

**MASTER SERVICES AGREEMENT**

**1. INTERPRETATION**

1.1 In this Agreement, the following terms shall have the following meanings:

- (a) "**Affiliate**" of any person means, at the time such determination is being made, any other person controlling, controlled by or under common control with such first person, in each case, whether directly or indirectly, and "control" and any derivation thereof means the possession, directly or indirectly, of the power to direct the management and policies of a Person whether through the ownership of voting securities or otherwise.
- (b) "**Agreement**" means this Agreement and the Schedules attached hereto which are incorporated herein together with any future written and issued amendments;
- (c) "**Applicable Laws**" means any federal, provincial, municipal and local statute, law, rule, code, ordinance, regulation, permit, certificate, judgment, decree, injunction, writ, order, subpoena, or like action of Governmental Authority that applies to this Agreement or the Services performed hereunder, including all applicable Privacy Laws;
- (d) "**Client**" means you;
- (e) "**Confidential Information**" means all information of a confidential or proprietary nature in any medium or format, whether or not marked or described as "confidential", of or which relates to a Party or any of its Affiliates (collectively, the "**Disclosing Party**") provided to the other Party or to any of its Affiliates (collectively, the "**Receiving Party**") in the course of the dealings relating to this Agreement or the Services, including, without limitation, technical, financial or business information, Personal Information, data, ideas, concepts or know-how. Confidential Information shall not include any information that (i) was already known by or in the possession of the Receiving Party prior to it being disclosed by the Disclosing Party, as established by documentary evidence; (ii) that was independently developed by the Receiving Party without any reference to or use of the Disclosing Party's Confidential Information, as established by documentary evidence; or (iii) was in the public domain at the time of disclosure or subsequently entered the public domain through no fault of the Receiving Party;
- (f) "**Fees**" has the meaning described in any Services Agreement or Quote entered into under this Agreement between the Parties and as further described in Section 2;
- (g) "**Governmental Authority**" means (i) any national, federal, provincial or local government entity, authority, agency, instrumentality, court, tribunal, regulatory commission or other body, either foreign or domestic, whether legislative, judicial, administrative or executive including without limitation any regulatory authority or governing college and (ii) any arbitrator to whom a dispute has been presented under government rule or by agreement of the Parties with an interest in such dispute;

- (h) “**Lifemark**” means the Lifemark entity identified in the applicable Service Agreement or Quote;
- (i) “**Party**” means either the Client or Lifemark, collectively the “**Parties**”;
- (j) “**Personal Information**” has the meaning given to such term in the *Personal Information Protection and Electronic Documents Act* (Canada);
- (k) “**Privacy Laws**” means all federal, provincial, state, municipal or other applicable statutes, laws or regulations of any Governmental Authority in any jurisdiction governing the handling of information about an identifiable individual, including the *Personal Information and Protection of Electronic Documents Act* (Canada) and equivalent provincial legislation;
- (l) “**Quote**” means a duly authorized quote for Services issued by Lifemark and accepted by the Client;
- (m) “**Services**” has the meaning described in any Services Agreement or Quote entered into under this Agreement between the Parties and as further described in Section **Error! Reference source not found.**; and.
- (n) “**Services Agreement**” means a duly authorized agreement outlining the terms of Services issued by Lifemark and accepted by the Client.

## 2. SERVICES & FEES

2.1 Lifemark agrees to provide the Services as described in the applicable Services Agreement or Quote in a timely, ethical and business-like fashion, with due diligence, as required under the Agreement and consistent with generally accepted industry practices and consistent with any practices as dictated by any regulatory body governing the Services.

2.2 Payment for Fees shall be made within thirty (30) days following the Client’s receipt of an invoice for the Services rendered. Interest on overdue amounts shall be at a rate of 8% per annum or as permitted under Applicable Law.

2.3 The Client will be billed directly by Lifemark Health Corp. for the Services described within the applicable Services Agreement or Quote.

## 3. REPRESENTATION AND WARRANTIES

3.1 Lifemark represents, warrants and covenants to the Client as follows and acknowledges that the Client is relying upon such representations, warranties and covenants:

- (a) Lifemark is a corporation incorporated under the laws of its jurisdiction of incorporation and has all necessary power and authority to execute and deliver this Agreement and to perform its obligations hereunder; and

(b) Lifemark has the necessary skills, knowledge, expertise, experience, qualification, competence, rights and resources to fulfill its obligations under this Agreement and agrees that the Services performed under this Agreement shall be performed in a diligent, efficient, competent and workmanlike manner, in accordance with the provisions of this Agreement and all legal and regulatory requirements.

#### **4. INDEMNITY**

4.1 Subject to Section 5 of this Agreement, Lifemark shall indemnify and save the Client harmless against and from any and all claims, suits, losses and damages which arise out of a breach by Lifemark of the terms of this Agreement, or the negligence or willful misconduct of Lifemark in performing the Services.

#### **5. LIMITATION OF LIABILITY**

5.1 In no event shall either Party be liable for any actions, damages, claims, liabilities, costs, expenses, or losses (each, a “**Claim**”) in excess of the Fees paid and accrued under this Agreement for the twelve-month period immediately preceding the first event that gave rise to the Claim. In no event shall either Party be liable for any indirect, special, incidental or consequential, damages or damages for lost profits, business interruption or lost revenue or failure to realize expected savings, even if that Party has been advised of the possibility of such loss or damage in advance. The foregoing disclaimer of liability shall apply regardless of whether such liability is based on breach of contract, tort (including without limitation negligence), strict liability, breach of a fundamental term, fundamental breach, or otherwise.

