

SCHEDULE 5-2

SERVICE SUBCONTRACTOR'S COLLATERAL AGREEMENT (SODEXHO)

THIS AGREEMENT is made as of the _____ day of December, 2004

AMONG:

ABBOTSFORD HOSPITAL AND CANCER CENTRE INC., a company incorporated under the laws of British Columbia

("Health Co")

AND:

SODEXHO MS CANADA LIMITED, a company incorporated under the laws of Ontario

("Sodexo Canada")

AND:

SODEXHO, INC., a company incorporated under the laws of Delaware

("Sodexo")

(Sodexo Canada and Sodexo hereinafter referred to collectively as the "Service Subcontractor")

AND:

AHA ACCESS HEALTH ABBOTSFORD LTD., a company incorporated under the laws of British Columbia

("Project Co")

WHEREAS:

- A Health Co and Project Co have entered into the Project Agreement, which requires Project Co to enter into, and to cause Service Subcontractor to enter into, this Agreement with Health Co.
- B. Project Co and Service Subcontractor have entered into the Services Subcontract, which requires Service Subcontractor to enter into this Agreement with Health Co.
- C. Sodexo Canada and Sodexo are jointly and severally liable for the obligations of the Service Subcontractor under the Services Subcontract and the Services Coordination Agreement.

NOW THEREFORE in consideration of the mutual promises and agreements of the Parties herein expressed and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

1. Definitions and Interpretation

In this Agreement unless the context otherwise requires:

- (a) "Agreement" means this Agreement.
- (b) "Approved Purposes" has the meaning given in the Project Agreement.
- (c) "Business Day" means a day other than a Saturday, Sunday or a statutory holiday in British Columbia.
- (d) "Default Notice" has the meaning given in Section 5(a).
- (e) "Design Data" has the meaning given in the Project Agreement.
- (f) "Governmental Authority" has the meaning given in the Project Agreement.
- (g) "Health Co" has the meaning given on the first page of this Agreement.
- (h) "Party" means Health Co, Service Subcontractor or Project Co and "Parties" means Health Co, Service Subcontractor and Project Co.
- (i) "Project" has the meaning given in the Project Agreement.
- (j) "Project Agreement" means that certain agreement entitled "Project Agreement" and made on or about the date hereof between Health Co and Project Co, as the same may be amended from time to time in accordance with its terms.
- (k) "Project Co" has the meaning given on the first page of this Agreement.
- (l) "Project Data" has the meaning given in the Project Agreement.
- (m) "Senior Funders" has the meaning given in the Project Agreement.
- (n) "Service Subcontractor" has the meaning given on the first page of this Agreement.
- (o) "Services" has the meaning given in the Project Agreement.
- (p) "Services Coordination Agreement" means the agreement made on or about the date hereof between Project Co, the Service Subcontractor, Johnson Controls L.P. and Intercon Security Inc., as the same may be amended, supplemented or replaced from time to time.
- (q) "Services Subcontract" means that certain Agreement entitled "Facility Management Agreement made on or about the date hereof between Service Subcontractor and Project Co, as the same may be amended, supplemented or replaced from time to time.
- (r) "Step-In Notice" has the meaning given in Section 6(a).
- (s) "Subcontractors" has the meaning given in the Project Agreement.
- (t) "Substitute" has the meaning given in Section 6(a).

2. Interpretation

This Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Agreement are for convenience of reference only, shall not constitute a part of this Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Agreement.
- (b) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (c) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (d) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (e) The words in this Agreement shall bear their natural meaning. The Parties have had the opportunity to take legal advice on this Agreement and no term shall, therefore, be construed contra proferentem.
- (f) References containing terms such as:
 - (i) "hereof," "herein," "hereto," "hereinafter," and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Agreement taken as a whole; and
 - (ii) "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall in all cases be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation".
- (g) In construing this Agreement, the rule known as the ejusdem generis rule shall not apply nor shall any similar rule or approach to the Services Subcontract of this Agreement and accordingly general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (h) Where this Agreement states that an obligation shall be performed "no later than" or "within" or "by" a stipulated date or event which is a prescribed number of days after a stipulated date or event the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or if that day is not a Business Day, 5:00 p.m. on the next Business Day.

- (i) Where this Agreement states that an obligation shall be performed "on" a stipulated date the latest time for performance shall be 5:00 p.m. on that day, or if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Whenever the terms "will" or "shall" are used in this Agreement they shall be construed and interpreted as synonymous and to read "shall".

3. Conflict in Documents

In the event of ambiguities, conflicts or inconsistencies between or among this Agreement, the Project Agreement and the Services Subcontract and the Services Coordination Agreement, this Agreement shall prevail.

