

Bill No. 193
2013

By-law No. A.- _____

A By-law to approve agreements between The Corporation of the City of London and Extencicare (Canada) Inc. for the provision of consulting services and administrator services to the Dearness Home.

WHEREAS section 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25, provides that a municipal power shall be exercised by by-law;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The agreement (attached as Schedule 1) dated May 1, 2013 between The Corporation of the City of London and Extencicare (Canada) Inc. for consulting services is hereby approved.
2. The agreement (attached as Schedule 2) dated May 1, 2013 between the Corporation of the City of London and Extencicare (Canada) Inc. for services of an administrator is hereby approved.
3. The City Manager is delegated the authority to execute the agreements approved in paragraphs 1 and 2 above.
4. The City Manager is delegated the authority to provide written notice of termination of the agreements approved in paragraphs 1 and 2 above, pursuant to the termination provisions of these agreements.
5. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on April 30, 2013.

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First Reading - April 30, 2013
Second Reading – April 30, 2013
Third Reading – April 30, 2013

Schedule 1

THIS CONSULTING SERVICES AGREEMENT MADE THIS 1ST DAY OF MAY, 2013

BETWEEN:

Extendicare (Canada) Inc.
(hereinafter referred to as the "Consultant")

AND

The Corporation of the City of London
a registered municipality incorporated under the laws
of the Province of Ontario:
(hereinafter referred to as the "Client")

WHEREAS the Client is approved under the *Long-Term Care Homes Act, 2007* (the "Act") to operate and maintain 243 beds at the Dearness Home (the "Home") located at 710 Southdale Road East, London, Ontario (the "Site");

AND WHEREAS the Client will continue to manage the Home;

AND WHEREAS the Consultant and the Client have agreed that the Consultant will provide its expertise and services to the Client by providing operational consulting services, including access to its Regional Director and team of professionals with experience in multiple areas of long term care, including: nursing and personal care, policy and legislation, accreditation, information technology, restorative care, Resident Assessment Instrument – Minimum Data Set (RAI MDS), program and support services, and care planning;

NOW THEREFORE IN CONSIDERATION OF the mutual covenants contained herein the parties hereto agree as follows:

1. Supply of Services

- 1.1 The Client hereby retains the Consultant to provide those services itemized in paragraph 3 hereof and the Consultant agrees to provide the services herein under the general direction and control of the City Manager of the Client ("City Manager") commencing on the 1st day of May, 2013.
- 1.2 The Consultant hereby agrees that during the term of this Agreement it will provide its services on a non-exclusive basis.
- 1.3 It is acknowledged by the Client that this is not an exclusive Agreement with the Consultant and that the Consultant provides similar services to other companies.
- 1.4 The Consultant agrees to supply at its sole cost and expense all staff, equipment, vehicles, accommodations and technical assistance necessary to perform the services to be furnished by the Consultant under this agreement and shall assume all overhead expenses in connection therewith, except as approved under Clause 2.2.

2. Consultant's Fees

- 2.1 The Client shall pay the Consultant a block fee of \$28,000 plus HST per month for the Services described in Article 3 for all hours worked in a month calculated from the 1st of one month to the last day of the same month. The Consultant is expected to provide services for a period of time of at least 60 hours per month. When required by the Client, the Consultant shall provide for approval by the City Manager a Schedule showing Services completed or to be completed in each month.
- 2.2 In addition to the fee the Consultant may be reimbursed at cost for out of pocket expenses that it expends in carrying out this Agreement limited to reasonable travel, meal, telephone and accommodation expenses up to a maximum of \$2500 per month, exclusive of HST.
- 2.3 The Consultant shall keep time dockets showing all time worked in each month, records, receipts, vouchers and documents as will verify to the satisfaction of the City Manager the time spent performing services in each month, the services performed and the out of pocket expenses incurred in accordance with this Agreement for which billings have been submitted. Upon the request of the City Manager, the Consultant shall furnish such documentation to the satisfaction of the City Manager to verify the time spent performing services, the services performed and the out of pocket expenses incurred.

