning operations because of faulty construction or faulty materials of construction or finish,

it shall, before commencing its work, advise the Customer Representative in writing, and will not undertake such work without the prior written approval of the Customer Representative.

## **ARTICLE 10 MANAGEMENT RESPONSIBILITIES**

- 10.1 General Statement.** The Contractor shall be solely responsible for all aspects of employment and labour relations in connection with the work force provided by the Contractor for performing the Services, including, interviewing, hiring, training, payroll, compensation, benefits, supervision, direction, management, scheduling, evaluation, security, discipline and termination of its employees. The Customer shall not be responsible in any way for the management, operation, direction, supervision or performance of the Services by the Contractor's work force.
- 10.2 Contractor Is Employer.** The Contractor is the employer of its staff, and all persons who carry out work to be performed hereunder shall at all times be employees of the Contractor and not employees of the Customer. All such employees shall be under the direct management and sole supervision of the Contractor and the Contractor shall be solely responsible for all on-site management, supervision, direction and control of its employees. The Contractor shall be responsible for payment of all remuneration to its employees and for all its employees' and labour contractors' Workers' Compensation assessments, contributions and payments as required by the Workers' Compensation Act.
- 10.3 Contractor Responsible for Payroll Functions.** The Contractor shall be responsible for all payroll functions including requirements of relevant laws and regulations including the *Employment Insurance Act* and *Income Tax Act* and shall pay any taxes, employment insurance premiums, Canada Pension Plan premiums or contributions, Workers Compensation assessments and other assessments of any nature or kind whatsoever that are payable to any government (whether federal, provincial or municipal) or to any body, agency or authority of any said government by virtue of the relationship existing between the Contractor and its employees.
- 10.4 Inspection of Work Site.** The Contractor shall provide regular inspections of the work site by a senior management staff member and shall make its workforce aware on an ongoing basis of any and all risks associated with the performance of its Services in a health sector environment, including, but not limited to, microbial infections, communicable diseases and contaminated facilities.
- 10.5 Report Incidents.** The Contractor's Manager will provide contact 24 hrs/ 7 days per week, to respond to requests, concerns and/or emergencies. The Contractor will notify the Customer Representative forthwith of any incidents warranting the Customer's attention including but not limited to damage to buildings, malfunctions, irregularities or incidents related to security.
- 10.6 Evaluation of Services.** The Contractor shall monthly, or at such other times as the parties may agree, cause a Contractor executive to participate with the Customer Representative in an organized evaluation and review of its Services to determine

fulfillment of the terms of the Contract and/or any further service requirements or enhancements.

- 10.7 **Authority.** The Contractor's Manager on site, together with the Contractor's supervisory personnel, shall have full and exclusive authority for decision making in all matters relating to the Contractor's work force on site at the Facilities including hiring, firing, direction, operation and discipline of Contractor cleaning staff.
- 10.8 **Management of Cleaning Staff.** All cleaning staff shall be managed by the Contractor's Manager and the Contractor's supervisors who will be available on-site at the Facilities at all times while the work is in progress to supervise the performance of the Services.
- 10.9 **Employee Qualifications.** In order to perform the Services specified in this Contract, the Contractor shall ensure that its employees:
- (a) are competent to perform the Services to the Service Levels and Quality Standards, and specifications described and provided for in this Contract and are properly qualified and trained in keeping with the qualification and training provided by a reasonably prudent supplier of housekeeping and environmental services in a health care setting suitable to ensure that the Customer's Service Levels and Quality Standards are met or exceeded. The Contractor shall provide evidence of the training and qualifications for any personnel performing work under this Contract upon request by the Customer;
  - (b) report daily any building damages, malfunctions or irregularities to the Contractor's Manager, who will in turn relay this information to the Customer Representative;
  - (c) are of good behaviour;
  - (d) have completed the following:
    - (i) Criminal Records Review Check Process (as per British Columbia Attorney General's Department guidelines for the protection of children);
    - (ii) Fire and Safety Training in accordance with applicable Facility policies;
    - (iii) Infection Control Training in accordance with the applicable Facility policies;
    - (iv) Site Orientation in accordance with the applicable Facility policies;
  - (e) are adequately trained and informed in the Worker's Compensation Board Workplace Hazardous Materials Information System ("WHMIS") and safety requirements of the Customer;
  - (f) are adequately informed of and trained in applicable Facility security policies; and

- (g) meet all of the Contractor's minimum basic requirements and preferred requirements set out in the Contractor's Proposal.

The Contractor shall ensure that the foregoing provisions of this Section are brought to the attention of every employee of the Contractor providing Services pursuant to this Contract. The Contractor shall be responsible for all costs associated with cleaning staff training, qualification, criminal records review process, instruction and orientation.

- 10.10 **Employee Belongings.** The Contractor will be responsible for its employees' personal belongings while they are on the Customer's premises. The Customer will provide separate locker room facilities for the Contractor's staff belongings at a location in each Facility approved by the Customer which will be identified as the Contractor's locker room. The Contractor will be responsible to maintain the order and cleanliness of the Contractor's locker room at the Contractor's cost.
- 10.11 **Other Contractor Facilities.** The Contractor may request the provision of certain facilities such as lunchroom facilities and cleaning equipment storage rooms for use by the Contractor's employees at each of the Facilities. The Customer may, in its discretion, and subject to the Customer's determination as to the availability and suitability of space, lease such facilities to the Contractor. Such facilities will not include parking as the Contractor's employees will be required to pay for parking at the normal rates established for members of the public parking at such Facilities. The Contractor will be responsible to maintain the order and cleanliness of the facilities made available to it at the Contractor's cost.
- 10.12 **Cleaning Staff Conduct.** The Contractor shall ensure that the conduct of its staff shall be above reproach at all times. The Contractor's staff are not to interfere with the operation of the Facilities including the activities of the Customer's officers, employees, agents, subcontractors, licensees, invitees or patients or with the property of any patients or other occupants of any of the Facilities. The Contractor's staff shall not use the telephones (except for matters relating to the provision of the Services and in an emergency), office equipment such as computers, photocopiers, radios, TV sets or any other equipment belonging to the Customer or any occupant of the Facility. All Services shall be provided in a manner that facilitates minimal inconvenience to staff, patients and the general public. While the Contractor's employees are on the Customer's premises, the Contractor shall require them to conduct themselves in accordance with the standards of conduct required under the B.C. Human Rights Code.
- 10.13 **Bonding.** Each employee and agent of the Contractor that performs Services hereunder shall be bonded by the Contractor through a fidelity insurance policy with an insurer acceptable to the Customer which carries a blanket limit of no less than one million dollars (\$1,000,000) per occurrence. Such policy shall provide coverage in respect of acts of the Contractor's employees or agents in the course of performing work. Proof of such insurance shall be provided to the Customer upon commencement of the Contract, and from time to time upon request.
- 10.14 **Liability for Employees' Services.** The Customer shall not be liable for, and the Contractor shall keep the Customer, B.C. Cancer Agency and Children's & Women's

indemnified from and against any damages or compensation payable to any employee or agent of the Contractor or his or her legal representatives or family members in respect of any injury, loss or death suffered by such employee or agent arising out of or in connection with the observance or performance of this Contract including without limitation any claim made against the Customer pursuant to the provisions of the *Occupiers Liability Act*, R.S.B.C. 1996, c.337, unless caused by the negligence of the Customer or those for whom the Customer is in law responsible.