4. Agreements

- (a) Project Co and the Service Subcontractor shall not amend, modify, or depart from the terms of the Services Subcontract or the Services Coordination Agreement without the prior written consent of Health Co acting reasonably, which consent shall not be withheld where such amendment modification or departure does not materially and adversely affect the ability of Project Co to perform its obligations under this Agreement and does not have the effect of increasing any liability of Health Co, whether actual or potential. Project Co and the Service Subcontractor shall provide a written copy of all such amendments, modifications or departures consented to by Health Co. The Parties acknowledge and agree that this Section 4(a) shall not apply to Variations provided for under the Project Agreement.
- (b) Each of the Parties acknowledges having received a copy of the Project Agreement and the Services Subcontract and the Services Coordination Agreement.
- (c) If Service Subcontractor gives Project Co any notice of any default(s) under the Services Subcontract and the Services Coordination Agreement that may give Service Subcontractor a right to terminate the Services Subcontract and the Services Coordination Agreement or to treat them as having been repudiated by Project Co or to discontinue Service Subcontractor's performance thereunder, then the Service Subcontractor shall concurrently provide Health Co with a copy of such notice and set out in reasonable detail the default(s).

5. No Termination by Service Subcontractor without Default Notice

Service Subcontractor shall not exercise any right it may have to terminate the Services Subcontract and the Services Coordination Agreement or to treat them as having been repudiated by Project Co or to discontinue Service Subcontractor's performance thereunder unless:

- (a) Service Subcontractor first delivers a written notice (a "Default Notice") to Health Co setting out in reasonable detail the default(s) on which Service Subcontractor intends to rely in terminating the Services Subcontract and the Services Coordination Agreement or to treat them as having been repudiated by Project Co or to discontinue Service Subcontractor's performance thereunder; and
- (b) within a period ending 30 days after Service Subcontractor notifies Health Co of the expiry of any relevant period for the exercise of step-in or similar rights by the Senior Funders, or if the Senior Funders have no such step-in or similar rights,

then 30 days after the later of Health Co receiving Default Notice or the expiry of the applicable cure period under the Services Subcontract and the Services Coordination Agreement:

- (i) the default(s) on which Service Subcontractor intends to rely in terminating the Services Subcontract and the Services Coordination Agreement or to treat them as having been repudiated by Project Co or to discontinue Service Subcontractor's performance thereunder have not been remedied; and
- (ii) Service Subcontractor has not received a Step-In Notice from Health Co,

provided however that until such time as Health Co may give Service Subcontractor a notice that Health Co will not give a Step-In Notice, Health Co shall pay Service Subcontractor's reasonable costs of continued performance.

6. Step-In Rights

- (a) Health Co may at any time:
 - (i) within a period ending 30 days after Service Subcontractor notifies Health Co of the expiry of any relevant period for the exercise of step-in or similar rights by the Senior Funders, or if the Senior Funders have no such step-in or similar rights, then within 30 days after the later of Health Co receiving Default Notice or the expiry of the applicable cure period under the Services Subcontract; or
 - (ii) if Health Co's right to terminate the Project Agreement has arisen and is continuing,

deliver a notice (a "Step-In Notice") electing to replace Project Co under the Services Subcontract and the Services Coordination Agreement either with Health Co or a third party designated by Health Co in the Step-In Notice (the "Substitute"), provided that Health Co can demonstrate to the Service Subcontractor, acting reasonably, that the Substitute shall have sufficient financial resources, or shall be supported by a satisfactory guarantee, to carry out the obligations of the Substitute under the Services Subcontract and the Services Coordination Agreement.

- (b) Subject to Section 6(d), upon receipt by Service Subcontractor of a Step-In Notice:
 - (i) Project Co and Service Subcontractor will be deemed to be released from their existing and future obligations under the Services Subcontract and the Services Coordination Agreement to each other (except with respect to any and all indemnities from Project Co or the Service Subcontractor to the other in respect of the period prior to the receipt of the Step-In Notice), and Health Co or the Substitute, as applicable, and Service Subcontractor will be deemed to assume those same existing and future obligations towards each other (except with respect to any and all indemnities from Project Co in favour of Service Subcontractor in respect of the period prior to the receipt of the Step-In Notice);
 - (ii) the existing and future rights of Project Co against Service Subcontractor under the Services Subcontract and the Services Coordination

Agreement and vice versa will be deemed to be cancelled (except with respect to any and all indemnities from Project Co or the Service Subcontractor to the other in respect of the period prior to the receipt of the Step-In Notice), and Health Co or the Substitute, as applicable, and Service Subcontractor will be deemed to acquire those same existing and future rights against each other (except with respect to any and all indemnities from Project Co in favour of Service Subcontractor in respect of the period prior to the receipt of the Step-In Notice), provided however that to avoid duplication of payment to Service Subcontractor, Health Co shall be credited the amount that Health Co paid pursuant to Section 5 for Service Subcontractor's costs of continued performance;