- 2.4 The Consultant will submit to the Client monthly an invoice for each installment plus applicable taxes for all Services completed in the immediately preceding month.
- 2.5 Where applicable, and pursuant to section 3.2 of the Long-Term Care Home Service Accountability Agreement ("SAA") between the South West Local Health Integration Network (the "LHIN") and the Client, the Consultant shall permit the LHIN or its authorized representatives to audit the Consultant in respect of this Agreement if the LHIN or its authorized representatives determines that such an audit would be necessary to confirm that the Client has complied with the terms of the SAA.

3. Services Provided

- 3.1 The Consultant shall deliver to the Client the Services, including without limitation those Services outlined in Appendix A hereto, as the same may be changed, altered or added to in accordance with the provisions of this Agreement.

4. Term

- 4.1 This Agreement shall take effect May 1, 2013 and will continue until October 31, 2013 unless the Client or Consultant invokes its privilege to terminate this Agreement under clause 6.

5. The Consultant/Client Relationship

- 5.1 The Consultant, in compliance with its obligations under this Agreement, shall be solely responsible for all statutory obligations related to the payment of employment Insurance, CPP benefits, WSIA, OHIP, HST and taxes.
- 5.2 The parties hereto are each independent of the other and this Agreement shall not operate to create a partnership, joint venture, employment arrangement, master servant relationship or any other similar relationship between the Client and the Consultant or between the Client and any employees, agent or contractor of the Consultant.
- 5.3 **Accessibility for Ontarians with Disabilities Act Training:** The Consultant shall ensure that all of its employees receive training about the provision of services to persons with disabilities, in compliance with the *Accessibility for Ontarians with Disabilities Act, 2005* and its Regulations.
- 5.4 **Client Policies:** Consultant shall ensure that its employees conduct themselves in a professional manner while on the Client's premises and/or workplaces including ensuring that their employees' conduct is in compliance with the Client's *Workplace Harassment/Discrimination Prevention Policy and Complaint Procedure, Workplace Violence Prevention Policy, and Code of Conduct*, and any such further policies as the Client may provide to the Consultant from time to time. The Consultant acknowledges that copies of these policies have been provided to and/or made available to it.

6. Termination

- 6.1 The Client may at any time by thirty (30) days' written notice to the Consultant suspend or terminate the Services or any portion thereof at any stage of the Agreement without cause. Upon receipt of such written notice, the Consultant shall perform no further Services or incur any disbursements other than those reasonably necessary to close out its Services. Further, the Client may terminate this Agreement immediately without cause in the event that the LHIN terminates the SAA or if so directed by the Ministry of Health and Long Term Care or at the direction of Municipal Council.
- 6.2 In the event of termination without cause in accordance with clause 6.1, the Client shall cease to be responsible for payment of any further expenses.
- 6.3 The Client or Consultant may at any time on written notice to the other immediately suspend or terminate the Services or any portion thereof at any stage of the Agreement in the event of default in performance by the other party pursuant to the terms of the Agreement. Upon receipt of such written notice, the Consultant shall perform no further services or incur any disbursements other than those reasonably necessary to close out its Services, and the Client shall pay the Consultant only those installments due and payable prior to the date of termination.
- 6.4 Any termination under this section shall be without compensation, penalty or liability on the part of the Client to the Consultant otherwise than as set forth above, and shall be without prejudice to any legal or equitable right or remedy of the Client.

7. Notice

- 7.1 Any notice, report, direction, request or other documentation required or permitted to be given to either party hereto shall be in writing and shall be given by personal service or by

mailing by registered mail, with postage thereon fully prepaid, in a sealed envelope, and be addressed as follows:

If for the Consultant

To: Paul Tuttle
At: Extencare (Canada) Inc.
3000 Steeles Ave.
Markham, ON L3R 9W2
Telephone: 905.470.5588
E-mail: ptuttle@extencare.com

If for the Client

To: City Manager
At: 300 Dufferin Avenue
P.O. Box 5035
London, Ontario N6A 4L9
Telephone 661-2500 ext. _____
E-mail: azuidema@london.ca

Either party may by notice in writing advise of a new address for notice, which shall then be used by the party to whom it is addressed.

Any notice, report, direction, request or other document delivered personally in accordance herewith shall be deemed to have been received when given to the addressee on the day of delivery. Any notice, report, direction, request or other document mailed as aforesaid shall be deemed to have been received by and given to the addressee on the second (2nd) business day following the date of mailing, provided that for such purposes no day during which there shall be a strike or other occurrence which shall interfere with normal mail service shall be considered a business day.

