

## Settlement Agreement

This Settlement Agreement made this 25th Day of January 2008

Between:

The Government of the Province of British Columbia (“Government”)

- and -

Health Employers Association of British Columbia (“HEABC”)

- and -

Facilities Bargaining Association (“FBA”)

### WHEREAS:

- A. The parties have met and considered the decision of the Supreme Court of Canada dated June 8, 2007 in the matter of *Health Services and Support – Facilities Subsector Bargaining Association v. British Columbia* (the “Decision”).
- B. The parties have resolved all issues arising from the Decision which affect members of the FBA.
- C. It has been agreed to enter into this Settlement Agreement.

**THEREFORE**, the parties agree as follows:

### 1. **Effect of Agreement:**

- 1.1. The responsibilities which arise under this Settlement Agreement will be the responsibility of the party identified as bearing the responsibility.
- 1.2. This Settlement Agreement will be supplementary to the provisions of the Facilities Subsector Collective Agreement between HEABC and the FBA which is in effect for the term of April 1, 2006 to March 31, 2010 in the manner established in this Settlement Agreement.
- 1.3. This Settlement Agreement will come into effect on [date], provided it has been approved by the FBA, by HEABC, and by the Government.

**2. Contracting Out:**

- 2.1. A Memorandum of Agreement entitled “Contracting Out” will be added to the 2006-2010 Facilities Subsector Collective Agreement as set out in Appendix A.

**3. FTE Cap:**

- 3.1. A Memorandum of Agreement entitled “FTE Cap” will be added to the 2006-2010 Facilities Subsector Collective Agreement as set out in Appendix B.

**4. Consultation:**

- 4.1. A Memorandum of Agreement entitled “Consultation – Contracting Out” will be added to the 2006-2010 Facilities Subsector Collective Agreement as set out in Appendix C.

**5. Employee Options:**

- 5.1. A Memorandum of Agreement entitled “Employee Options – Contracting Out” will be added to the 2006-2010 Facilities Subsector Collective Agreement as set out in Appendix D.

**6. Contract Re-Tendering:**

- 6.1. A new Memorandum of Agreement entitled “Contract Re-Tendering” will be added to the 2006-2010 Facilities Subsector Collective as set out in Appendix E.

**7. Financial Issues:**

- 7.1. A lump sum of seventy-five million dollars (\$75,000,000) to be allocated as follows:
- A. Two million dollars (\$2,000,000) for re-training for individuals previously laid off due to contracting out;
  - B. Five million dollars (\$5,000,000) for re-training of employees laid off due to contracting out in the future; and
  - C. Sixty-eight million dollars (\$68,000,000) for payments to impacted individuals.
- 7.2. The parties agree that the total amount committed for the above purposes must

not exceed seventy-five million dollars (\$75,000,000).

- 7.3. A joint governance Committee will be established between HEABC and the Facilities Bargaining Association to set priorities for how to allocate payments to impacted individuals. The joint governance Committee will be established within thirty (30) days of the effective date of a Settlement Agreement and will be terminated on December 31, 2008.
- 7.4. The parties agree on the following process for the identification and categorization of impacted individuals entitled to a payment from the sixty-eight million dollar (\$68,000,000) lump-sum amount:
- A. Step One:
- i. The Facilities Bargaining Association will engage in the following preliminary process:
    - a) the identification of impacted individuals;
    - b) the criteria and categories of impact; and
    - c) the value assigned to each category of impact.By no later than March 31, 2008, the number of categories and the relative value of such categories will be established. Subsequently, the determination can be made as to the expenditure of the sixty-eight million dollar (\$68,000,000) lump sum by calculating the number of impacted individuals in each category times the relative value of all categories divided into the sixty-eight million dollar (\$68,000,000) lump sum.
- B. Step Two:
- i. The joint governance Committee with a neutral Chair will be established comprised of three (3) representatives appointed by the Facilities Bargaining Association and three (3) representatives appointed by HEABC. The parties agree that, in order, Vince Ready or Irene Holden or Chris Sullivan will be appointed as the neutral Chair of the joint governance Committee, subject to his/her availability consistent with the needs of the parties.
  - ii. The Committee will determine its own process.
  - iii. The Committee will review and confirm:
    - a) the identification of impacted individuals;
    - b) the categories of impact and criteria for inclusion in that category;
    - c) the application of the criteria to impacted individuals and/or the assignment of impacted individuals to categories of impact; and
    - d) the value assigned to each criteria in the category of impact.
  - iv. Disputes by previously impacted individuals will be limited to appropriate application of the criteria to individuals for placement within the categories established.