- (iii) any guarantee, bond or covenant in favour of Project Co from any third party in respect of any term, provision, condition, obligation, undertaking or agreement on the part of Service Subcontractor to be performed, observed or carried out by Service Subcontractor as contained in, referred to, or inferred from the Services Subcontract and the Services Coordination Agreement shall be assigned, novated or granted, as required by Health Co, acting reasonably, to Health Co, and Service Subcontractor shall cause such assignment, novation or grant on substantially the same terms and conditions as the original guarantee, bond or covenant, provided however that where Project Co shall continue to hold, or shall continue to be entitled to have rights under, such guarantee, bond or covenant as security for any obligations of Service Subcontractor, the assignment, novation or grant of the guarantee, bond or covenant to the extent of any such obligations to Project Co shall be conditional on the satisfaction of those obligations to Project Co; and
 - (iv) at Health Co's request, Service Subcontractor shall enter into, and shall cause any other guarantor, covenantor or surety under any guarantee, bond or covenant referred to in Section 6(b)(iii) to enter into, and Health Co shall or shall cause Substitute to enter into, as applicable, all such agreements or other documents as reasonably necessary to give effect to the foregoing, including without limitation, an agreement between Health Co or the Substitute, as applicable, and Service Subcontractor, acceptable to Health Co and Service Subcontractor, acting reasonably, on substantially the same terms as the Services Subcontract and the Services Coordination Agreement.
- (c) Subject to Section 6(d), Project Co shall, at its own cost, cooperate fully with Health Co and the Substitute in order to achieve a smooth transfer of the Services Subcontract and the Services Coordination Agreement to Health Co or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Services Subcontract and the Services Coordination Agreement, ongoing supervisory activities and scheduling.
 - (d) The rights granted by Sections 6(b) and (c) shall be of no force or effect if, at any time Service Subcontractor receives a Step-In-Notice, the Service Subcontractor has already received notice in writing from another entity entitled to the benefit of step-in rights relating to the Services Subcontract and the Services Coordination Agreement that it is or has validly exercised those step-in rights. If Service Subcontractor receives any such notice on the same day as a Step-In Notice, the Step-In Notice shall be effective, except where the other notice is given by the

Senior Funders, in which case such other notice and not the Step-In Notice shall be effective.

7. Service Subcontractor Liability

- (a) The liability of Service Subcontractor hereunder shall not be modified, released, diminished or in any way affected by:
- (i) any independent inspection, investigation or enquiry into any matter which may be made or carried out by or for Health Co, or by any failure or omission to carry out any such inspection, investigation or enquiry;
 - (ii) the appointment by Health Co of any other person to review the progress of or otherwise report to Health Co in respect of the Project, or by any action or omission of such person whether or not such action or omission might give rise to any independent liability of such person to Health Co,

provided always that nothing in this Section 7 shall modify or affect any rights which the Service Subcontractor might have otherwise had to claim contribution from any other person whether under statute or common law.

- (b) In the event Health Co delivers a Step-In Notice, the Service Subcontractor shall have no greater liability to Health Co or any Substitute than it would have had to Project Co under the Services Subcontract and/or the Services Coordination Agreement, and Service Subcontractor shall be entitled in any proceedings by Health Co or any Substitute to rely on any liability limitations in the Services Subcontract and the Services Coordination Agreement.

8. Project Co as Party

Project Co acknowledges and agrees that Service Subcontractor shall not be in breach of the Services Subcontract and the Services Coordination Agreement by complying with its obligations hereunder.

9. Liability of Sodexho Canada and Sodexho

Sodexho Canada and Sodexho covenant and agree with Health Co that Sodexho Canada and Sodexho are jointly and severally liable for, and on a joint and several basis will observe, perform and fulfil, each and every covenant, proviso, obligation, term and condition of the Services Subcontract and the Services Coordination Agreement and this Agreement.

10. Assignment

- (a) Project Co shall not, without the prior written consent of Health Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Agreement except to the extent entitled to do so by the Project Agreement.
- (b) Health Co may assign or otherwise dispose of the benefit of the whole or part of this Agreement to any person to whom Health Co may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 59.2 of the Project Agreement but only in conjunction therewith, and shall provide written notice to Project Co and Service Subcontractor of such assignment or disposition.

- (c) Service Subcontractor shall not, without the prior written consent of Health Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Agreement, except as may be permitted under the Services Subcontract.