8. Changes and Additional Services

8.1 With the consent of the Consultant, the Client may in writing at any time after the execution of this Agreement or the commencement of the Services delete, extend, increase, vary or otherwise alter the Services forming the subject of this Agreement.

9. Indemnification

9.1 **Indemnification:** The Consultant undertakes and agrees to defend and indemnify the Client and hold the Client harmless, at the Consultant's sole expense, from and against all claims, demands, suits, losses, costs, damages and expenses that the Client may sustain or incur by reason of:

- (a) any breach of this Agreement by any of the Consultant, the Consultant's employees, any subcontractor of the Consultant, or persons for whom the Consultant is at law responsible;
- (b) the acts or omissions of the Consultant, the Consultant's employees, subcontractor of the Consultant, or any person for whom the Consultant is at law responsible in performing the Services or otherwise carrying on the Consultant's business, including any damage to any and all persons or property, whether deliberate, accidental or through negligence, and all tickets, fines or penalties;
- (c) any claim or finding that any of the Consultant, the Consultant's employees, subcontractor of the Consultant, or persons for whom the Consultant is at law responsible are employees of, or are in any employment relationship with, the Client or are entitled to any Employment Benefits of any kind; or,
- (d) any liability on the part of the Client, under the *Income Tax Act* (Canada) or any other statute (including, without limitation, any Employment Benefits statute), to make contributions, withhold or remit any monies or make any deductions from payments, or to pay any related interest or penalties, by virtue of any of the following being considered to be an employee of the Client, from the Consultant; the Consultant's employees or others for whom the Consultant is at law responsible in connection with the performance of Services or otherwise in connection with the Consultant's business.

10. Insurance

10.1 The Consultant agrees to obtain and maintain in full force and effect during the term of this Agreement current and valid professional liability insurance protection covering all persons providing the professional services to the Client in an amount of not less than \$5,000,000.00. Further, Consultant will ensure such insurance is in place at inception of this agreement and thereafter remain in force during the period of this agreement.

- 10.2 The Consultant agrees to obtain and maintain third party liability insurance in the amount of at least \$5,000,000.00 covering all use and occupation of the premises and including personal injury liability, contractual liability, non-owned automobile liability, employer's liability, host liquor liability, owners' and contractors' protective insurance coverage and shall contain a severability of interests clause and cross liability clause.
- 10.3 The Client reserves the right to request such higher limits of insurance or other types of insurance policies appropriate to this Agreement as it may reasonably require.
- 10.4 The above-noted insurance will not be cancelled or permitted to lapse unless the insurer notifies the Client in writing at least thirty (30) days prior to the date of cancellation or expiry.
- 10.5 Evidence of such insurance shall be delivered to the Client promptly at inception of this agreement and thereafter prior to the insurance renewal date(s). Failure to satisfactorily meet these conditions relating to insurance shall be deemed a breach of this agreement.

11. Assignment

- 11.1 Neither party may assign this Agreement without the prior consent in writing of the other.

12. Previous Agreements

- 12.1 This Agreement supersedes all previous agreements, arrangements or understandings between the parties whether written or oral in connection with or incidental to this Agreement.

13. Publication and Confidentiality

- 13.1 The Consultant agrees to obtain the consent in writing of the Client before publishing or issuing any information regarding the Services. The Consultant shall treat all confidential information (including personal information and personal health information) and proprietary information communicated to or acquired by it, or disclosed by the Client in the course of carrying out the Services provided for herein in accordance with the *Municipal Freedom of Information and Protection of Privacy Act*, and the *Personal Health Information Protection Act*. No such information shall be used by the Consultant on any other project without the approval in writing of the Client.
- 13.2 The Client agrees that this Agreement contains information which, if disclosed to competitors of Consultant, would damage the ability of Consultant to negotiate similar agreements with other operators/owners who may be interested in engaging Consultant to provide management or consulting services, and accordingly the Client agrees not to disclose or cause to be disclosed, except when required to be disclosed to Municipal Council of the City of London, or at law, any part of this Agreement, including the terms, conditions or fees, in any manner or form that may damage the ability of Consultant to carry on its normal business activities.