- v. The application of the criteria to impacted individuals and/or the assignment of impacted individuals to categories of impact must be finalized, prior to any distribution of funds, in the event there are disputes over assignments.
- vi. The Chair has jurisdiction only to resolve disputes regarding the allocations and development of criteria and assignment of individuals to categories, and there is no jurisdiction to render any decision, the effect of which would result in the lump sum of sixty-eight million dollars (\$68,000,000) being exceeded. The Chair also has jurisdiction to determine that the process set out in Step One and Step Two will not be conducted in a manner that is arbitrary, discriminatory, or in bad faith.

**8. Release:**

- 8.1. This Settlement Agreement will exist as a separate Agreement and will not form part of the Facilities Subsector Collective Agreement. Notwithstanding the foregoing, any amendments arising from this Settlement Agreement are supplementary to the Facilities Subsector Collective Agreement and will be deemed to be part of the Facilities Subsector Collective Agreement.
- 8.2. This Settlement Agreement will resolve all outstanding grievances and claims by the Facilities Bargaining Association and each of the member Unions of the Facilities Bargaining Association on their own behalf and on behalf of their individual members or former members with respect to Part 2 of the *Health and Social Services Delivery Improvement Act*, and Parts 1 and 4 as they affect Part 2, including:
  - a) Every grievance filed by a member or former member of the Facilities Bargaining Association, including policy grievances, between January 28, 2002 and the date of this Settlement Agreement relating directly or indirectly to the application, interpretation, operation, constitutionality of, or in any way engaging, the *Health and Social Services Delivery Improvement Act* or relating to the impact of Health Sector Employer or Government actions taken pursuant to the *Health and Social Services Delivery Improvement Act*.
  - b) Any claim by the Facilities Bargaining Association, a constituent member of the Facilities Bargaining Association, or any member or former member of any of the constituent Unions of the Facilities Bargaining Association in relation to the *Health and Social Services Delivery Improvement Act*.
  - c) Any claim by the Facilities Bargaining Association or any of its constituent Unions for damages or any other form of relief pursuant to or related in any fashion to the June 8, 2007 of the decision of the Supreme Court of

Canada in the *Health Services* case.

- 8.3. The Facilities Bargaining Association and each of its constituent Unions agree that they will not initiate any new claims or grievances in respect of the *Health and Social Services Delivery Improvement Act*.
- 8.4. Sections 8.2 and 8.3 do not affect a future claim that an Employer covered by the *Health and Social Services Delivery Improvement Act* has acted contrary to a provision of the *Health and Social Services Delivery Improvement Act*.
- 8.5. This Settlement Agreement is entered into on a strictly without prejudice basis to the position of the Government and HEABC that the *Health Services* decision has no retrospective or retroactive effect. This Settlement Agreement is entered into on a strictly without prejudice basis to the position of the Facilities Bargaining Association that the *Health Services* decision has retrospective or retroactive effect.
- 8.6. The Government may be presenting legislation or amendments to the *Health and Social Services Delivery Improvement Act* to the Legislative Assembly, which shall not be inconsistent with this Settlement Agreement, to implement the terms of this Settlement Agreement. It is a fundamental term of this Settlement Agreement that any such legislation will not be inconsistent with the terms of the Settlement Agreement.
- 8.7. Subject to Section 8.8 below, the parties confirm that all shaded provisions in the printed booklet of the 2006-2010 Facilities Subsector Collective Agreement are deleted.
- 8.8. Section 8.7 above does not apply to the first paragraph of Article 17.12 as it is qualified by Appendix A of this Settlement Agreement (Memorandum of Agreement – Contracting Out).
- 8.9. It is understood that off-the-record discussions during the negotiations will not be referred to, introduced, or relied on in any future proceedings except in a proceeding to determine the correct interpretation of the Settlement Agreement, including these Release provisions.