## **ARTICLE 11 SUPPLY EQUIPMENT**

- 11.1 Purchase of Equipment.** Upon execution of this Contract the Contractor shall purchase certain of the equipment identified in Appendix F for the prices stated therein. Only the equipment which has been assigned a dollar value under the heading "To Be Purchased By Contractor" will be purchased unless otherwise indicated on Appendix F. The purchase price will be the amounts described under such heading "To Be Purchased By Contractor" and the Contractor shall pay such purchase price to the Customer plus all social services taxes, goods and services taxes where applicable and other fees properly payable upon the sale and transfer of such equipment, upon delivery by the Customer to Contractor of a bill of sale for such equipment in sufficient detail to permit certainty as to the passing of clear title to such equipment to the Contractor, free and clear of any liens or encumbrances. The Contractor shall purchase such equipment on an "as is where is" basis and the Customer makes no representations or warranties to Contractor with respect to the condition or quality of such equipment or the fitness of such equipment for the Contractor's purposes. The purchase of such equipment shall be made entirely without recourse to the Customer.
- 11.2 Capital Investment.** The Contractor shall provide a capital investment in the amount set out in Appendix F-4 (the "Capital Investment"). The Capital Investment will be used to purchase the existing equipment of the Customer pursuant to Section 11.1 of this Contract and any new equipment required for the delivery of the Services (collectively the "Equipment"). If the purchase price for the Equipment is less than the value of the Capital Investment, the Contractor shall pay the remaining amount of the Capital Investment to the Customer as an additional incentive for the Customer to enter into this Contract. The Capital Investment will be amortized on a straight-line basis over the Initial Term of the Contract. In the event the Contract is terminated for any reason prior to the expiry of the Initial Term, the Customer shall pay the Contractor the unamortized balance of the Capital Investment as at the date of termination and title to the Equipment shall pass to the Customer. The Contractor will provide the Customer with a bill of sale specifying the equipment purchased and providing for the passing of clear title to the Equipment, free and clear of any liens or encumbrance. The Customer will be liable for all social services taxes, sales taxes, goods and services taxes, and other fees properly attributable to the sale and transfer of the Equipment.
- 11.3 Supply Equipment.** The Contractor shall at its expense provide its own equipment and will be responsible for providing all equipment required for the performance of the Services.

- 11.4 **Maintain Equipment.** The Contractor shall maintain its equipment in good working order at all times, shall promptly make all necessary equipment repairs and replacements, and shall provide immediate backup support equipment to replace any defective equipment. The Contractor shall be responsible for compliance with all Federal, Provincial and local health and/or safety regulations with respect to such equipment.
- 11.5 **CSA Standards.** All machinery and electrical devices used and provided by the Contractor shall conform to C.S.A. standards and bear C.S.A. approval labels. All costs of approval to obtain the required certification will be the sole responsibility of the Contractor.
- 11.6 **Equipment Free of Defects.** The Contractor represents and warrants to and in favour of the Customer, with the intent that the Customer will rely upon such representation and warranty in entering into this Contract, that all supplies, materials and equipment supplied by the Contractor hereunder are in good working order, free from defects and imperfections. The Contractor will indemnify and save harmless the Customer from and against any and all lawsuits, claims, demands and/or expenses, patent litigation, infringement claims, material or materialmen's or labourers' liens or any claims by third parties with respect to the materials, supplies and equipment supplied by the Contractor.
- 11.7 **Education and Training.** All education and training required by any department or division of the Customer to effectively utilize the products, Services and equipment provided by the Contractor under this Contract shall be provided by the Contractor at no cost to the Customer.
- 11.8 **New Technology/Alternative Products.** No substitute or alternative product will be accepted by the Customer unless agreed to prior to delivery. The Contractor shall make samples available to the Customer of any substitute or alternate product that may replace items under this Contract. There will be no cost to the Customer for the samples. If accepted by the Customer, the alternate products may be substituted at the original contracted price or, if agreed between the parties, at a reduction to the Contract Price.

## ARTICLE 12 FURNISH SUPPLIES

- 12.1 **Furnish Supplies.** The Contractor shall at its expense provide all materials and supplies for the performance of the Services, including, but not limited to, cleaning supplies and janitorial supplies, such as soap, toilet tissue, paper towels, and trash can liners and plastic bags. A complete and descriptive list of materials and supplies to be used for these Services shall be submitted to the Customer prior to execution of this Contract. This list shall be kept updated should any materials or products be changed. The Customer reserves the right to prohibit the use of any product should it be deemed to be in the best interest of the Customer. The Customer will specify hand soap requirements, based on infection control practices provided for in the Contract or as otherwise specified by the Customer from time to time. Change of any dispenser(s) requires written approval of the Customer Representative.

- 12.2 **Storage and Office Space.** The Contractor shall be responsible for the safe use and storage of its supplies and equipment in a leased storeroom. Should the Contractor require a reasonable amount of office space in a Facility, such space as may be approved by the Customer will be leased to the Contractor and will be identified as the Contractor's office. The office will include the existing desks, chairs, filing cabinets, phone line and fax line and the Contractor shall be responsible for and shall pay all costs and expenses incurred in the use of such phones and fax lines. The Contractor shall be responsible to maintain the order and cleanliness of such office space at the Contractor's cost.

**ARTICLE 13  
WORK SITE CONDITIONS**

- 13.1 **General Requirements.** The Contractor shall:

- (a) perform the work in such a manner as not to interrupt or interfere with the operation of any existing activity on the premises or at the location of the work;
- (b) store its apparatus, materials, supplies and equipment in an orderly fashion only in the Contractor's storeroom designated pursuant to Section 12.2;
- (c) participate in a recycling program approved by the Customer and will use only environmental friendly products approved by the Customer, where appropriate;
- (d) clean up frequently all refuse, rubbish, scrap materials and debris and spills caused by its operations, to the end that all times the site of the work shall present a neat, orderly and good appearance.

**ARTICLE 14  
RESPONSE TO DISTURBANCES, CONTINGENCIES, EMERGENCIES AND  
DISASTERS**

**Information withheld  
under FOIPPA  
section 17.**

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under FOIPPA  
section 17.**

- 14.6 **Emergency Response Plan.** The Contractor shall develop, provide to the Customer, and maintain in effect throughout the Term, an emergency response plan (the "ERP Plan") acceptable to the Customer for each Facility which will provide for:
- (a) chemical spill management;
  - (b) WHMIS;
  - (c) outbreaks of infectious disease, including influenza, MRSA and gastrointestinal;
  - (d) isolation procedure;
  - (e) other emergencies; and
  - (f) the provision of additional trained and fully qualified staff to deal with the relevant emergency.

The Contractor will implement any changes in its ERP Plan which may be required from time to time, by the Customer. The Contractor will implement its ERP Plan forthwith whenever required by the Customer. The Contractor shall advise the Customer of the anticipated additional costs of implementing its ERP Plan and upon obtaining approval for such costs, all such additional costs reasonably incurred by the Contractor in implementing its ERP Plan shall be considered costs of additional Services provided pursuant to Section 5.2. All documentation used for the ESP Plan shall be made available on a regular basis for review by the Customer Representative.

- 14.7 **Disaster Plan.** In order to ensure that all essential services are maintained in the event of a disaster including power outage, telephone failure, intercom failure, flooding, heat, water, ventilation or food services disruption at the Facilities or any of them, the Contractor shall develop, provide to the Customer, and maintain in effect throughout the Term, a disaster plan (the "Disaster Plan") acceptable to the Customer for each Facility. The Contractor will implement any changes in its Disaster Plan which may be required from time to time, by the Customer. The Contractor will implement its Disaster Plan forthwith whenever required by the Customer. The Contractor shall advise the Customer of the anticipated additional costs of implementing its Disaster Plan and upon obtaining approval for such costs, all such additional costs reasonably incurred by the Contractor in implementing its Disaster Plan shall be considered costs of additional Services provided pursuant to Section 5.2. All documentation used for the Disaster Plan shall be made available on a regular basis for review by the Customer Representative.

