
TERTIARY SUPPORT AGREEMENT

by and among

ESSENT HEALTHCARE – AYER, INC.

and

BETH ISRAEL DEACONESS MEDICAL CENTER, INC.

And

**HARVARD MEDICAL FACULTY PHYSICIANS AT
BETH ISRAEL DEACONESS MEDICAL CENTER, INC.**

For the Provision of Tertiary Resources at

**DEACONESS NASHOBA HOSPITAL
Ayer, Massachusetts**

Dated as of October __, 2002

TERTIARY SUPPORT AGREEMENT

This **Tertiary Support Agreement** (the “**Agreement**”) is made as of the ____ day of October, 2002, by and among **ESSENT HEALTHCARE – AYER, INC.**, a Tennessee corporation having its principal place of business at 3100 West End Avenue, Suite 900, Nashville, Tennessee 37203 (“**Essent**”), **HARVARD MEDICAL FACULTY PHYSICIANS AT BETH ISRAEL DEACONESS MEDICAL CENTER, INC.**, a Massachusetts not-for-profit corporation having its principal place of business at 110 Francis Street, Boston, Massachusetts 02215 (“**HMFP**”), and **BETH ISRAEL DEACONESS MEDICAL CENTER, INC.**, a Massachusetts not-for-profit corporation having its principal place of business at 330 Brookline Avenue, Boston, Massachusetts 02215 (“**BIDMC**”).

BACKGROUND

Essent has entered into an Asset Purchase Agreement dated as of October ___, 2002, as amended (the “**Asset Purchase Agreement**”), with The Nashoba Community Hospital Corporation, Nashoba Management Services, Inc., and James Brook Properties, Inc., pursuant to which Essent has agreed to purchase substantially all of the assets associated with or employed in the operations of Deaconess Nashoba Hospital, a 41-bed general acute care hospital located in Ayer, Massachusetts (the “**Hospital**”), all upon and subject to the terms and conditions set forth in the Asset Purchase Agreement.

Essent, HMFP and BIDMC wish to set forth their understanding as to the tertiary resources BIDMC and HMFP will provide to Essent, the manner in which the parties will determine additional resources, advisory services and professional services BIDMC and HMFP will provide to Essent, the basis for BIDMC’s and HMFP’s compensation therefor, and various other matters involving regulatory, tax and other considerations that will be applicable to any and all services provided by BIDMC or HMFP and to any and all joint activities that Essent, HMFP and BIDMC may undertake. From time to time, upon the determination of resources that BIDMC or HMFP will provide, BIDMC, HMFP and Essent will enter into a Supplemental Agreement or Addendum to this Agreement for and with respect to additional services that BIDMC or HMFP will provide to Essent, and for each joint activity that will be undertaken by BIDMC, HMFP and Essent.

NOW THEREFORE, in consideration of the foregoing, and the promises and covenants contained herein, and intending to be legally bound hereby, Essent, BIDMC and HMFP agree as follows:

ARTICLE I

STATEMENT OF PURPOSE AND GUIDING PRINCIPLES

1.1. Statement of Purpose. The purpose of the relationship among Essent, HMFP and BIDMC as set forth in this Agreement is to improve and enhance the availability, quality and cost-effectiveness of health care services in the Service Area (as that term is defined in Section 7.2) by making available to Essent and to Essent's governing board, advisory board, management, medical staff, professional staff and patients, appropriate clinical, technological and educational support, expertise and other resources that BIDMC and HMFP can provide as a teaching hospital, physician practice and medical center that provides a full range of quality, state-of-the-art tertiary specialty and sub-specialty hospital and medical services, with due regard for legal and regulatory requirements and economic and financial considerations.

1.2. Guiding Principles. The relationship among Essent, HMFP and BIDMC, and the respective rights, benefits and obligations of the parties hereto, shall be premised on the following Guiding Principles, each of which Guiding Principle is more particularly discussed elsewhere in this Agreement:

1.2.1. The parties shall comply with all governmental laws, rules and regulations that are applicable to the parties and to the services and activities provided or undertaken pursuant to this Agreement and pursuant to any Supplemental Agreement and Addendum including, without limitation, Determination of Need requirements under the jurisdiction of the Massachusetts Department of Public Health's ("DPH") Determination of Need Program; licensure requirements under the jurisdiction of the Massachusetts Department of Public Health, Division of Health Care Quality ("DHCQ"); licensure requirements under the jurisdiction of the Massachusetts Division of Professional Licensure, accreditation standards of the Joint Commission on Accreditation of Health Care Organizations ("JCAHO") and other applicable accrediting agencies, and fraud and abuse, anti-kickback and similar provisions and prohibitions regarding the inducement of referrals of patients for services or items reimbursable under the Medicare, Medicaid, TriCare or other federal or state governmental healthcare programs.

1.2.2. The independence and autonomy of the parties, and the separate governance and management of the parties and their respective businesses, operations and facilities, shall be preserved and shall not be restricted or otherwise affected by the provisions of this Agreement or of any Supplemental Agreement or Addendum.

