

Bill No. 6  
2023

By-law No. A.-\_\_\_\_\_

A by-law to authorize and approve the Purchasing and Revenue Share Agreement between Extendicare (Canada) Inc. carrying on business as SGP Purchasing Partner Network (“SGP”) and The Corporation of the City of London, commencing January 1, 2023, for the purpose of participating in a Revenue Share Program to receive a share of rebates received by the SGP on volume purchases of food products and other related services and products.

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;

AND WHEREAS The Corporation of the City of London wishes to enter into a Purchasing and Revenue Agreement with Extendicare (Canada) Inc., 3000 Steeles Ave., Markham, Ontario, L3R 9W2, carrying on business as SGP Purchasing Partner Network (“SGP”), commencing January 1, 2023, for the purpose of participating in a Purchasing and Revenue Share Program to receive a share of rebates received by the SGP on volume purchases of food products and other related services and products;

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

1. The Purchasing and Revenue Share Agreement attached as Schedule “1” to this by-law, between Extendicare (Canada) Inc. carrying on business as SGP Purchasing Partner Network (“SGP”) and The Corporation of the City of London, commencing January 1, 2023, for the purpose of participating in a Purchasing and Revenue Share Program to receive a share of rebates received by the SGP on volume purchases of food products and other related services and products be authorized and approved.
2. Civic Administration be authorized to undertake all the necessary administrative acts in connection with this matter; and
3. The Mayor and City Clerk be authorized to execute the Purchasing and Revenue Share Agreement authorized and approved in section 1, above.
- 4.. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on December 13, 2022.

Josh Morgan  
Mayor

Michael Schulthess  
City Clerk

First Reading – December 13, 2022  
Second Reading – December 13, 2022  
Third Reading – December 13, 2022

**SCHEDULE 1****PURCHASING AND REVENUE SHARE AGREEMENT****between****EXTENDICARE (CANADA) INC. carrying on business as  
SGP PURCHASING PARTNER NETWORK ("SGP")****and****The Corporation of the City of London, Ontario Canada  
("Member")****WHEREAS:**

- A. SGP is a provider of group purchasing services through membership in its SGP Purchasing Partner Network Program (the "**Volume Discount Program**"), whereby members of the Volume Discount Program ("**VDP Members**") benefit from volume discounts negotiated by SGP on certain goods and services (including, but not limited to administration, clinical, food service, housekeeping, laundry, recreation and therapy, maintenance, capital equipment, furniture, and fixtures) purchased by VDP Members from vendors ("**VDP Vendors**") participating in the Volume Discount Program.
- B. Member wishes to participate in the Volume Discount Program on the terms and conditions set out in this Agreement.
- C. SGP agrees to provide Member the Volume Discount Program on the terms and conditions set out in this Agreement.
- D. Certain VDP Vendors may pay a portion of the revenue back to SGP from time to time in the form of rebates on the contract price of the goods and services purchased through the Volume Discount Program by the VDP Members.
- E. Member is entitled to participate in a revenue sharing arrangement (the "**Revenue Share Program**") by which Member is entitled to receive a share of any rebates received by SGP from a VDP Vendor calculated on the aggregate purchases by Member, its permitted affiliates and owners or operators of Participants (as hereinafter defined) of goods and services from such VDP Vendor.

**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 mutually acknowledged, the parties agree as follows:

**PARTICIPANTS**

1. Member is only permitted to include as participants in the Volume Discount Program and Revenue Share Program long term care facilities, retirement facilities, nursing facilities, or other similar senior care facilities (collectively, “**Senior Care Facilities**”) that Member or an affiliate of Member directly or indirectly owns or manages, provided, however, at the sole discretion of SGP, other facilities that are not Senior Care Facilities may also be permitted to be included by Member as participants in the Volume Discount Program and the Revenue Share Program (each, a “**Participant**”).
2. Member’s initial list of Participants consists of the following:

Name of Facility	No. of Beds
Dearness Home	243 LTC
City of London Cafeteria	0
Fanshawe Golf Course	0
Hamilton Road Senior’s Centre	0
Kiwanis Senior’s Centre	0
Storybook Gardens	0
Thames Valley Golf Course	0
Discretionary Benefits – City of London	0

**\*\*\*SGP will add additional RSP Members to the Group at any time upon request from the City of London.**

A Participant shall cease to be a Participant hereunder upon it ceasing to be owned or managed as per Section 1 hereof, and Member shall provide SGP notice of such cessation no later than at the time of such cessation. Upon written request from Member and following a 30 day administrative evaluation period, SGP may, in its sole discretion, add Participants requested by Member to be so added.