**SIGNATURES OF THE PARTIES**

Signed on behalf of:

**HEALTH EMPLOYERS ASSOCIATION OF BRITISH COLUMBIA**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

Per: \_\_\_\_\_

**FACILITIES BARGAINING ASSOCIATION**

Per: \_\_\_\_\_

**THE GOVERNMENT OF THE PROVINCE OF BRITISH COLUMBIA**

Per: \_\_\_\_\_

Dated this 25<sup>th</sup> day of January, 2008.

**Appendix A**  
**Facilities Subsector Collective Agreement 2006-2010**  
**Memorandum of Agreement – Contracting Out**

- a) Notwithstanding Article 17.12, Health Sector Employers will have the option to contract out work carried out by members of the Facilities Bargaining Association bargaining unit including where it results in the layoff of members of the Facilities Bargaining Association bargaining unit. This Memorandum of Agreement continues in force and effect until such time as HEABC and the Facilities Bargaining Association negotiate changes to it.
  
- b) **Bill 94-2003:** HEABC commits to informing the Facilities Bargaining Association as soon as reasonably possible after notification by the Government of B.C. of any new designations under the *Health Sector Partnerships Agreement Act* on or after April 1, 2006.
  
- c) Paragraphs b above is effective from April 1, 2006.
  
- d) **Return of Service:** If a Health Sector Employer returns a service for direct delivery that was contracted out, employees who were employed as a regular employee by the Health Sector Employer at the effective date of the contracting out and are regular employees of the contractor at the time that the service returns to direct delivery:
  - i. will be offered employment by the Health Sector Employer subject to availability of positions; and
  
  - ii. where the former employee accepts the offer, he/she will have previous Health Sector service and seniority recognized.

This provision applies for the balance of the term of the 2006-2010 Facilities Subsector Collective Agreement and applies until the effective date of a renewal Collective Agreement.

**Appendix B**  
**Facilities Subsector Collective Agreement 2006-2010**  
**Memorandum of Agreement – FTE Cap**

- a) **FTE Cap:** Notwithstanding Article 17.12 and the Memorandum of Agreement entitled “Contracting Out”, during the term of the 2006-2010 Facilities Subsector Collective Agreement, Health Sector Employers will limit contracting out to seven hundred (700) full-time equivalents (“FTE Cap”) covered by the Facilities Subsector Collective Agreement between April 1, 2006 and March 31, 2010. Any layoffs occurring on or after April 1, 2006 as a result of a displacement notice issued prior to April 1, 2006 shall not count towards this total number of reductions. The total number of reductions excludes employees who may be laid off as a result of the application of the *Health Sector Partnerships Agreement Act*. The contracting out allocation will occur as follows: (a) no more than two hundred (200) full-time equivalents in fiscal 2006/2007; (b) three hundred (300) full-time equivalents in fiscal 2007/2008; (c) two hundred (200) full-time equivalents in fiscal 2008/2009; and (d) any unused allocation in any year will be carried forward to future years until fiscal 2009/2010. For example, any amount not allocated in fiscal 2006/2007 may be carried forward to fiscal 2007/2008 to be allocated in addition to the three hundred (300) full-time equivalents in fiscal 2007/2008.

The FTE Cap will be allocated to Health Sector Employers by the Government of British Columbia.

- b) Paragraph a above is effective from April 1, 2006.

**Appendix C**  
**Facilities Subsector Collective Agreement 2006-2010**  
**Consultation – Contracting Out**

- a) Health Sector Employers will engage in a consultation process as described below effective at least sixty (60) calendar days in advance of the issuance of a Request for Proposals (“RFP”) or by issuance of an equivalent invitation to bid by a Health Sector Employer when it is considering contracting out that may result in the layoff of bargaining unit employees.
- b) **Consultation Process – General:** In the sixty (60) calendar day period, the Union will be provided an opportunity at the appropriate project level to discuss alternatives to the proposed contracting out and/or the options for impacted employees. Health Sector Employers will give good faith consideration, in the discussions on contracting out, to alternatives advanced by a Union.

Where a project involves services that impact a significant number of the worksites amalgamated within one (1) Health Authority, HEABC and the Facilities Bargaining Association agree that the sixty (60) calendar day period will be changed to up to ninety (90) calendar days.

At the end of the sixty (60) or ninety (90) calendar day period, as applicable, the Health Sector Employer will have the discretion to proceed with the contracting out.