**ARTICLE 15  
INDEMNITY**

- 15.1 **Contractor and Covenantor to Indemnify.** The Contractor and Covenantor shall jointly and severally indemnify and hold the Customer, B.C. Cancer Agency and

Children's & Women's and their directors, officers, employees, servants and agents harmless of, from and against all claims, liabilities, losses, damages, demands, expenses (including legal expenses calculated as between a solicitor and his or her own client), costs, obligations, actions and causes of action of every kind and nature whatsoever that may be asserted, made or brought against or incurred, suffered or sustained by the Customer, B.C. Cancer Agency and Children's & Women's, for and in respect of injury to or the death of any person whomsoever, and damage to or loss or destruction of any property (including without limitation any Facility and the property of the Customer, B.C. Cancer Agency and Children's & Women's) arising directly or indirectly from the Contractor's or its employees or agents, acts or omissions in the performance of this Contract or breaches or defaults by the Contractor in the performance of this Contract. This indemnity will survive termination of this Contract.

15.2 **Waiver.** With respect to the indemnity provided in Section 15.1, the Contractor and Covenantor hereby:

- (a) waive notice of demand for payment, performance or satisfaction of all or any part of their obligations under the indemnity and any right they may have to require that an action be brought against the Contractor or the Covenantor as the case may be or any other person;
- (b) agree to honour their obligations under the indemnity forthwith upon demand and acknowledge that such liability is not contingent or conditional upon the pursuit of any remedies against the Covenantor or Contractor as the case may be or any other person and that such liability shall not be diminished, relieved or otherwise affected by the extension of time or any other indulgence which the Customer may from time to time grant to the Contractor and Covenantor;
- (c) agree that in the event of the bankruptcy, winding-up or distribution of the assets of the Contractor or Covenantor as the case may be, the rights of the Customer shall not be affected or impaired by its omission to prove its claim, or to prove its full claim and it may prove such claim as it sees fit and may refrain from proving any claims;
- (d) agree that no action or omission on the part of the Customer in exercising or failing to exercise its rights hereunder or in connection with or arising from the obligations of the Contractor and Covenantor under the indemnity given by them shall make the Customer liable to the Contractor or Covenantor or either of them for any loss occasioned to either of the Contractor or Covenantor.

#### **ARTICLE 16 INSURANCE**

16.1 **Comprehensive General Liability.** The Contractor shall, at its own expense and without limiting its liabilities herein, insure its operations under a contract of comprehensive or commercial general liability, with an insurer licensed in British Columbia, in an amount of not less than Ten Million (\$10,000,000) Dollars per

occurrence insuring against bodily injury, personal injury and property damage including loss of use thereof and in an amount of not less than Five Million (\$5,000,000) Dollars per occurrence in respect of environmental liability. Such insurance shall extend to and include, but not be limited to blanket contractual and products liability and non-owned automobile liability and such policy of insurance shall contain:

- (a) an endorsement attesting that the Insurer named in such policy has received a copy of the Contract between the Customer and the Contractor;
- (b) an endorsement showing that such policy shall not be terminated, cancelled or materially altered in any manner unless 30 days prior written notice of such termination, cancellation or variation is provided to the Customer;
- (c) a cross-liability clause showing that each of the named insureds and additional insureds shall be entitled to indemnity from the Insurer in respect of liability to any one or more of the insureds or additional insureds;
- (d) an endorsement adding the Customer, B.C. Cancer Agency and Children's & Women's and their directors, officers and employees as additional insureds.

16.2 **Vehicle Insurance.** The Contractor shall maintain automobile liability insurance on all vehicles (owned, leased, rented or borrowed) used in the performance of the Contract in an amount of not less than Five Million Dollars (\$5,000,000) per occurrence.

16.3 **Evidence of Insurance.** Prior to commencement of any work under this Contract and thereafter during the Term on the request of the Customer at any time and from time to time the Contractor shall provide the Customer with evidence of such insurance coverage in the form of a Certificate of Insurance satisfactory to the Customer. The Contractor shall similarly file with the Customer evidence of each renewal of insurance coverage at least 10 days prior to the expiry of any insurance coverage required by this Contract.

## ARTICLE 17 PERFORMANCE BOND

17.1 **Performance Bond.** The Contractor shall, upon signing this Contract, deliver to the Customer a two (2) year performance bond (the "First Bond") in the amount of five million (\$5,000,000) dollars reducing by one million (\$1,000,000) dollars on the first anniversary of the Effective Date. At least thirty (30) days prior to the expiry of the First Bond, the Contractor shall deliver to the Customer a further two (2) year performance bond (the "Second Bond") in the amount of three million (\$3,000,000) dollars reducing by one million (\$1,000,000) dollars on the third anniversary of the Effective Date. At least thirty (30) days prior to the expiry of the Second Bond, the Contractor shall deliver to the Customer a further one (1) year performance bond (the "Third Bond") in the amount of one million (\$1,000,000) dollars. In the event the Contractor fails to deliver the First Bond upon signing this Contract, or either the Second Bond or Third Bond at least thirty (30) days prior to the expiry of the then existing performance bond, the Contractor shall be in default of its obligations under this Contract and the Customer shall be entitled to make a claim under the then

existing performance bond and exercise its rights under Article 21. All bonds delivered by the Contractor shall be issued by a surety approved by the Customer, shall be on terms approved by the Customer, and shall not prevent the Customer from making a claim under the bond in the event the Contractor does not provide replacement bonds within the times required by this Section 17.1. The Customer shall reimburse the Contractor fifty (50%) percent of the fee payable by the Contractor to the surety for the issue of the performance bonds.

#### **ARTICLE 18 PERMITS AND LICENSING**

- 18.1 **Obtain Permits.** The Contractor shall obtain and maintain in force during the Term at its cost all necessary permits and licenses required directly or indirectly for its operations under this Contract. The Contractor shall give all necessary notices and pay all fees required by law and comply with all rules and regulations relating to the Facilities made by the Customer from time to time during the Term of which the Contractor has received notice in writing and with all laws, by-laws, ordinances, rules and regulations, whether federal, provincial, regional or municipal, relating to the business it carries on, the Facilities or the Services required by this Contract.
- 18.2 **Registration in British Columbia.** The Contractor will be required to register and conduct its business in the Province of British Columbia.

#### **ARTICLE 19 HEALTH AND SAFETY OBLIGATIONS**

- 19.1 **General Responsibility for Health and Safety.** The Contractor shall have the sole responsibility for the safety of its employees who perform Services and shall publish, comply with and enforce all rules for the promotion of health and safety and for the protection of its employees which may be issued by the Customer from time to time for contractors working on site at the Facilities.
- 19.2 **Occupational Health and Safety Program.** The Contractor will develop and present to the Customer for its review, a comprehensive occupational health and safety program which complies with all applicable Federal and Provincial laws, and regulations and policies, and with all of the standards required by the Customer from time to time for the Contractors' employees performing Services pursuant to this Contract. The Contractor will publish, comply with and enforce its occupational health and safety program throughout the Term.
- 19.3 **Infection Control.** The Contractor shall ensure that all of its employees performing Services are fully trained with respect to and shall fully comply with and enforce all guidelines, quality standards, rules and regulations relating to infection control issued by the Customer from time to time, including those set forth in this Contract, and with all laws, bylaws, ordinances, rules and regulations which may otherwise be in force regarding the prevention and control of infection at the Facilities.
- 19.4 **Vaccination.** It is the responsibility of the Contractor to ensure that its workforce performing Services at the Facilities are, at a minimum, vaccinated according to the

most recent Health Canada guidelines for Routine Immunization of Adults<sup>1</sup>, the most recent Health Canada guidelines for Immunization of Health Care Workers and Others Providing Personal Care<sup>2</sup>, and Customer Infection Control Guidelines (i.e. - chicken pox and tuberculosis etc.), and provide initial and ongoing documentation of immunization records at the request of the Customer.