**VOLUME DISCOUNTS**

3. Member, its permitted affiliates and owners or operators of Participants (collectively, the “**Member Buying Group**”) are entitled to purchase goods and/or services in respect of Participants from VDP Vendors.

4. SGP shall maintain a list of the VDP Vendors and their respective prices/programs on SGP's website ([www.sgpnetwork.com](http://www.sgpnetwork.com)). Member may access such list once the form in Schedule "A" is completed and submitted to SGP.
5. The respective names of Member, its permitted affiliates and Participants shall be provided by SGP to each VDP Vendor by the Membership Start Date (as hereinafter defined) and thereafter Member Buying Group will be permitted to purchase goods and/or services in respect of Participants from VDP Vendors at the stated prices, subject only to meeting any financial or credit requirements of the VDP Vendor.
6. For greater certainty, the VDP Vendors' price list in effect for Member at any time shall be the same as the price list in effect for all other VDP Members at that time.
7. Member is not obligated to purchase any goods or services from any VDP Vendor, but Member acknowledges that all VDP Vendors will be notified by SGP of Member's enrollment in the Volume Discount Program.

#### **TERM AND TERMINATION**

8. Member's right to participate in the Volume Discount Program commences on **January 1, 2023**.
9. The term of this Agreement begins on the date hereof, will continue for a period of two (2) years following the Membership Start Date unless terminated earlier pursuant hereto, and may be renewed on the same terms and conditions for an additional three (3) one (1) year term by mutual written agreement executed not less than three months prior to the expiration of the initial term.
10. Either party may terminate this Agreement for convenience by providing 90 days' written notice to the other party.
11. Either party may terminate this Agreement with immediate effect for cause by providing written notice to the other party of such termination if the other party commits a material breach of any obligation set out in this Agreement and such breach is not capable of being cured, or if such breach is capable of being cured, the other party fails to cure such breach within 30 days of receipt of notice of such breach by the other party.

#### **LIMITATION OF LIABILITY AND INDEMNITY**

12. Member acknowledges and agrees that SGP only provides access to volume discounts on goods and services for direct purchase by Member Buying Group. SGP does not take title to, possession of or effect delivery of any product and expressly does not provide any

warranty, guarantee or representations to Member as to

- (a) the merchantability or fitness of any product available for purchase by VDP Vendors, or
  - (b) the capability or services of any VDP Vendors.
13. Except to the extent materially caused or contributed to by a breach by SGP of its obligations hereunder, Member hereby agrees to indemnify, defend, and hold harmless SGP and its affiliates, subsidiaries, directors, officers, employees, and agents from and against all claims, actions, causes of action, proceedings, damages, losses (including lost profits), liabilities, fines, penalties, costs and expenses of whatever nature (including reasonable legal fees) incurred by SGP in connection with, arising from or out of, or related to this Agreement, including, for greater certainty and without limitation, any failure or defect in the nature or delivery of the goods or services purchased from a VDP Vendor through the Volume Discount Program, or any misrepresentations made by a VDP Vendor to any entity within Member Buying Group with respect to any good or service purchased through the Volume Discount Program, and, for greater certainty, SGP shall in no way be liable to Member or any other entity or person in any way, except in respect of Member for a default by SGP hereunder, provided, however, such liability of SGP shall not exceed the portion of the Revenue Share (as hereinafter defined) received by SGP in respect of Member Buying Group's purchases pursuant to the Revenue Share Program.
14. SGP hereby agrees to indemnify and hold harmless the Member and its directors, offices, employees and agents from and against all claims, actions, causes of action, damages, losses, liabilities, costs and expenses incurred by the Member except those arising from any misrepresentations made by a VDP Vendor to the Member with respect to any good or services purchased through the Volume Discount Program.