#### **6. INSURANCE**

6.1 Lifemark shall ensure that it has in place insurance coverage that is customary and appropriate in connection with its provision of the Services, and shall ensure that any health care practitioner providing any of the Services has insurance in place coverage through their applicable protective association.

6.2 Lifemark shall furnish the Client with proof of insurance in the form of certificates of insurance, which shall also obligate the insurer to give the Client 30 day’s prior written notice of cancellation or non-renewal of the policy or of any material changes affecting the coverage provided therein.

6.3 Any insurance coverage required under the terms of this Agreement shall not in any manner restrict or limit the liabilities assumed by Lifemark nor shall they release Lifemark from any obligations under the terms of this Agreement.

#### **7. CONFIDENTIALITY**

7.1 Each Party acknowledges that, in connection with the Services, it may have access to

certain Confidential Information. Receiving Party will: (a) hold all Confidential Information of Disclosing Party in confidence; (b) not use or copy such Confidential Information except for the purposes of and as permitted by this Agreement; and (c) not disclose such Confidential Information except to its directors, officers, employees or agents who have a need to know such information for purposes of and as permitted by this Agreement. Each Party agrees to use the same means it uses to protect its own confidential information of a like nature, but in any event, not less than reasonable means, taking into consideration the sensitivity and nature of the Confidential Information in question, to prevent the disclosure of Disclosing Party's Confidential Information to third parties. Receiving Party will be relieved from its obligations under this Section 7.1: (i) to the extent that the Disclosing Party gives its prior written consent; or (ii) to the extent necessary to comply with Applicable Laws, provided that the Receiving Party uses commercially reasonable efforts to provide prior written notice of such disclosure (to the extent such disclosure is not required to be made immediately) to Disclosing Party to afford Disclosing Party the opportunity to seek a protective order.

## **8. PRIVACY**

8.1 Lifemark agrees and covenants that it shall:

- i) keep and maintain all Personal Information in strict confidence, using such degree of care and diligence as is appropriate to avoid unauthorized access, use or disclosure.
- ii) use and disclose Personal Information solely and exclusively for the purposes for which the Personal Information, or access to it, is provided pursuant to the terms and conditions of this Agreement, and not use, sell, rent, transfer, distribute, or otherwise disclose or make available Personal Information for Lifemark's own purposes or for the benefit of anyone other than the Client, in each case, without the Client's prior written consent; and
- iii) not directly or indirectly disclose Personal Information to any person or entity other than employees, subcontractors, agents, outsourcers or auditors who need to know such Personal Information for the purpose of Lifemark performing its obligations under this Agreement without written consent from the Client, or otherwise as required by Applicable Law.

8.2 Lifemark represents and warrants that its collection, access, use, storage, disposal and disclosure of Personal Information shall comply with Applicable Law.

8.3 Lifemark shall implement administrative, physical and technical safeguards to protect Personal Information and shall ensure that all such safeguards, including the manner in which Personal Information is collected, accessed, used, stored, processed, disposed of and disclosed, comply with Applicable Laws, as well as the terms and conditions of this Agreement.

8.4 Lifemark shall promptly notify the Client of any breach of this Section 8.

**9. GENERAL**

9.1 Amendments. This Agreement may be modified by Lifemark in its sole discretion with notice to the Client.

9.2 Assignment. This Agreement and the rights and obligations hereunder are not assignable by either Party without the prior written consent of the other Party, except that either Party may, assign this Agreement to an Affiliate without obtaining the prior written consent of the other Party.

9.3 Independent Contractors. In all matters relating to this Agreement, the applicable Services Agreement or Quote, Lifemark and the Client are independent contractors of each other and neither Party is an employee, agent or partner or joint venture of the other Party.

9.4 Governing Law. This Agreement is governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.

9.5 Notices. All notices, requests and demands hereunder shall be in writing addressed to the other Party as described in the applicable Services Agreement or Quote. Notices are deemed received: (a) on delivery, if delivered in person; (b) when sent and receipt is confirmed, if sent by e-mail; (c) one business day after sending, if sent by nationally recognized overnight courier services; and (d) five days after mailing, if sent by registered mail with requested return.

9.6 Entire Agreement. This Agreement, together with any Services Agreement or Quote and all other documents that are incorporated by reference herein, supersede all previous agreements between the Parties relating to the subject matter hereof and constitute the whole and entire agreement between the Parties relating to the subject matter hereof. Except otherwise stipulated herein or in a Services Agreement or Quote, in case of conflict between the provisions of this Agreement and any Services Agreement or Quote, this Agreement shall prevail.

9.7 Waiver. A waiver of any provision of this Agreement is only effective if in writing and applies only to the specific incident waived. A failure or delay in exercising any term hereof does not constitute a waiver of any right or term, which will continue in full force and effect.

9.8 Severability. If any provision, or portion thereof, of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions will remain in full force and effect. Any provision so severed will be deemed substituted with a like provision to accomplish the intent of the Parties to the extent permitted by Applicable Law.

9.9 Enurement. This Agreement shall enure to the benefit, and be binding upon, the parties hereto and their respective successors, affiliates and permitted assigns.