**19.5 WCB Certification.** The Contractor will as a condition precedent of performance of this Contract deliver to the Customer an original and current certification from the Workers Compensation Board ("WCB") certifying that:

- (a) the Contractor is registered and in good standing to date with the WCB;
- (b) the Customer will not have any current or future liability to the WCB as a result of this Contract and the Contractor will indemnify the Customer if such liability arises.

**19.6 Control Hazards.** The Customer shall provide to the Contractor all information which is reasonably necessary and appropriate for the Contractor to identify and eliminate or control hazards to the health or safety of persons at the workplace.

**19.7 Compliance with Law.** The Contractor will comply with all relevant laws, statutes and regulations relating to employment as amended from time to time and will comply with the requirements of the *Workers Compensation Act* and all regulations under such Act including without limitation the Occupational Health and Safety Regulations as amended from time to time at all times during the Term and will, on request of the Customer from time to time, provide the Customer with reasonable evidence of either such compliance or its exemption from compliance. Additionally, the Contractor will provide evidence of policies, designation of responsibilities, compliance of employee safety programs and WHMIS when requested by the Customer.

**19.8 Maintain WCB Coverage.** WCB coverage shall be maintained by the Contractor for the duration of the Contract. Prior to receiving any payments, the Contractor may be required to submit a WCB clearance letter indicating that all WCB assessments have been paid. The Contractor will be responsible to provide annual clearance letters for the duration of the Contract.

**19.9 Site Responsibility.** It is the responsibility of the Contractor:

- (a) to provide the Customer with copies of all health and safety policies, written work procedures and other documentary material relating to the Contractor's health and safety practices in relation to the provision of the Services;
- (b) to advise the Customer immediately of any working conditions or other circumstances that may pose a risk to the health or safety of the Customer's

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<sup>1</sup> See Part 2: Recommended Immunization for Infants, Children, and Adults of the Canadian Immunization Guide, Sixth Edition, 2002.

<sup>2</sup> See Part 5: Immunization of Health Care Workers and Others Providing Personal Care of the Canadian Immunization Guide, Sixth Edition, 2002.

employees, or the employees of B.C. Cancer Agency or Children's & Women's, the Contractor's employees or any other contractor's employees;

- (c) to comply with any directives issued by the Customer for the purpose of coordinating the activities of employers, workers and other persons at the worksite relating to health and safety issues.

## **ARTICLE 20 FORCE MAJEURE**

- 20.1 **Relief.** If either party fails to perform any term of the Contract and such failure is due to any event of Force Majeure, that failure will not be deemed to be a default under the Contract. The party affected by an event of Force Majeure will immediately notify the other party and will take all reasonable steps to minimize the extent and duration of the Force Majeure and the period of all such delays resulting from the Force Majeure will be excluded in computing the time within which anything is required or permitted by such party to be done under the Contract, it being understood and agreed that the time within which anything is done under the Contract will be extended by the total period of all such delays. During the Force Majeure requiring suspension or curtailment of a party's obligation under the Contract, that party will suspend or curtail its operations in a safe and orderly manner. "Force Majeure" means any cause beyond the control of a party which prevents the performance by a party of any of its duties, liabilities and obligations under the Contract not caused by its default or act of commission or omission and not avoidable by the exercise of reasonable effort or foresight by that party including civil disturbances, acts, orders, legislation, regulations, directives or failure to act by any governmental agency, act of public enemy, war, riot, sabotage, blockade, embargo, hurricane, earthquake, flood, washout, explosion, and acts of God but excluding lack of or insufficient financial resources to discharge and pay any monetary obligations and excluding inability to obtain labour, equipment or materials, strikes, lockouts, or other labour disputes or disturbances.
- 20.2 **Termination.** If a Force Majeure event prevents the Contractor from providing Services for a period of two or more days, the Customer may thereafter on notice to the Contractor either suspend in whole or in part the performance of further Services or terminate the Contract with respect to the affected Services, or if all Services are prevented, the entire Contract. In the event of such suspension, the Contractor agrees it will vacate the affected site(s) along with all of its employees and equipment until such period of time as the Customer may determine and the Customer shall have the right to obtain substitute Services from a third party at its sole discretion for the duration of such period of suspension. In the event of such termination, the Customer will be entitled to a refund of all prepaid costs related to the Services prevented by the event of Force Majeure, effective from the occurrence of the event of Force Majeure. Both parties shall make all reasonable efforts to minimize the frequency, severity, and duration of events of Force Majeure.

**ARTICLE 21  
GENERAL TERMINATION AND SUSPENSION RIGHTS**

**21.1 Termination by Customer for Default.** Without limiting the other remedies available to the Customer, the Customer will have the right, at its option, to immediately terminate this Contract in whole or in part on the occurrence of any of the following events:

- (a) if the Contractor fails to provide continuous and uninterrupted provision of Services at any Facility in accordance with the requirements of this Contract at any time during the Term it being agreed that the Services will not be considered to be continuous and uninterrupted if the Contractor fails to provide Services at any Facility for more than one day throughout the Term of the Contract;
- (b) if the Contractor fails to meet or exceed the Service Levels and Quality Standards described herein and such breach is not cured within 24 hours of receiving written notice of such breach from the Customer;
- (c) if the Contractor fails to observe or perform any of its other obligations under this Contract and the Contractor has not, within seven (7) days notice from the Customer specifying the default, cured the default;
- (d) if the Contractor or Covenantor becomes bankrupt or insolvent, takes the benefit of any act now or hereafter in force for bankrupt and insolvent debtors, makes an assignment for the benefit of its creditors or any arrangement or compromise or files any proposal or notice of intention to file a proposal;
- (e) if proceedings are initiated by or with respect to the Contractor or Covenantor under any bankruptcy, insolvency or debtor's relief law including proceedings under the *Bankruptcy and Insolvency Act* and the *Companies Creditors Arrangement Act*;
- (f) if a receiver or receiver manager is appointed in respect of all or part of the property or business of the Contractor or Covenantor;
- (g) if proceedings are instituted by the Contractor or any other person for the winding up of the Contractor or other termination of the corporate existence of the Contractor or Covenantor or if the Contractor or Covenantor fail to maintain their corporate existence;
- (h) if any representation, warranty disclosure or statement of the Contractor in its Proposal is false, inaccurate or misleading;
- (i) if the Contractor shall be in breach of any of its obligations under Article 17 or Article 26; or
- (j) if the Customer elects to terminate this Contract pursuant to Sections 6.10, 20.2 or 27.3.

Termination of the Contract under any of the provisions of this Section 21.1 shall be considered termination for cause. All costs associated with the transfer of Services

following termination of this Contract from the Contractor to another service provider shall be borne by the Contractor unless such termination is pursuant to Section 21.2.