- c) **Consultation Process – Two (2) or More Health Authorities:** Where a project would apply to two (2) or more Health Authorities (including Providence Health Care Society as part of Vancouver Coastal Health Authority) covered by the Facilities Subsector Collective Agreement, HEABC and the Facilities Bargaining Association agree to refer the project to a provincial level Alternate Service Delivery Committee jointly established by HEABC and the Facilities Bargaining Association. In this event the consultation process will begin ninety (90) days in advance of the issuance of an RFP by the Health Authorities or by issuance of an equivalent invitation to bid.

The Committee will be comprised of four (4) representatives appointed by the Facilities Bargaining Association and four (4) representatives appointed by HEABC. The Committee will have the ability to bring in a reasonable number of subject matter experts in the work performed and/or the proposed project. HEABC and the Facilities Bargaining Association also agree that where a project impacts multiple Union Bargaining Associations, the Committee may, by mutual agreement, meet with other Union Bargaining Associations but the membership of the Committee will not include representatives from other Union Bargaining Associations.

The Committee will be the forum for the discussion of alternatives to the

proposed contracting out and/or the options for impacted employees. Health Authorities will give good faith consideration, in the discussions on contracting out, to alternatives advanced by a Union.

HEABC and the Facilities Bargaining Association will each pay their own expenses for their respective Committee members. Employees who are members of the Committee shall be granted leave without loss of pay or receive straight-time regular wages while attending meetings of the Committee.

At the end of the ninety (90) calendar day period, the Health Authorities will have the discretion to proceed with the contracting out.

- d. **Disclosure:** Health Employers will provide to the Union a detailed description of the proposed contracting out.

Relevant information and supporting documents on the proposed contracting out will be disclosed by the Health Employer to the Union to inform the discussions regarding alternatives and options for affected employees.

- e. **Confidentiality:** Confidentiality will be needed until such time as the Employer is prepared to announce a decision.

HEABC and the Facilities Bargaining Association agree that the Union has the ability to discuss with impacted employees alternatives and options with the affected employees on a confidential basis.

HEABC and the Facilities Bargaining Association agree that should any financial and/or proprietary information of the Employer and/or any potential third party contractor be disclosed, such information will remain confidential.

- f. **Notification to FBA:** Once the Health Employer makes a decision under the process set out in this Memorandum of Agreement, the Facilities Bargaining Association will be notified of the decision in writing. If the Health Employer makes a decision to proceed with contracting out, the parties agree that they will move to the process set out in the Memorandum of Agreement Re: Employee Options – Contracting Out.

- g. **Application of Labour Relations Code:** HEABC and the Facilities Bargaining Association agree that the process described in this Memorandum of Agreement and the Memorandum of Agreement entitled “Employee Options – Contracting Out” establish the specific process of consultation and adjustment contemplated by Section 54 of the *Labour Relations Code* and satisfies the requirements of this Section of the *Labour Relations Code* for the purposes of contracting out that results in the layoff of members of the Facilities Bargaining Association bargaining unit.

**Appendix D**  
**Facilities Subsector Collective Agreement 2006-2010**  
**Employee Options – Contracting Out**

- a) The Memorandum of Agreement Re: Employees Laid Off Due to Contracting Out or Due to the Application of the *Health Sector Partnerships Agreement Act* [Employee Options] in the Facilities Subsector Collective Agreement is retained and amended as follows:

The parties agree as follows:

**1. Enhanced Severance Allowance:**

- a) An Enhanced Severance Allowance shall be paid to each regular employee who is laid off where the employee's services are no longer required due to contracting out or because of the application of the *Health Sector Partnerships Agreement Act* between April 1, 2006 and March 31, 2010. The Enhanced Severance Allowance will be based on the exact same formula and process as the Severance Fund established in the May 2, 2004 Memorandum of Agreement as outlined in the November 26, 2004 agreement letter from the FBA to HEABC.
- b) The balance remaining from the \$25 million Severance Fund established under the May 2, 2004 Memorandum of Agreement between HEABC, the FBA, the Government of British Columbia, and the B.C. Federation of Labour shall be carried forward to finance, in part, the Enhanced Severance Allowance referenced in paragraph 1 (a) above. Employees laid off as a direct result of contracting out or who received layoff notice during the period referenced in the May 2, 2004 Memorandum of Agreement or whose job was eliminated due to contracting out between April 1, 2004 and March 31, 2006 shall be entitled to receive a payment from the balance of the \$25 million Severance Fund in accordance with the November 26, 2004 agreement letter from the FBA to HEABC. Note that employees under this provision are not entitled to the Enhanced Severance Allowance referenced under paragraph 1 (a) above.
- c) A regular employee who is re-employed in the Health Sector within six (6) months of the effective date of layoff will not be entitled to receive an Enhanced Severance payment subject to the conditions set out below. If the Enhanced Severance payment is made to an employee who is re-employed within six (6) months of the effective date of layoff in the Health Sector, he/she will reimburse the Employer a prorated amount of the Enhanced Severance payment based on the length of time before re-employment (e.g., one month before re-employment means a repayment of 5/6<sup>th</sup> of the Enhanced