## REVENUE SHARE CALCULATION

15. Member acknowledges that not every VDP Vendor pays rebates on purchases made from it. Share of revenue from VDP Vendors ("**Revenue Share**") will be calculated and paid only in respect of actual rebates paid to SGP by VDP Vendors.
16. SGP will calculate Member's quarterly Revenue Share in the following manner:
- (a) thirty-five per cent (35%) on revenue generated from VDP Vendor rebates on contract purchases by Member Buying Group that are from one dollar (\$1.00) to three million dollars (\$3,000,000.00) in a calendar year;
  - (b) forty-five per cent (45%) on revenue generated from VDP Vendor rebates on

contract purchases by Member Buying Group that are from three million and one dollars (\$3,000,001.00) to five million dollars (\$5,000,000.00) in a calendar year; and

- (c) fifty per cent (50%) on revenue generated from VDP Vendor rebates on contract purchases by Member Buying Group that are over five million and one dollars (\$5,000,001.00) in a calendar year.

All of the foregoing figures in this Section exclude HST.

17. SGP will calculate the Revenue Share payable to Member in respect of its first calendar year based on a mutually agreed upon forecast of Member Buying Group purchases for that year (the “**First Year Purchase Forecast**”), and no additional payments or clawbacks shall apply should actual purchases for such year exceed or fail to meet the First Year Purchase Forecast such that Revenue Share payments would have been greater or less, as applicable, than those paid if actual purchase amounts had been applied.
18. SGP will calculate the Revenue Share payable to Member in respect of its second calendar year and any subsequent calendar year based on Member Buying Group’s actual purchases in the immediately preceding year, which may be prorated to reflect a full calendar year of purchases, in the event participation in the Revenue Share Program by Member in such year was less than 12 months.
19. No later than 60 days after the end of a quarter, Member shall be provided copies of Member Buying Group’s purchase history reports, and absent any dispute by Member in a timely fashion but in any event no later than 30 days from receipt of such reports as to the accuracy of a report, each of SGP and Member agree that the amounts contained in the reports shall be determinative for the purposes of calculating Member's Revenue Share. Member shall have the right to have the purchase history reports audited at its cost and expense.
20. Member's Revenue Share shall be calculated by SGP quarterly for the quarters ending March 31, June 30, September 30 and December 31.

#### **PAYMENT OF REVENUE SHARE**

21. Payment of Member’s Revenue Share is conditional upon Member:
  - (a) being in good standing under this Agreement, and
  - (b) Member being a member of the Revenue Share Program for the full quarter being paid out (other than the initial quarter, if Member joined the Revenue Share Program on a day other than the first day of that quarter, in which case

Member's Revenue Share will be calculated on a *pro rata* basis for that quarter). For clarity, a Member who ceases to be a member of the Revenue Share Program effective on a day that is not the last day of a quarter is not entitled to a Revenue Share for that quarter.

22. Member's Revenue Share shall be paid to Member on or before the end of the second calendar month following the end of the quarter calculated.

## CONFIDENTIALITY

23. In this Agreement, "**Confidential Information**" of a party means any and all information of a party or, in the case of SGP, information about the Volume Discount Program, the VDP Vendors, their products and services and price lists, and other VDP Members (including to the extent such information is on the SGP website ([www.sgpnetwork.com](http://www.sgpnetwork.com))), and, in the case of Member Buying Group, purchases under the Volume Discount Program (the "**Disclosing Party**") that has or will come into the possession or knowledge of the other party (the "**Receiving Party**") in connection with or as a result of entering into this Agreement, including information concerning the Disclosing Party's past, present or future customers, suppliers, technology, or business. Notwithstanding the foregoing, Confidential Information does not include information that is:
- (a) publicly available when it is received by or becomes known to the Receiving Party or that subsequently becomes publicly available other than through a direct or indirect act or omission of the Receiving Party (but only after it becomes publicly available);
  - (b) established by evidence to have been already known to the Receiving Party at the time of its disclosure to the Receiving Party and is not known by the Receiving Party to be the subject of an obligation of confidence of any kind;
  - (c) independently developed by the Receiving Party without any use of or reference to the Confidential Information of the Disclosing Party as established by evidence that would be acceptable to a court of competent jurisdiction; or
  - (d) received by the Receiving Party in good faith without an obligation of confidence of any kind from a third party who the Receiving Party had no reason to believe was not lawfully in possession of such information free of any obligation of confidence of any kind, but only until the Receiving Party subsequently comes to have reason to believe that such information was subject to an obligation of confidence of any kind when originally received.