Termination of this Contract by the Customer under any of the provisions of this Contract shall not deprive the Customer of any of its rights, remedies or actions against the Contractor in law or in equity, including the right to claim for damages arising from or related to any default by the Contractor or Covenantor.

- 21.2 Termination by Customer Without Cause.** Notwithstanding anything herein otherwise provided, or any custom of the trade, duty of fairness, principle, term or rule of law to the contrary, whether express or implied, the Customer may at its option and in its sole and unfettered discretion, terminate the Contract in whole or in part at any time without cause, and for any reason and without penalty or other recourse by the Contractor, other than as provided in Section 21.4, by providing ninety (90) days written notice to the Contractor.
- 21.3 Termination by Contractor.** The Contractor may, without incurring any liability for termination and without foregoing any rights or obligations due to the Contractor by the Customer, terminate this Contract by written notice to the Customer if the Customer is more than thirty (30) days late in making any payment due to the Contractor and such breach is not remedied within thirty (30) days after receipt by the Customer of written notice of such default delivered by the Contractor, unless the Customer notifies the Contractor in writing within fifteen (15) days after delivery of such written notice of default that the Customer is of the bona fide belief that it is not obligated to make the payment which the Contractor claims is due and owing.
- 21.4 Liability Following Termination.** In the event of early termination of the Contract by the Customer in accordance with the provisions of this Article 21, the Contractor agrees that notwithstanding anything herein otherwise provided or any duty, principle, term or rule of law to the contrary, whether express or implied, the Customer shall not be liable to the Contractor for any loss or damage of any nature whatsoever flowing therefrom, including without limitation any special, incidental, direct, indirect or consequential damages arising out of such early termination, nor shall the Customer be under any obligation to the Contractor save and except for the payment for such Services as may have been performed in accordance with the terms of the Contract up to the date of termination of the Contract and for any amounts repayable to the Contractor in respect of its Signing Bonus and Capital Investment in accordance with the provisions of Sections 6.11 and 11.2 provided however that where the Customer terminates the Contract without cause pursuant to the provisions of Section 21.2, the Customer shall also be responsible for the reasonable severance pay costs actually incurred by the Contractor in accordance with its collective agreement, contractual or statutory obligations to those of its affected employees who were providing Services at the Facilities provided that the Customer's responsibility for such reasonable severance pay costs shall be limited to amounts calculated as follows:
- (a) to a maximum of one hundred (100%) percent of the severance pay costs that would be payable by the Contractor to the affected employees under the *Employment Standards Act* if the circumstances in which the severances occur meet the definition in that Act of a group termination; or

- (b) to a maximum of two hundred (200%) percent of the severance pay costs that would be payable by the Contractor to the affected employees under the *Employment Standards Act* if the circumstances in which the severances occur do not meet the definition in that Act of a group termination.

In circumstances where:

- (i) employees who were providing services at the Facilities are terminated; and
- (ii) their subsequent employment at other of the Contractor's locations in British Columbia will mitigate the severance pay costs incurred by the Contractor; and
- (iii) the Contractor has vacancies for such employment at such locations which would constitute reasonable alternative employment; and
- (iv) the terminated employees are, in the Contractor's reasonable estimation, suitable for such employment,

the Contractor shall offer employment to such terminated employees to fill such vacancies at such locations it being understood that the Contractor's employees providing Services at the Facilities shall have no transfer entitlement to other locations in British Columbia or elsewhere at which the Contractor performs or delivers contracted services.

**21.5 Suspension of Services.** Where the Customer invokes its rights under Section 14.3 herein or in any circumstance where the Customer is reasonably of the view that the Services as performed by the Contractor are either not in accordance with the requirements of this Contract or pose any unacceptable risks to the safety of patients receiving the Services, the Customer may without incurring any liability to the Contractor immediately suspend performance of further Services on written notice to the Contractor for such period of time as the Customer may determine in which case the Contractor agrees it will vacate the affected site(s) along with all of its employees and equipment, until such period of time as the Customer may determine, in which case Section 8.3 will apply mutatis mutandis to such period of suspension.

**21.6 Service Migration Plan.** The Contractor shall develop and present to the Customer a service migration plan acceptable to the Customer (the "Service Migration Plan") which will demonstrate how the Contractor, in the event of termination of this Contract under Article 21 or upon expiry of the Term, will ensure a positive seamless transition from the service model established by the Contractor for performance of the Services in place at the date of such termination to the service model of another service provider. The Contractor will make such changes to its Service Migration Plan as may be reasonably required by the Customer from time to time during the Term and will implement such Service Migration Plan forthwith upon being required so to do by the Customer at no additional cost to the Customer.

**ARTICLE 22  
TERMINATION UNDER SPECIAL CIRCUMSTANCES**

**22.1 Significance of Current Legal Environment.** The Customer and Contractor acknowledge the following:

- (a) that the existence and efficacy of this Contract is dependent upon the continuation and favourable interpretation of the Health and Social Services Delivery Improvement Act, R.S.B.C. 2002, c.2 (hereinafter "HSSDI Act"), as amended from time to time;
- (b) that the efficacy of this Contract will be eradicated if, by reason of legislative change or other authoritative declarations, the Customer is no longer able to lawfully contract out non-clinical services and engage third party contractors to perform such work without breaching its collective agreements with its own employees or if the Contractor may no longer enter into such contracts without becoming successor to, or common employer with, the Customer under the Labour Relations Code of British Columbia;
- (c) that the efficacy of this Contract depends, in whole or in part, on the Contractor being and remaining the "true employer" of its employees for labour relations purposes in accordance with Section 10.2 herein; and
- (d) that since legislation is subject to change or unfavourable interpretation which may impair or eradicate the business efficacy of this Contract, it is prudent to make provisions herein to address such contingencies.

**22.2 Alteration by Legislation or Otherwise.** If the HSSDI Act is repealed in whole or in part, materially amended or overturned in whole or in part, by a court of competent jurisdiction in such a manner so as to materially and substantially affect the performance of the Services contemplated by this Contract or to otherwise substantially impair or eradicate the efficacy of this Contract, or if a decision of any adjudicative body of competent jurisdiction has the same effect, then the following shall occur:

- (a) The Customer and the Contractor shall forthwith meet to re-negotiate mutually agreeable provisions to be substituted for the provisions of this Contract so affected, to whatever degree, provided that the parties agree that it is possible to amend this Contract in such a way as to preserve its efficacy; and
- (b) If the re-negotiation is not successful or if the opportunity for re-negotiation is lost because of a legislative or other authoritative requirement for immediate compliance by the parties, or either of them, with orders or directives that have the effect mentioned in this Section, then (i) the Customer may elect to terminate this Contract immediately, without notice or (ii) the Contractor may elect to terminate this Contract on not less than 4 weeks notice to the Customer, and, in either event, without penalty except as provided for in Section 22.4.