14. Time

- 14.1 The Consultant shall perform the Services expeditiously to meet the requirements of the Client and shall complete any portion or portions of the Services in such order as the Client may require. If requested at any time by the Client, the Consultant shall provide to the Client a schedule showing the Services completed and remaining to be completed.

15. Waiver

- 15.1 The failure of either party at any time to require performance by the other party of any provisions shall in no way affect the full right to require such performance at any time thereafter, nor shall waiver by either party of any breach of the provisions be taken or held to be a waiver of any succeeding breach of such provisions or as a waiver of the provision itself.

16. Conflict of Interest

- 16.1 The Consultant shall disclose in writing to the City Manager any outside interests and commitments that may generate a conflict of interest before commencing work under this Agreement and thereafter upon any such outside interest or commitment coming to the Consultant's attention. "Conflict of Interest" means a situation in which the interests of the Consultant or its staff or any outside interest or commitment of the Consultant comes into conflict, or appears to come into conflict with the interests of the Client. The City Manager shall review the conflict promptly after disclosure by the Consultant and shall give the consultant notice under clause 7 of his determination in writing as to whether any outside interest or commitment raises a potential conflict of interest with respect to the projects identified in Appendix A and the decision of the City Manager shall be final.

Disclosures of conflicts by the Consultant to the City Manager shall be kept confidential except to the extent necessary to review, consider and resolve any conflict and as permitted by the *Municipal Freedom of Information and Protection of Privacy Act*. A conflict of interest may be resolved by the Consultant ceasing to carry out a portion of the work identified in Appendix A upon the written direction of the City Manager or by the termination of the Agreement in accordance with section 6.1.

17. Applicable Law

- 17.1 This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and Canada and the parties hereto hereby agree to the jurisdiction of the Courts of Ontario.
- 17.2 This Agreement shall enure to the benefit of and be binding on the parties and their respective successors and assigns.
- 17.3 **Observance Of The Law:** The Parties agree that they and their respective directors, officers, employees, agents, volunteers and representatives, shall at all times comply with all Federal and Provincial statutes, rules, regulations and orders, (including but not limited to the Human Rights Code) and with all Municipal by-laws, policies, rules, and orders, governing the performance of this Agreement.

Signed Sealed and Delivered on the date first written above:

The Consultant:
Extendicare (Canada) Inc.

The Client
The Corporation of the City of London

PER: _____
Title

PER: _____
Art Zuidema, City Manager
I have the authority to bind the corporation.

PER: _____
Title
I/We have the authority to bind the corporation

Appendix A Terms of Reference

The Consultant will work as and when required under the direction of the City Manager;

- to provide operational consulting services regarding the Home, including providing access to its Regional Director and team of professionals with experience in multiple areas of long term care, including: nursing and personal care, policy and legislation, accreditation, information technology, restorative care, Resident Assessment Instrument - Minimum Data Set (RAI MDS), program and support services and care planning;
- to familiarize itself with the operational review report prepared by PeopleCare and to provide a report identifying and prioritizing any areas for improvement in policy, procedures or practice arising therefrom within sixty (60) days of the commencement of this Agreement;
- to familiarize itself with the action plan prepared by PeopleCare and make recommendations for improvements arising therefrom;
- to form, in conjunction with the Client, a liaison committee or similar committee as a working committee to discuss operational issues affecting the Home (the "Liaison Committee"). The Client and Consultant will determine the members and structure of the Liaison Committee, together with agenda items and planned meeting dates and times. Copies of the records of the Liaison Committee meetings will be made available to both the Client and Consultant. Duties of the Liaison Committee shall be determined by the Client and Consultant from time to time, but unless otherwise agreed to, will include the following:
 - reviewing reports on operational and quality initiatives;
 - monitoring the performance of the Home;
 - reviewing and discussing significant matters that may arise from time to time;
 - executing directions from the Client.

The Consultant will comply with the following requirements concerning employees of the Consultant:

- Where applicable under the Act, before the employees of the Consultant first work in the Home, the Consultant shall screen them including a criminal reference check in accordance with section 215 of Regulation 79/10 and including a vulnerable sector screen to determine the person's suitability to be a staff member in a long-term care home and to protect residents from abuse and neglect.
- Where applicable under the Act, the employees of the Consultant shall provide the Client with a signed declaration with respect to the criminal reference check in accordance with section 215(4) of Regulation 79/10

The Consultant, notwithstanding the terms of this Agreement, shall not be required to provide labour relation services or back office support including payroll and finance.