Severance payment).

2. **Expanded Access to Regular On-Going Vacancies and Work Under the Addendum – Casual Employees:**

Regular employees laid off as a direct result of contracting out or as a direct result of the application of the *Health Sector Partnerships Agreement Act* who have not terminated and who have no bumping or vacancy posting option under the Facilities Subsector Collective Agreement at their current Employer shall be entitled to:

- a) Apply for an unfilled regular on-going vacancy across any one (1) Health Authority worksite in the province.
  - i. A laid off regular employee who successfully posts into a regular on-going vacancy will be entitled to coverage under the Medical, Dental, and Extended Health Care Plans effective the first day of the month following employment.
  - ii. **Relocation Expenses:** An employee who accepts a regular on-going position in the Health Sector in a location that is more than fifty (50) kilometres from his/her previous worksite and who chooses to relocate will be entitled to relocation expenses of five hundred dollars (\$500) for a move of up to two hundred and forty (240) kilometers and eight hundred dollars (\$800) for a move of beyond two hundred and forty (240) kilometers. Relocation expenses must be claimed from his/her former Employer within six (6) months of the start date of the regular position and must be supported by receipts.
- b) Register for work under the Addendum – Casual Employees on one casual list in any one (1) Health Authority worksite in the province provided the employee is qualified to perform and capable of performing the work.
  - i. An employee who registers under the Addendum – Casual Employees shall be eligible to apply for regular on-going vacancies.
  - ii. A laid off regular employee who registers for work under the Addendum – Casual Employees has the option to enroll in the health and welfare benefit plans as per Section 14 of the Addendum without having to work one hundred and eighty (180) hours.
  - iii. In addition, a laid off regular employee who registers for

work under the Addendum – Casual Employees will be entitled to access the benefits set out in Section 15 of the Addendum at the Health Authority.

- c) A laid off regular employee who successfully posts into a regular on-going vacancy or registers for work under the Addendum – Casual Employees prior to the expiry of their recall period under the process in this Memorandum of Agreement shall port her/his service and seniority to the receiving Employer. The ability to port is not available to an employee who receives an Enhanced Severance Allowance under paragraph 1 above.
- d) **Re-employment with Previous Health Sector Employer:** A regular employee laid off as a result of contracting out who successfully applies on a posting for a regular on-going position at his/her previous Health Sector Employer within one (1) year from the effective date of the end of the recall period will have his/her previous Health Sector service and seniority restored. If the employee received a Severance Allowance or elected to waive the recall period to receive Severance Allowance, Article 43.02 (c) of the Facilities Subsector Collective Agreement will continue to apply. This provision will not apply to an employee who has ported service and seniority to another Health Sector Employer within one (1) year from the effective date of the end of the recall period.

- 3. **Reimbursement of Educational or Re-Training Costs:** Regular employees who are issued displacement notice on or after April 1, 2006 and laid off as a result of contracting out or as a result of the application of the *Health Sector Partnerships Agreement Act* may apply to their Employer for reimbursement of educational or re-training costs, subject to the following conditions:
  - i. Reimbursement will be provided for the costs of courses incurred at an educational institution up to a maximum of \$1,000 (pro-rated for regular part-time employees based on their full-time equivalent);
  - ii. Reimbursement will be provided upon presentation of receipts submitted before the expiry of the employee's Collective Agreement recall period; and
  - iii. Regular employees who are laid off and who request to be added to one casual list within the Health Authority (as per paragraph 2 (b) above) are not eligible for these funds.
- 4. **Re-Training Fund:** A re-training fund of seven million dollars (\$7,000,000) will be established to facilitate access to re-training for a job in areas of

need in the Facilities Subsector.