**Information withheld  
under FOIPPA  
section 17.**

**Information withheld  
under FOIPPA  
section 17.**

**ARTICLE 23  
DISPUTE RESOLUTION**

- 23.1 **Negotiation.** The parties agree that, both during and after the Term of this Contract, each of them shall make bona fide efforts to resolve any disputes arising between them in a private, expeditious and businesslike manner through communication, discussion and resolution by amicable negotiation.
- 23.2 **Mediation.** Either party may require the assistance of a skilled commercial mediator appointed by the British Columbia International Commercial Arbitration Centre under its Commercial Mediation Rules to resolve a dispute. If a mediator is appointed under this Section 23.2, the mediated negotiations shall be terminated ten (10) days after the appointment unless the parties agree otherwise.
- 23.3 **Arbitration.** Save and except for any dispute concerning the Quality Standards met by the Contractor which are required by the terms of this Contract to be determined by an independent quality assurance auditor, any dispute arising out of or in connection with this Contract that cannot be resolved through negotiation or mediation may be referred by either party to arbitration under the *Commercial Arbitration Act* (British Columbia). The arbitration will be governed by the British Columbia International Commercial Arbitration Centre in accordance with its "Domestic Commercial Arbitration Rules of Procedure" ("BCIAC Rules"). The arbitration shall be conducted by a single arbitrator appointed in accordance with the BCIAC Rules and the parties shall instruct the arbitrator to commence the arbitration proceedings within five (5) business days of the matter being referred to the arbitrator. The award of the arbitrator, including an award as to costs, shall be final and binding on the parties. Nothing in this Section 23.3 will preclude any party from applying to a court of competent jurisdiction for interlocutory or interim relief.
- 23.4 **Abeyance and Consolidation.** If the parties agree, any unresolved disputes referred to arbitration under this Contract may be:
- (a) held in abeyance until the earlier of completion or termination of this Contract, and

(b) consolidated into a single arbitration before a single arbitrator under the rules of the British Columbia International Commercial Arbitration Centre in accordance with Section 23.3;

23.5 **Performance Notwithstanding Dispute.** Both the Contractor and the Customer shall continue the performance of their respective obligations during the resolution of any dispute or disagreement, including during any period of arbitration, unless and until this Contract is terminated or expires in accordance with its terms and conditions.

23.6 **NAFTA.** The Contractor agrees that this Contract is a procurement contract for the sale of goods or services and is not an "investment" as such term is defined in the North American Free Trade Agreement ("NAFTA") and that the Contractor has no right to receive any compensation pursuant to Article 1110 of NAFTA.

#### **ARTICLE 24 SECURITY REQUIREMENTS**

24.1 **Access.** Only employees of the Contractor specifically assigned to perform the Services will be allowed to enter the Facilities. Failure to abide by this requirement will constitute a default by the Contractor under this Contract. The Contractor shall ensure that all subcontractors, suppliers and service representatives that enter the Facilities are reported to the Customer Representative so that the Customer Representative will be aware of who is on the site and the duration of the site visit.

24.2 **Windows and Doors.** The Contractor shall ensure that all windows and doors which they may open or which they find open in the course of their duties are closed and locked before leaving the room or areas.

24.3 **Lights.** The Contractor shall ensure that all office and clinic lights are switched off before leaving the rooms or areas.

24.4 **Keys and Access Control.** The Contractor will comply with the Customer's security procedures. Keys and access control cards are provided by the Customer's security on authority of the Contractor's Manager only. The Contractor's Manager shall issue the keys and/or cards to Contractor employees each shift and they must be returned at the end of each shift to the Contractor's Manager and kept at all times under secure conditions. At no time will keys or cards be taken off site or duplicated.

24.5 **Key Audits.** Key audits will be performed from time to time, and missing keys and/or access cards will be the responsibility of the Contractor. All losses must be reported immediately to the Customer. The cost of re-keying or re-programming an area or building shall be charged to the Contractor. The Contractor shall ensure that key-rings are securely attached when issued to its employees. Similarly the Contractor is responsible to see that its employees maintain the security of the access cards issued for the performance of the Services.

**ARTICLE 25  
CRIMINAL RECORDS REVIEW ACT**

25.1 **CRRA Check.** The Contractor shall demonstrate to the Customer that it has complied with the requirements of the *Criminal Records Review Act* ("CRRA") for the purposes of preventing the physical and sexual abuse of children. A criminal record check under the CRRA is in addition to whatever other criminal record check requirements the Contractor has established for its employees. In addition to these general requirements, the Contractor agrees:

- (a) the Contractor must inform employees about the requirements of the CRRA if those individuals are employed in, or are applicants for employment in, a job that involves working with children or having or potentially having access to children in the ordinary course of employment;
- (b) the Contractor must ensure that an employee does not work with children until the individual has signed a signed criminal record check authorization form to the Contractor;
- (c) the Contractor must ensure that an individual who is an applicant for new employment and who is determined to be at risk to children by the adjudicator under the CRRA, is not hired for a job that involves working with children;
- (d) the Contractor must ensure that an individual who is a current employee and who is determined to be at risk to children by the adjudicator under the CRRA, does not work with children.

25.2 **CRRA Results.** Employees of the Contractor must not commence work that involves working with children until the results have been received on a signed Criminal Record Check Authorization Form. In addition the Contractor will ensure that if any of its employees are subsequently charged with an offence involving children, the Contractor will ensure that such employee does not provide Services at any of the Facilities.

**ARTICLE 26  
CONFIDENTIALITY AND FREEDOM OF INFORMATION AND PROTECTION OF  
PRIVACY ACT OBLIGATIONS**

26.1 **FOIPPA.** The Contractor acknowledges that all information or material supplied to or obtained or created by the Contractor is subject to the provisions of the *Freedom of Information and Protection of Privacy Act* (British Columbia) as same may be amended or supplemented from time to time (the "Act"). The Contractor will document and manage its records in accordance with:

- (a) the Act;
- (b) other applicable provincial legislation;
- (c) any relevant Federal legislation; and

- (d) the policies of the Customer communicated in writing from time to time, provided such policies shall not be inconsistent with the terms of this Contract.

**26.2 Disclosure Pursuant to Act.** As a "public body" under the Act, the Customer may be requested to disclose the contents of this Contract and/or other Contractor Confidential Information. For the purposes of Section 21(1) of the Act, the Customer specifically acknowledges having been advised by the Contractor that the Signing Bonus and pricing information in Appendix E and the Capital Investment information in Appendix F of this Contract is:

- (a) commercial, financial and/or technical information of the Contractor;
- (b) supplied explicitly in confidence by the Contractor; and
- (c) would harm significantly the Contractor's competitive position or interfere significantly with the Contractor's negotiating position.

**26.3 Protection of Personal Information.** The parties acknowledge that the Contractor, in carrying out its duties and obligations hereunder, is not expected to and is not entitled to have access to "personal information" as defined in the Act ("Personal Information"). In the event the Contractor or any of its representatives inadvertently or otherwise obtain access to any such Personal Information, the Contractor covenants and agrees to comply with the privacy provisions of Appendix G.

**26.4 Customer Confidential Information.** In this Contract "Customer Confidential Information" means all the Customer and patient information disclosed, directly or indirectly, to the Contractor hereunder or acquired by the Contractor in the performance of the Services including the terms of this Contract other than:

- (a) information which at the time of disclosure hereunder is in the public domain, or which thereafter enters the public domain, through no fault of the Contractor; and
- (b) information that the Contractor can prove was in its possession at the time of disclosure hereunder and was not acquired, directly or indirectly, from the Customer or from a third party under any confidentiality obligation.

**26.5 Contractor Disclosure Restrictions.** The Contractor shall not disclose or permit the disclosure of any Customer Confidential Information to any third party, or use any Customer Confidential Information for any purpose other than the performance of the Services except as otherwise provided in this Section. The Contractor may disclose Customer Confidential Information (excluding patient information, or personal information which must be protected in accordance with Sections 26.3 and 26.6) only to those of its officers, employees, directors, agents, and advisors who require it for the purposes of performing the Services and the Contractor shall cause each such recipient of Customer Confidential Information to assume and comply with obligations of confidentiality equal to the obligations which the Contractor has assumed under this Contract.