24. Each party will, in its capacity as a Receiving Party:
- (a) not use or reproduce Confidential Information of the Disclosing Party for any purpose, other than as and to the extent expressly permitted under this Agreement or as may be reasonably necessary for the exercise of rights or the performance of obligations set out in this Agreement;
  - (b) not lose, disclose, provide or allow access to, transfer or otherwise make available any Confidential Information of the Disclosing Party except as expressly permitted in this Agreement; and
  - (c) take measures required to maintain the confidentiality and security of all Confidential Information of the Disclosing Party that it handles.
25. Each party may disclose Confidential Information of the other party:
- (a) if and to the extent required by a governmental or regulatory authority or otherwise as required by applicable law, provided that the party proposing to disclose must first give the other party written notice of such compelled disclosure (except where prohibited by applicable law from doing so) and must use commercially reasonable efforts, to the extent permitted by applicable law, to provide the other party with an opportunity to take such steps as it desires to challenge or contest such disclosure or seek a protective order. Thereafter, the party proposing to disclose may disclose the applicable Confidential Information, but only to the extent required by the applicable governmental or regulatory authority or applicable law and subject to any protective order that applies to such disclosure;
  - (b) to: (i) its accountants, internal and external auditors, legal counsel and other professional advisors if and to the extent that such persons need to know such Confidential Information in order to provide the applicable professional advisory services relating to such party's business; (ii) potential permitted assignees or successors of such party if and to the extent that such persons need to know such Confidential Information in connection with a potential sale, merger, amalgamation or other corporate transaction involving the business or assets of such party; and (iii) such party's personnel if and to the extent that such persons need to know such Confidential Information to perform their respective obligations under this Agreement; provided that for: (A) any person described in this Section, an express duty of confidence exists between such party and such person; or (B) any other person described in this Section, such person has entered into a written agreement with such party that includes confidentiality obligations in respect of such Confidential Information that are no less stringent



than those contained in this Section. Any breach of such duty of confidence or confidentiality obligations by any such person that would otherwise have been a breach if performed by such party, will be deemed to be a breach of this Section by such party.

26. SGP acknowledges that information over which the Member exercises control is subject to the *Municipal Freedom of Information and Protection of Privacy Act*, and local municipal by-laws and that disclosure and retention of information is subject to those, and other legal obligations.

## **NOTICE**

27. Every notice or other communication provided for or permitted by this Agreement and all legal process in regard hereto shall be validly given, made or served, if in writing and delivered by hand, by registered mail, by facsimile or by email to the party to whom it is to be given at:

To SGP:

SGP Purchasing Partner Network  
3000 Steeles Avenue East  
Markham, Ontario L3R 4T9

Attention: Senior Director  
Telephone: 1.800.263.7025  
Facsimile: 1.866.468.0777  
Email: [csr@sgpnetwork.com](mailto:csr@sgpnetwork.com)

To Member:

### **The Corporation of the City of London**

267 Dundas Street, 4<sup>th</sup> Floor, London, ON N6A 1H2

Attention: **Mary Ma, CSCMP**- Procurement Officer  
Telephone: 519.661.CITY (2489) x 4720  
Facsimile: 519.661.5030  
Email: [mma@london.ca](mailto:mma@london.ca)

## **GENERAL PROVISIONS**

28. Member hereby acknowledges that SGP may modify any part of the Volume Discount Program in its sole discretion, provided that SGP provides 30 days' notice to Member in advance of any such change.