Schedule 2

THIS PURCHASE OF SERVICES AGREEMENT MADE THIS 1st DAY OF MAY, 2013

BETWEEN:

Extendicare (Canada) Inc.
(hereinafter referred to as the "Provider")

AND

The Corporation of the City of London
a registered municipality incorporated under the laws
of the Province of Ontario:
(hereinafter referred to as the "Client")

WHEREAS the Client is approved under the *Long-Term Care Homes Act, 2007* (the "Act") to operate and maintain 243 beds at the Dearness Home (the "Home") located at 710 Southdale Road East, London, Ontario (the "Site");

AND WHEREAS the Client will continue to manage the Home;

AND WHEREAS the Provider and the Client have agreed that the Provider will provide the services of a qualified Administrator for the Home to direct the daily operations of the Home in the name and for the account of the Client;

NOW THEREFORE IN CONSIDERATION OF the mutual covenants contained herein the parties hereto agree as follows:

1. Supply of Services

- 1.1 The Client hereby retains the Provider to provide the services of a qualified Administrator for the Home to direct the daily operations of the Home in the name and for the account of the Client, and upon the terms and conditions hereinafter set forth, and to provide those further services itemized in paragraph 3 hereof (collectively the "Services") and the Provider agrees to provide the services herein under the general direction and control of the City Manager of the Client ("City Manager") commencing on the 1st day of May, 2013.
- 1.2 The Administrator selected by the Provider shall be subject to the prior approval of the Client acting reasonably.
- 1.3 The Provider hereby agrees that during the term of this Agreement it will provide its services on a non-exclusive basis.
- 1.4 It is acknowledged by the Client that this is not an exclusive Agreement with the Provider and that the Provider provides similar services to other companies.
- 1.5 The Provider agrees to supply at its sole cost and expense all staff, equipment, vehicles, accommodations and technical assistance necessary to perform the services to be furnished by the Provider under this agreement and shall assume all overhead expenses in connection therewith, except as approved under Clause 2.2.

2. Provider's Fees

- 2.1 The Client shall pay the Provider a block fee of \$14,500 plus HST per month for the Services described in Article 3 for all hours worked in a month calculated from the 1st of one month to the last day of the same month. The Provider is expected to provide services for a period of time of at least 140 hours per month, with a minimum of 35 hours per week attributed to the Administrator. When required by the Client, the Provider shall provide for approval by the City Manager a Schedule showing Services completed or to be completed in each month.
- 2.2 In addition to the fee the Provider may be reimbursed at cost for out of pocket expenses that it expends in carrying out this Agreement limited to reasonable travel, meals, telephone, and accommodation expenses up to a maximum of \$2500 per month, exclusive of HST.
- 2.3 The Provider shall keep time dockets showing all time worked in each month, records, receipts, vouchers and documents as will verify to the satisfaction of the City Manager the time spent performing services in each month, the services performed and the out of

pocket expenses incurred in accordance with this Agreement for which billings have been submitted. Upon the request of the City Manager, the Provider shall furnish such documentation to the satisfaction of the City Manager to verify the time spent performing services, the services performed and the out of pocket expenses incurred.

2.4 The Provider will submit to the Client monthly an invoice for each installment plus applicable taxes for all Services completed in the immediately preceding month.

2.5 Where applicable, and pursuant to section 3.2 of the Long-Term Care Home Service Accountability Agreement ("SAA") between the South West Local Health Integration Network (the "LHIN") and the Client, the Provider shall permit the LHIN or its authorized representatives to audit the Provider in respect of this Agreement if the LHIN or its authorized representatives determines that such an audit would be necessary to confirm that the Client has complied with the terms of the SAA.

3. Services Provided

3.1 The Provider shall deliver to the Client the Services, including without limitation those Services outlined in Appendix A hereto, as the same may be changed, altered or added to in accordance with the provisions of this Agreement.

4. Term

4.1 This Agreement shall take effect May 1, 2013 and will continue until October 31, 2013 unless the Client or Provider invokes its privilege to terminate this Agreement under clause 6.