26.6 **Patient Information.** The Contractor recognizes patients right to privacy. The Contractor shall not disclose or permit disclosure by its directors, officers, employees or advisors of personal information or patient information.

26.7 **Contractor Confidential Information.** In this Contract "Contractor Confidential Information" means all the information disclosed, directly or indirectly, to the Customer by the Contractor in the performance of the Services including the terms of this Contract other than:

- (a) information which at the time of disclosure hereunder is in the public domain, or which thereafter enters the public domain, through no fault of the Customer; and
- (b) information that the Customer can prove was in its possession at the time of disclosure hereunder and was not acquired, directly or indirectly, from the Contractor or from a third party under any confidentiality obligation.

26.8 **Customer Disclosure Restrictions.** The Customer shall not disclose or permit the disclosure of any Contractor Confidential Information to any third party, or use any Contractor Confidential Information for any purpose other than the performance of the Services except as otherwise provided in this Section and Section 26.9. The Customer may disclose Contractor Confidential Information only to those of the Customer and its Branch Societies' officers, employees, directors, agents and advisors who require it in connection with the performance of the Services and the Customer shall cause each such recipient of Contractor Confidential Information to assume and comply with obligations of confidentiality equal to the obligations which the Customer has assumed under this Contract.

26.9 **Disclosure to Province.** The Contractor acknowledges that :

- (a) the Customer is the umbrella health authority established by the Province of British Columbia to be responsible for health care agencies and programs that service patients across the Province of British Columbia;
- (b) in order for the Customer to carry out its role, the Customer is required to provide information and reports to the Province and to share information regarding the provision of health care services with the other Health Authorities.

Accordingly, the Contractor agrees that notwithstanding any other provision of this Contract to the contrary, the Customer may at any time, and from time to time, without being required to seek or obtain further consent or authority from the Contractor, disclose any and all information relating to this Contract including the terms of this Contract, the nature of the Services, the nature, methods and manner of performances of the Services by the Contractor, the rates payable by the Customer to the Contractor hereunder, and the contents of the Proposal to the Ministry of Health Services and other ministries and agencies of the Province of British Columbia.

26.10 **Use of Customer's Name.** The Contractor will not use the name of the Customer or any of the individual Facility site names or any contents of this Contract in any

advertising or publications without the prior written consent of the Customer which consent may be arbitrarily withheld.

- 26.11 **Press Releases.** The Contractor will not make any press releases or other disclosures with respect to the execution, delivery or performance of this Contract, nor any matter related to this Contract, unless the Customer has approved such press release or disclosure. Any and all media releases, advertising, promotional material, interviews or other formal communications by the Contractor with third parties relative to the relationship of the parties or the provision of the Services under this Contract shall be coordinated between the Customer and the Contractor and shall be subject to prior approval of the Customer which approval may be arbitrarily withheld.
- 26.12 **Breach of Confidentiality.** Notwithstanding anything in this Contract to the contrary, a breach by the Contractor of any provision of this Article 26 shall constitute a material default and the Customer may at its option forthwith terminate this Contract immediately upon written notice to the Contractor without liability to the Contractor for such termination. The Contractor shall notify the Customer immediately of the disclosure of any Customer Confidential Information to any person or entity. The Contractor shall cooperate with the Customer in preventing the recurrence of such disclosure and to the extent feasible, in recovering the disclosed information, including any copies. Without limiting the generality of the foregoing, the Contractor acknowledges that the improper disclosure or use of Customer Confidential Information may give rise to irreparable injury to the Customer, inadequately compensable in damages and that accordingly the Customer may seek and obtain in addition to any legal remedies that may be available to it, injunctive relief against the breach or threatened breach by the Contractor of any provisions of this Article 26.
- 26.13 **Survival.** The parties' obligations under this Article 26 shall survive the cancellation, termination or expiration of this Contract.

#### **ARTICLE 27 ASSIGNMENT AND SUBCONTRACTING**

- 27.1 **Consent Required.** The Contractor will not assign this Contract or any part of this Contract without the prior written consent of the Customer, which consent may be arbitrarily and unreasonably withheld by the Customer and any purported assignment without the required consent of the Customer is not binding or enforceable. The Contractor shall not enter into any subcontract for any or all of the Services herein required without the prior written consent of the Customer, which consent may be arbitrarily and unreasonably withheld by the Customer. The Contractor will provide the Customer with all information requested regarding a proposed subcontractor and the approval by the Customer of a subcontractor shall not relieve the Contractor of its obligations under this Contract extent to the extent that those obligations are in fact properly performed. In the event the Customer approves a subcontractor, the Contractor shall secure compliance with and enforce, at its own expense, for the benefit of the Customer, each of the Contractor's contracts with subcontractors. Nothing contained in this Contract shall create any contractual relationship between a subcontractor and the Customer.

- 27.2 **Contractor Liable for Subcontractors.** The Contractor agrees to bind every approved subcontractor to the terms and conditions of this Contract which are appropriate and applicable to the work to be performed by the subcontractor and the Contractor shall be fully responsible to the Customer for the acts and omissions and errors of all subcontractors and of persons directly or indirectly employed or contracted by them.
- 27.3 **Change in Ownership.** The Contractor will promptly advise the Customer of any anticipated changes in the ownership or control of the Contractor during the Term. In the event of any change in such ownership or control not receiving the prior written approval of the Customer which approval the Customer may withhold in its sole and arbitrary discretion, the Customer may immediately terminate this Contract on notice to the Contractor without incurring any liability to the Contractor whatsoever.

**ARTICLE 28  
SOFTWARE & INTELLECTUAL PROPERTY RIGHTS**

- 28.1 **Contractor Software.** The Contractor shall, throughout the Term, provide the software module TeamCoach identified in its Proposal (the "Contractor Software"). The Contractor Software is the Contractor's proprietary web based quality assurance application that provides an essential database of quality assurance scores, patient surveys and Customer surveys. Within the Contractor Software, managers have the ability to print standardized QA's and surveys and enter and report quality assurance information via the internet. The Contractor Software will be used by the Contractor's on-site management team to track quality for the Customer.
- 28.2 **Software License.** The Contractor shall furnish the Contractor Software for use at the Facilities without charge to the Customer for use in association with the Services provided by the Contractor however the Contractor Software shall at all times remain the property of the Contractor. Upon termination of the Contract and provided the Customer has remained current in its payment obligations the Contractor will license the Contractor Software to the Customer on a perpetual, fully paid up royalty free non-exclusive basis for use in locations where the Contractor Software is used at the termination of the Contract, subject to the Customer entering into a license agreement for the Contractor Software on standard, mutually agreeable terms and conditions. Nothing herein shall be deemed to vest or have vested in the Customer any right, title or interest in the Contractor Software and the Contractor is and shall remain the sole owner of the Contractor Software. The Customer agrees to maintain the confidentiality of the Contractor Software and shall not reproduce, disseminate, modify or change the Contractor Software in any way and will not reverse engineer, reverse compile or disassemble the Contractor Software or any modification or enhancement thereto.
- 28.3 **No Infringement.** The Contractor warrants and represents that the Contractor Software does not and will not infringe any patent, copyright or other third party intellectual property rights and the Contractor shall, at its own expense, defend any suit that may arise in respect thereto and indemnify and hold harmless the Customer against all claims, demands, costs, charges and expenses arising from or incurred by any such infringement.