**Better all together™**

29. Neither party shall have the right to assign, directly or indirectly, its rights and obligations under this Agreement without the prior written consent of the other party, which consent may be unreasonably withheld; provided, however, that a party may assign, directly or indirectly, its rights and obligations under this Agreement without the consent of the other party (i) to an affiliate in connection with an internal corporate reorganization, or (ii) to a third party in connection with the sale of all or substantially all of the business or assets of such party, or in the case of Extendicare (Canada) Inc., the business carried on as SGP Purchasing Partner Network, provided in each case that the assignee agrees to be bound by and assumes the obligations of the assigning party hereunder on and after the effective date of such assignment.
30. This Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns.
31. All amounts stated herein are expressed in Canadian currency.
32. The parties acknowledge and agree that this Agreement may be executed in counterparts and delivered by means of facsimile or email transmission.
33. This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario.
34. If any covenant, obligation or agreement in this Agreement or the application thereof to any person or circumstances is to any extent invalid or unenforceable, the remainder of this Agreement or the application of such covenant, obligation or agreement to persons or circumstances other than those to which it is invalid or unenforceable will not be affected thereby and each covenant, obligation and agreement in this Agreement will be separately valid and enforceable to the fullest extent permitted.
35. The Schedules attached hereto form part of and shall be construed in accordance with this Agreement.
36. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and there are no covenants, representations, agreements, warranties or conditions relating to this Agreement, whether express or implied, collateral or otherwise except those set out herein.
37. Nothing in this Agreement is intended to nor shall it be deemed to confer any rights or benefits on any person or entity that is not a party hereto.

[Signature page follows.]



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**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of the 15<sup>th</sup> day of December 2022.

**EXTENDICARE (CANADA) INC. carrying on  
business as SGP PURCHASING PARTNER  
NETWORK**

Per: \_\_\_\_\_  
Name: Rick Wassell  
Title: Director National Sales

Per: \_\_\_\_\_  
Name: Jason Horne  
Title: Senior Director

I/We have authority to bind the Corporation.

**The Corporation of the City of London**

Per: \_\_\_\_\_  
Name: Josh Morgan  
Title: Mayor

Per: \_\_\_\_\_  
Name: Michael Schulthess  
Title: City Clerk

I/We have authority to bind the Corporation.

**SCHEDULE "A"**  
**WEBSITE CONFIDENTIALITY FORM**

See attached.

## SCHEDULE "A" WEBSITE CONFIDENTIALITY FORM

Dear Valued Member:

Welcome to our Website!

### WEBSITE INCLUDES:

- Public domain – general SGP information
- Member domain – confidential & proprietary information
  - contracts, menu systems, supplier information/links
  - login username & password is required
  - signed authorization form returned to SGP to obtain username & password
  - immediately accessible with login & password
- Quick & convenient access to the SGP Purchasing Partner Network Program increasing your productivity
- Current information at your fingertips
- **Going Green!** We are reducing paper flow

### HOW TO GET ACCESS:

It is necessary that participants understand the confidentiality of the SGP Purchasing Partner Network Program

1. To access the member domain of the SGP website, we require a signed copy of the authorization form below indicating that you understand that the SGP Purchasing Partner Network Program and information on the website is proprietary and confidential.
2. Provide the email address of the Facility Administrator/Manager who will be responsible for the compliancy of users and passwords. Please fill in the Website Confidentiality Form with all users' information and return to us. Thank you.
3. Email your completed form to:

**Frances Deo**

**Email: [csr@sgpnetwork.com](mailto:csr@sgpnetwork.com)**

**Toll Free: (800) 263-7025**

If you have any questions or would like a verbal walk-through of the website, please do not hesitate to call either one of us,

Head Office: 3000 Steeles Avenue East, Markham, Ontario L3R 4T9  
1-800-263-7025 • Fax: (866) 468-0777

WEBSITE CONFIDENTIALITY FORM

ACCESS TO SGP WEBSITE

AUTHORIZATION of ACKNOWLEDGEMENT  
of  
SGP Purchasing Partner Network Program

I, \_\_\_\_\_, (**Name of Member**) understand that the information on the SGP website (www.sgpnetwork.com) is proprietary and confidential. This information will not be shared with NON-SGP members.

**Users:**

Name: \_\_\_\_\_ Email: \_\_\_\_\_ Title: \_\_\_\_\_

Name: \_\_\_\_\_ Email: \_\_\_\_\_ Title: \_\_\_\_\_

Name: \_\_\_\_\_ Email: \_\_\_\_\_ Title: \_\_\_\_\_

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Better all together™

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<b>Name of Member</b>	<b>Signature:</b>	<b>Date:</b>
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