5. The Provider/Client Relationship

5.1 The Provider, in compliance with its obligations under this Agreement, shall be solely responsible for all statutory obligations related to the payment of Employment Insurance, CPP benefits, WSIA, OHIP, HST and taxes.

5.2 The parties hereto are each independent of the other and this Agreement shall not operate to create a partnership, joint venture, employment arrangement, master servant relationship or any other similar relationship between the Client and the Provider or between the Client and any employees, agent or contractor of the Provider.

5.3 **Accessibility for Ontarians with Disabilities Act Training:** The Provider shall ensure that all of its employees receive training about the provision of services to persons with disabilities, in compliance with the *Accessibility for Ontarians with Disabilities Act, 2005* and its Regulations.

5.4 **Client Policies:** Provider shall ensure that its employees conduct themselves in a professional manner while on the Client's premises and/or workplaces including ensuring that their employees' conduct is in compliance with the Client's *Workplace Harassment/Discrimination Prevention Policy and Complaint Procedure*, *Workplace Violence Prevention Policy*, and *Code of Conduct*, and any such further policies as the Client may provide to the Provider from time to time. The Provider acknowledges that copies of these policies have been provide to and/or made available to it.

6. Termination

6.1 The Client may at any time by two (2) days' written notice to the Provider suspend or terminate the Services or any portion thereof at any stage of the Agreement without cause. Upon receipt of such written notice, the Provider shall perform no further Services or incur any disbursements other than those reasonably necessary to close out its Services. Further, the Client may terminate this Agreement immediately without cause in the event that the LHIN terminates the SAA or if so directed by the Ministry the Ministry of Health and Long-Term Care or at the direction of Municipal Council.

6.2 In the event of termination in accordance with clause 6.1, the Client shall cease to be responsible for payment of any further expenses.

6.3 The Client of Provider may at any time on written notice to the other immediately suspend or terminate the Services or any portion thereof at any stage of the Agreement in the event of default in performance by the other party pursuant to the terms of the Agreement. Upon receipt of such written notice, the Provider shall perform no further services or incur any disbursements other than those reasonably necessary to close out its Services, and the Client shall pay the Provider only those installments due and payable prior to the date of termination.

6.4 Any termination under this section shall be without compensation, penalty or liability on the part of the Client to the Provider otherwise than as set forth above, and shall be without prejudice to any legal or equitable right or remedy of the Client.

- 6.5 **Transition Period** - In the event of termination, the Client may require the Provider to continue to provide an Administrator for a transition period of up to thirty (30) days, as determined by the Client. In the event the Client requires the Provider to continue providing an Administrator for such transition period, the Client shall continue to pay to the Provider the fees at the average per diem rate charged for the previous month.

7. Notice

- 7.1 Any notice, report, direction, request or other documentation required or permitted to be given to either party hereto shall be in writing and shall be given by personal service or by mailing by registered mail, with postage thereon fully prepaid, in a sealed envelope, and be addressed as follows:

If for the Provider

To: Paul Tuttle
At: Extendicare (Canada) Inc.
3000 Steeles Ave.
Markham, ON L3R 9W2
Telephone: 905.470.5588
E-mail: ptuttle@extendicare.com

If for the Client

To: City Manager
At: 300 Dufferin Avenue
P.O. Box 5035
London, Ontario N6A 4L9
Telephone 661-2500 ext. _____
E-mail: azuidema@london.ca

Either party may by notice in writing advise of a new address for notice, which shall then be used by the party to whom it is addressed.

Any notice, report, direction, request or other document delivered personally in accordance herewith shall be deemed to have been received when given to the addressee on the day of delivery. Any notice, report, direction, request or other document mailed as aforesaid shall be deemed to have been received by and given to the addressee on the second (2nd) business day following the date of mailing, provided that for such purposes no day during which there shall be a strike or other occurrence which shall interfere with normal mail service shall be considered a business day.

8. Changes and Additional Services

- 8.1 With the consent of the Provider, the Client may in writing at any time after the execution of this Agreement or the commencement of the Services delete, extend, increase, vary or otherwise alter the Services forming the subject of this Agreement.