**ARTICLE 29  
GENERAL**

- 29.1 **Covenantor's Obligations.** The Covenantor hereby joins in each and every representation, warranty, obligation, covenant and agreement made or given by the Contractor pursuant to this Contract including, without limiting the generality of the foregoing, the indemnity provisions contained in Article 15 with the intent that, and the Contractor and Covenantor hereby agree that, each of the Contractor and Covenantor be and they are hereby jointly and severally bound thereby such that the Customer shall have a separate and independent cause of action against the Contractor and Covenantor or either of them in the event that any of the Contractor's representations, warranties, obligations, covenants or agreements contained or incorporated herein by reference is false, breached, not observed or not performed.
- 29.2 **Independent Contractor.** The Contractor acknowledges and agrees that (a) the Contractor is an independent contractor and supplies the Services hereunder as an independent contractor;; (b) neither the Contractor, nor any person employed by or associated with the Contractor in the performance of the Services or otherwise, is an employee of, or is in any way entitled to terms or conditions of employment or employment benefits of any kind whatsoever from the Customer under any collective agreement or otherwise including but not limited to private programs or coverages and statutory programs and coverages, whether under the Employment Standards Act of British Columbia, the Workers Compensation Act, the Employment Insurance Act, health plan contributions or otherwise. Accordingly, the Contractor shall pay and shall accept full and exclusive liability for the assessments or contributions required by, but not limited to, the *Employment Insurance Act (Canada)*, *Canada Pension Plan Act*, *Income Tax Act (Canada)* and any applicable provisions of the *Worker's Compensation Act* of the Province of British Columbia in respect of its employees.
- 29.3 **Conflict of Interest.** The Contractor represents and warrants to the best of its knowledge and belief that, except as may arise by virtue of being a shareholder in an incorporated company issuing shares to the public at large, no director, officer or employee of the Customer has a direct or indirect interest in the Contractor or receives any direct or indirect proceeds from this Contract from the Contractor. The Contractor acknowledges and undertakes that the Contractor and its directors, officers, agents, servants or employees shall take all steps to ensure avoidance of all direct or indirect conflicts of interest (either actual or potential) between any of their individual interests and those of the Customer. If the Contractor becomes aware of any possibility of any direct or indirect conflicts, then the Contractor shall promptly disclose to the Customer the facts and circumstances pertaining to same.
- 29.4 **Customer as Agent.** The Customer, in entering into this Contract, is acting as agent for B.C. Cancer Agency and Children's & Women's. The Services provided by the Contractor hereunder are being provided directly to B.C. Cancer Agency and Children's & Women's in respect of their respective Facilities and the Customer may, at its option, at any time terminate the agency relationship and assign this Contract in whole or in part to B.C. Cancer Agency and Children's & Women's without the consent of the Contractor. In the event of such an assignment, the Customer will be relieved of all further obligations hereunder.

- 29.5 **Successors and Assigns.** This Contract enures to the benefit of and binds the parties and their respective successors and permitted assigns.
- 29.6 **Written Waivers.** No waiver of any provisions of this Contract is binding unless it is in writing and signed by each party to the Contract at the time of the waiver. No failure to exercise and no delay in exercising any right or remedy under the Contract will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of the Contract will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.
- 29.7 **Further Assurances.** Each party will execute and delivery promptly all further documents and take all further action reasonably necessary or appropriate to give effect to the provisions and intent of this Contract.
- 29.8 **Remedies Cumulative.** The rights and remedies under the Contract are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.
- 29.9 **Counterparts.** This Contract 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 Contract by facsimile facility but that party will immediately dispatch by delivery to the other party an originally executed copy of this Contract.
- 29.10 **Amendments.** This Contract may only be amended by Change Order or by written instrument signed by both parties.
- 29.11 **Entire Contract.** Save as expressly referred to herein or unless specifically incorporated herein by reference, the Proposal is not incorporated into and does not form part of this Contract. Save as expressly herein otherwise provided, this Contract and all documents contemplated by or delivered under or in connection with this Contract constitute the entire agreement between the parties hereto with respect to the subject matter of this Contract and supersede all prior agreements, negotiations, discussions, undertakings, representations, warranties and understandings whether written or oral, express or implied, statutory or otherwise.
- 29.12 **Notices.** All notices, requests, demands and other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given and to be effective if mailed, three (3) business days after being deposited in the post as registered, postage prepaid, return receipt requested, addressed as follows and if delivered or sent by facsimile communication on the date of delivery or sending by facsimile to the party at the following address:

(a) If to the Customer

Provincial Health Services Authority  
700 - 1380 Burrard Street  
Vancouver, B.C., V6Z 2H3

Attention: President & CEO  
Fax Number: (604) 708-2799

(b) if to the Contractor

Compass Group Canada (Health Services) Ltd.  
3700 North Fraser Way, Suite 100  
Burnaby, B.C., V5J 5H4  
Attention: President & CEO  
Fax Number: (604) 291-2460

With a copy to:

Compass Group Canada (Health Services) Ltd.  
5560 Explorer Drive, Suite 400  
Mississauga, Ontario, L4W 5M3  
Attention: General Counsel  
Fax Number: (905) 568-8945

(c) if to the Covenantor

Compass Group USA Investments LLP  
2400 Yorkmont Road  
Charlotte, NC 28217  
Fax Number: (704) 329-4010

or at such other address as the party to whom the notice is sent shall have designated in accordance with the provisions of this Section 29.12.

- 29.13 **Survival.** The provisions of Sections 2.1, 6.8, 6.11, 10.14, 11.2, 14.4, 15.1, 15.2, 17.1, 21.4, 22.4, Articles 23 and 26, Sections 27.2, 28.2 and 29.1 shall survive the expiration or termination of this Contract, and shall continue in full force and effect thereafter.
- 29.14 **Governing Law.** This Contract and any dispute arising out of or in connection with this Contract including, but not limited to, any action challenging the validity of the Contract by claiming fraud in the inducement shall be governed exclusively by and shall 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 Contract.
- 29.15 **Attornment.** The parties agree to submit to and hereby attorn to the exclusive jurisdiction of the Courts of the Province of British Columbia for any action arising out of or in connection with this Contract.
- 29.16 **Currency.** All references to amounts of money mean lawful currency of Canada.
- 29.17 **Independent Legal Counsel.** The Contractor and Covenantor confirm they have each obtained independent legal advice in entering into this Contract.
- 29.18 **Severability.** Each provision of this Contract is intended to be severable and if any provision is determined by a court of competent jurisdiction to be illegal or invalid or

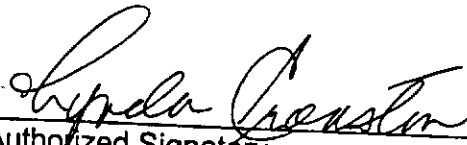
unenforceable for any reason whatsoever, such provision shall be severed from this Contract and will not affect the legality, validity or enforceability of the remainder of or any other provision of this Contract.

29.19 Time of Essence. Time shall be of the essence of this Contract.

IN WITNESS WHEREOF this Contract has been executed and delivered by the parties as of the day and year first above written.

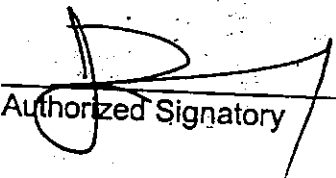
**PROVINCIAL HEALTH SERVICES AUTHORITY**

Per:

  
\_\_\_\_\_  
Authorized Signatory

**COMPASS GROUP CANADA (HEALTH SERVICES) LTD.**

Per:

  
\_\_\_\_\_  
Authorized Signatory

**COMPASS GROUP USA INVESTMENTS LLP**

Per:

\_\_\_\_\_  
Authorized Signatory