11. Notices

Any notices required or permitted under this Agreement shall be in writing and (a) delivered personally, (b) sent by a recognized express mail or courier service, with delivery receipt requested, or (c) sent by confirmed facsimile transmission with telephonic confirmation, to the following addresses:

If to Health Co Abbotsford Hospital and Cancer Centre Inc.
c/o West Annex, 2179 McCallum Road
Abbotsford, BC V2S 3P1

Fax No.: 604 556 5077
Attn.: Mike Marasco

If to Sodexho Canada Sodexho MS Canada Limited
3350 South Service Road
Burlington, Ont. L7N 3M6

Fax No.: 905 681 3021
Attn.: Maarten Galesloot

If to Sodexho Sodexho, Inc.
Suite 1240
9801 Washingtonian Boulevard
Gaithersburg, MD 20878
USA

Fax No.: 301 987 4499
Attn.: Thomas R. Morse

If to Project Co AHA Access Health Abbotsford Ltd.
Suite 2373
595 Burrard Street
PO Box 49127
Three Bentall Centre
Vancouver, BC V7X 1J1

Fax No.: 604 484 7165
Attn.: President

- (a) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall also promptly be delivered personally or sent by a recognized express mail or courier service, with delivery receipt requested.
- (b) A Party may at any time and from time to time change its nominated address or facsimile number by prior notice to the other Parties, and such change shall be effective on the day that next follows the recipient Parties' receipt of such notice.

- (c) Notices given by mail shall be effective upon the earlier of (i) actual receipt, and (ii) 7 days after mailing if mailed within Canada, and 21 days after mailing if mailed outside of Canada. Notices delivered personally shall be effective upon delivery. Notices given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:
- (i) within 2 hours after sending, if sent on a Business Day between the hours of 9am and 4pm; or
 - (ii) by 11am on the next following Business Day, if sent after 4pm on a Business Day but before 9am on that next following Business Day.
- (d) If the Party giving the notice or communication knows or ought reasonably to know of difficulties or disruption with the postal system which might affect the delivery of mail:
- (i) any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission; and
 - (ii) where such difficulties or disruption arise after mailing but before the date of receipt as provided in this Section 11 the party giving such notice shall make or give such notice by personal delivery or by facsimile transmission.
- (e) To be effective, notices and all formal communications under this Agreement shall be in writing and delivered as provided in this Section 11, and shall be signed by an authorized representative of the Party giving the notice. E-mails shall not be used for and shall not constitute notices under this Agreement.
- (f) Oral communications shall not constitute formal communication under this Agreement and no Party has any obligation to act on any oral communication, instruction or assurance unless and until it is confirmed in writing. Any action taken by a Party based on oral communications, instructions or assurances shall be at that Party's sole risk and shall be without liability to or recourse against the other Parties.

12. Amendments

No oral or written amendment or modification of this Agreement, either before or after execution and delivery of this Agreement, shall be of any force or effect unless such amendment or modification is in writing and is signed by a duly authorized representative of each Party to be bound thereby.

13. Waiver

- (a) No waiver of any rights under this Agreement shall be binding or effective unless the waiver is in writing and signed by an authorized representative of the Party giving such waiver.
- (b) Any Party's waiver of any of its rights under this Agreement or of any breach or failure to enforce any of the terms, covenants, conditions, or other provisions of this Agreement at any time shall not in any way affect, limit, modify, or waive that

Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition, or other provision hereof, any course of dealing or custom of the trade notwithstanding.

14. Time is of the Essence

Time is of the essence of this Agreement and each provision herein.

15. Independent Contractor

The Parties are independent contractors. This Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or except as provided in this Agreement, of principal and agent. None of Project Co, Service Subcontractor, Guarantor or any of its or their representatives are or shall be deemed to be an employee of Health Co.

16. Entire Agreement

Except where provided otherwise in this Agreement, this Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Agreement.

17. Severability

If any provision of this Agreement shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement.

18. Enurement

This Agreement shall enure to the benefit of and be binding on each of the Parties and their respective successors and permitted transferees and assigns.

19. Governing Law and Jurisdiction

- (a) This Agreement shall be governed by and construed in accordance with the laws of British Columbia and the laws of Canada applicable therein and shall be treated in all respects as a contract in the Province of British Columbia, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of British Columbia shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Agreement and hereby irrevocably attorn to the jurisdiction of those courts.

20. Further Assurance

Each Party shall do all things and execute all further documents necessary to give full effect to this Agreement.

EXECUTED AND DELIVERED by)
SODEXHO MS CANADA LIMITED acting)
by)
)

Authorized Signatory)

Witness (Signature)

Full Name)

Witness (Full Name)

Authorized Signatory)

Witness (Signature)

Full Name)

Witness (Full Name)

EXECUTED AND DELIVERED by)
SODEXHO, INC. acting by)
)

Authorized Signatory)

Witness (Signature)

Full Name)

Witness (Full Name)

Authorized Signatory)

Witness (Signature)

Full Name)

Witness (Full Name)

EXECUTED AND DELIVERED by **AHA**)
ACCESS HEALTH ABBOTSFORD LTD.)
acting by)
)

Authorized Signatory)

Witness (Signature)

Full Name)

Witness (Full Name)

Authorized Signatory)

Witness (Signature)

Full Name)

Witness (Full Name)