15. Indemnification

- 9.1 **Indemnification:** The Provider undertakes and agrees to defend and indemnify the Client and hold the Client harmless, at the Provider's sole expense, from and against all claims, demands, suits, losses, costs, damages and expenses that the Client may sustain or incur by reason of:
- (a) any breach of this Agreement by any of the Provider, the Provider's employees, any subcontractor of the Provider, or persons for whom the Provider is at law responsible;
 - (b) the acts or omissions of the Provider, the Provider's employees, subcontractor of the Provider, or any person for whom the Provider is at law responsible in performing the Services or otherwise carrying on the Provider's business, including any damage to any and all persons or property, whether deliberate, accidental or through negligence, and all tickets, fines or penalties;
 - (c) any claim or finding that any of the Provider, the Provider's employees, subcontractor of the Provider, or persons for whom the Provider is at law responsible are employees of, or are in any employment relationship with, the Client or are entitled to any Employment Benefits of any kind; or,
 - (d) any liability on the part of the Client, under the *Income Tax Act* (Canada) or any other statute (including, without limitation, any Employment Benefits statute), to make contributions, withhold or remit any monies or make any deductions from payments, or to pay any related interest or penalties, by virtue of any of the following being considered to be an employee of the Client, from the Provider; the Provider's employees or others for

whom the Provider is at law responsible in connection with the performance of Services or otherwise in connection with the Provider's business.

16. Insurance

- 10.1 The Provider agrees to obtain and maintain in full force and effect during the term of this Agreement current and valid professional liability insurance protection covering all persons providing the professional services to the Client in an amount of not less than \$5,000,000.00. Further, Provider will ensure such insurance is in place at inception of this agreement and thereafter remain in force during the period of this agreement.
- 10.2 The Provider agrees to obtain and maintain third party liability insurance in the amount of at least \$5,000,000.00 covering all use and occupation of the premises and including personal injury liability, contractual liability, non-owned automobile liability, employer's liability, host liquor liability, owners' and contractors' protective insurance coverage and shall contain a severability of interests clause and cross liability clause.
- 10.3 The Client reserves the right to request such higher limits of insurance or other types of insurance policies appropriate to this Agreement as it may reasonably require.
- 10.4 The above-noted insurance will not be cancelled or permitted to lapse unless the insurer notifies the Client in writing at least thirty (30) days prior to the date of cancellation or expiry.
- 10.5 Evidence of such insurance shall be delivered to the Client promptly at inception of this agreement and thereafter prior to the insurance renewal date(s). Failure to satisfactorily meet these conditions relating to insurance shall be deemed a breach of this agreement.

17. Assignment

- 11.1 Neither party may assign this Agreement without the prior consent in writing of the other.

18. Previous Agreements

- 12.1 This Agreement supersedes all previous agreements, arrangements or understandings between the parties whether written or oral in connection with or incidental to this Agreement.

19. Publication and Confidentiality

- 13.1 The Provider agrees to obtain the consent in writing of the Client before publishing or issuing any information regarding the Services. The Provider shall treat all confidential information (including personal information and personal health information) and proprietary information communicated to or acquired by it, or disclosed by the Client in the course of carrying out the Services provided for herein in accordance with the *Municipal Freedom of Information and Protection of Privacy Act*, and the *Personal Health Information Protection Act*. No such information shall be used by the Provider on any other project without the approval in writing of the Client.
- 13.2 The Client agrees that this Agreement contains information which, if disclosed to competitors of Provider, would damage the ability of Provider to negotiate similar agreements with other operators/owners who may be interested in engaging Provider to provide management or consulting services, and accordingly the Client agrees not to disclose or cause to be disclosed, except when required to be disclosed to Municipal Council of the City of London, or at law, any part of this Agreement, including the terms, conditions or fees, in any manner or form that may damage the ability of Provider to carry on its normal business activities.

20. Time

- 14.1 The Provider shall perform the Services expeditiously to meet the requirements of the Client and shall complete any portion or portions of the Services in such order as the Client may require. If requested at any time by the Client, the Provider shall provide to the Client a schedule showing the Services completed and remaining to be completed.

15. Waiver

- 15.1 The failure of either party at any time to require performance by the other party of any provisions shall in no way affect the full right to require such performance at any time thereafter, nor shall waiver by either party of any breach of the provisions be taken or held to be a waiver of any succeeding breach of such provisions or as a waiver of the provision itself.