- a. Re-training for employees laid off due to contracting out in the future – five million dollars (\$5,000,000).
- b. Individuals previously laid off due to contracting out – two million dollars (\$2,000,000). Individuals previously laid off due to contracting out who are interested in re-training must receive an allocation from the two million dollar (\$2,000,000) re-training fund by June 1, 2009. After that date, remaining funds shall be made available to all employees to be re-trained in areas of need in accordance with terms determined by the joint Committee. Individuals previously laid off due to contracting out who are re-trained, who are not already in the Health Sector, and who apply for a regular on-going vacancy with any Health Sector Employer are considered an external applicant under Article 16.03 of the Facilities Subsector Collective Agreement.

5. **Employment with the Contractor:** If a regular employee who has been issued a displacement letter due to contracting out is interested in being employed by the contractor, the Health Employer will facilitate the process.
6. Subject only to the variations specified in this Memorandum of Agreement, the Facilities Subsector Collective Agreement will apply and prevail.
7. This Memorandum of Agreement is effective from April 1, 2006.

b) **Re-Training:** A joint Re-Training Committee will be established comprised of three (3) representatives appointed by the Facilities Bargaining Association and three (3) representatives appointed by HEABC to implement the terms of this Framework Agreement pertaining to the re-training fund. The principles governing the Committee's decisions and the application of the re-training funds are:

- i. Re-training must be for an area of need in the Facilities Subsector as determined and approved by the Employer. The Committee may discuss re-training for areas of need in the Community Bargaining Association.
- ii. Employee must be qualified and capable before being able to bid on a vacancy upon completion of any re-training.
- iii. The funds shall cover the cost of the course and, where appropriate, a reasonable stipend for current employees in the Health Sector to assist with living expenses while enrolled in the course. The joint committee will determine the value and application of the stipend.

- iv. During the re-training period, the employee will be placed on a casual list at his/her current Health Sector Employer and:
  - (a) can access work during the re-training period if the employee is qualified; or
  - (b) if not qualified, is deemed unavailable until the re-training is concluded.
- v. Commitment to stay in the Health Sector upon conclusion of re-training and posting into a vacancy. Failure to stay in the Health Sector for a period equivalent to three (3) times the length of the re-training period results in a prorated share of reimbursing the Fund for the cost of the re-training and, where applicable, the stipend payments.
- vi. Should no regular on-going vacancy be available, a re-trained employee must register on one casual list in any one (1) of the six (6) Health Authorities across the province upon completion of training to facilitate access to a regular on-going vacancy. The casual list must be for an occupation in which the employee received re-training.

The employee will retain the ability to have his/her service and seniority restored for six (6) months following the completion of the re-training if the employee is successful in posting into a regular on-going vacancy.

- vii. HEABC and the Facilities Bargaining Association will work with public sector post-secondary institutions to maximize the training opportunities for the employee and the Employer.
- c) **Other Options:** The following options are available for consideration by the Employer at its discretion:
- i. Early Retirement Incentives and/or Voluntary Departure Incentives. If such incentives are made available to employees impacted by contracting out, such incentives will only be granted where vacancies would be created by the departing employee(s), which would be filled by other employees who would otherwise be laid off due to contracting out; and
  - ii. Other options for labour adjustment suggested by the Union, including voluntary recognition of the Union.

**Appendix E**  
**Facilities Subsector Collective Agreement 2006-2010**  
**Contract Re-Tendering**

Prior to the expiry of the full term of currently contracted services that were provided by the Facilities Subsector Bargaining Association as of January 28, 2002, the Union that previously represented the employees at the Health Employer will be entitled to an opportunity to prepare and present a proposal for the orderly return of contracted services to the direct control of the Health Employer to the senior designate(s) appointed by the Health Employer. The opportunity for the Union to present a proposal to the Health Employer will be provided sixty (60) days before a Request for Proposals ("RFP") is issued for the continuing contracting of services. The Health Employer will have the discretion to choose to proceed with the contracting out. The Employer agrees to provide the Union with the details of the work to be performed, including any tendering documents.