16. Conflict of Interest

16.1 The Provider shall disclose in writing to the City Manager any outside interests and commitments that may generate a conflict of interest before commencing work under this Agreement and thereafter upon any such outside interest or commitment coming to the Provider's attention. "Conflict of Interest" means a situation in which the interests of the Provider or its staff or any outside interest or commitment of the Provider comes into conflict, or appears to come into conflict with the interests of the Client. The City Manager shall review the conflict promptly after disclosure by the Provider and shall give the Provider notice under clause 7 of his determination in writing as to whether any outside interest or commitment raises a potential conflict of interest with respect to the projects identified in Appendix A and the decision of the City Manager shall be final. Disclosures of conflicts by the Provider to the City Manager shall be kept confidential except to the extent necessary to review, consider and resolve any conflict and as permitted by the *Municipal Freedom of Information and Protection of Privacy Act*. A conflict of interest may be resolved by the Provider ceasing to carry out a portion of the work identified in Appendix A upon the written direction of the City Manager or by the termination of the Agreement in accordance with section 6.1.

17. Applicable Law

17.1 This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and Canada and the parties hereto hereby agree to the jurisdiction of the Courts of Ontario.

17.2 This Agreement shall enure to the benefit of and be binding on the parties and their respective successors and assigns.

17.3 **Observance Of The Law:** The Parties agree that they and their respective directors, officers, employees, agents, volunteers and representatives, shall at all times comply with all Federal and Provincial statutes, rules, regulations and orders, (including but not limited to the Human Rights Code) and with all Municipal by-laws, policies, rules, and orders, governing the performance of this Agreement.

Signed Sealed and Delivered on the date first written above:

The Provider:
Extendicare (Canada) Inc.

The Client:
The Corporation of the City of London

PER: _____
Title

PER: _____
Art Zuidema, City Manager
I have the authority to bind the corporation.

PER: _____
Title

I/We have the authority to bind the corporation.

Appendix A

Terms of Reference

The Provider shall provide to the Client the Services of a qualified Administrator to direct the daily operations of the Home in the name and for the account of the Client upon the following terms and conditions:

- the Administrator shall comply with the requirements of an Administrator under the Act and Regulations including:
 - shall work regularly in the position of Administrator on Site at the Home for at least 35 hours per week;
 - has a post-secondary degree from a program that is a minimum of three years in duration, or a post-secondary diploma in health or social services from a program that is a minimum of two years in duration;
 - has at least three years working experience,
 - in a managerial or supervisory capacity in the health or social services sector, or
 - in another managerial or supervisory capacity, if he or she has already successfully completed the course set out below;
 - has demonstrated leadership and communications skills;
 - has successfully completed or (subject to the Act's Regulation) is enrolled in, a program in long-term care home administration or management that is a minimum of 100 hours in duration of instruction time; and
 - is otherwise eligible to act as an Administrator pursuant to the Act.

- the Administrator shall also:
 - perform the duties and responsibilities of the Administrator hereunder in compliance with the Act, the SAA, and all other requirements of the Ministry of Health and Long Term Care and the LHIN;
 - supervise and provide direction to the management and staff of the Home in a prudent manner consistent with programs and industry standards for long term care homes, and in any event, in compliance with this Agreement, the Act and all requirements of the Ministry of Health and Long Term Care and of the LHIN;
 - use all reasonable efforts to assist the Client to move forward in achieving its goals and objectives for the Home;
 - discuss and seek approval on issues that will have a significant impact on the Home, its employees residents or community;
 - use its best efforts to ensure the comfort and safety of all of the residents of the Home;
 - meet at least quarterly as part of an interdisciplinary team, to evaluate the effectiveness of the medication management system in the Home and to recommend any changes necessary to improve the system;
 - meet annually to evaluate the effectiveness of the medication management system in the Home and to recommend any changes necessary to improve the system;
 - before the Administrator first works in the Home, the Provider shall screen the Administrator including a criminal reference check in accordance with section 215 of Regulation 79/10 and including a vulnerable sector screen to determine the person's suitability to be a staff member in a long-term care home and to protect residents from abuse and neglect; and
 - provide the Client with a signed declaration with respect to the criminal reference check in accordance with section 215(4) of Regulation 79/10.