1.2.3. The parties do not intend that this Agreement, or any Supplemental Agreement or Addendum, require or induce any party or any other person or entity to make referrals of patients for services or products.

1.2.4. In all of their dealings, the parties shall act fairly and in good faith in implementing the provisions of and in performing their respective obligations under this Agreement and any Supplemental Agreement or Addendum, except for those specific instances where this Agreement or any Supplemental Agreement or Addendum provides that a party may act or make a determination in its “sole discretion,” or words of similar import.

1.2.5. BIDMC and HMFP shall be compensated fairly for all services provided pursuant to this Agreement and any Supplemental Agreement and Addendum, as mutually determined and reflected in each Supplemental Agreement and Addendum, and arrangements for services and joint activities by and among Essent, HMFP and BIDMC shall be structured so that the same are in furtherance of BIDMC’s or HMFP’s tax-exempt purpose and so that no private benefit inures to Essent that might adversely affect or jeopardize BIDMC’s or HMFP’s tax-exempt status.

1.2.6. The parties do not intend that this Agreement shall preclude Essent from establishing arrangements with other hospitals, facilities or providers for tertiary resources that BIDMC and HMFP do not provide pursuant to the provisions of this Agreement.

ARTICLE II

EFFECTIVE DATE AND TERM

2.1. Effective Date. This Agreement shall be effective and binding upon and enforceable by and against the parties hereto upon execution and delivery of this Agreement by Essent, HMFP and BIDMC (the “**Effective Date**”), it being recognized that certain of the obligations of the parties hereunder are not applicable and cannot be implemented unless and until Closing has occurred. For purposes of this Agreement, “**Closing**” shall mean the date on which Essent (or its affiliate) acquires by purchase or lease substantially all of the assets used in the operation of the Hospital.

2.2. Term. The Term of this Agreement shall commence as of the Effective Date, and, unless sooner terminated as provided in Article XI below, shall continue to be effective and binding upon the parties until five (5) years from the date of Closing.

2.3. Automatic Renewal. The Term of this Agreement shall be automatically renewed for successive terms of one (1) year each without any further act or notice by or from any party, unless one party provides notice to the other parties of the termination of this Agreement as of the end of the then current Term, which notice shall be given not less than one hundred eighty (180) days prior to the end of the then current Term.

2.4. Expiration of Term. All obligations of the parties under this Agreement and, except as may be specifically provided therein to the contrary, under any Supplemental Agreement and Addendum, shall cease and terminate upon the expiration of the Term of this Agreement. Notwithstanding the foregoing, (a) the expiration of this Agreement shall not affect the liability

of a party for breach of any provision of this Agreement or any Supplemental Agreement or Addendum occurring or arising prior to expiration, and (b) the provisions of Sections 6.6 and 10.1 below shall survive any such expiration.

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS OF ESSENT

Essent represents and warrants, and covenants that during the Term of this Agreement:

3.1. Organization. Essent is and shall continue to be a corporation duly organized and validly existing, and will possess all powers, authority, and governmental licenses and permits to own and operate the Hospital and to perform Essent's obligations under this Agreement and any Supplemental Agreement and Addendum.

3.2. Authorization, etc. This Agreement has been duly authorized, executed and delivered by and on behalf of Essent and, upon due authorization, execution and delivery by and on behalf of BIDMC and HMFP, will constitute the valid and legally binding obligation of Essent enforceable against Essent in accordance with its terms.

3.3. Compliance with Laws, etc. The execution and delivery of this Agreement by Essent and Essent's performance of its obligations set forth herein do not and will not violate any law, rule or regulation of any governmental authority, or any order, judgment or decree of any court or governmental authority. Essent agrees to comply with all applicable laws, rules and regulations of any governmental authority, any valid and enforceable order, judgment or decree of any court or governmental authority, and the accreditation standards of JCAHO, in the performance of its obligations under this Agreement and any Supplemental Agreement or Addendum, except where the failure to do so will not have a material adverse effect on Essent, BIDMC or HMFP.

3.4. No Conflict. The execution and delivery of this Agreement by and on behalf of Essent and the performance of its obligations set forth herein do not and will not conflict with, or result in a breach of, any of the terms or provisions of, or constitute a default under, the organizational documents of Essent or any other agreement or instrument to which Essent is a party or by which it may be bound or to which any of its property or assets are subject.

3.5. Litigation, etc. There is not now pending or to Essent's knowledge threatened any action, suit or proceeding to which Essent is subject before or by any court or governmental authority, which would materially affect Essent's ability to perform its obligations under this Agreement or any Supplemental Agreement or Addendum, nor does Essent know of any circumstances which would give rise to any such action, suit or proceeding.

ARTICLE IV

REPRESENTATIONS, WARRANTIES AND COVENANTS OF BIDMC AND HMFP

BIDMC and HMFP, respectively, represent, warrant, and covenant that during the Term of this Agreement:

4.1. Organization.

4.1.1. BIDMC is and shall continue to be a not-for-profit corporation duly organized and validly existing, and possessing all powers, authority, and governmental licenses and permits to engage in the business in which it is currently engaged and to perform its obligations under this Agreement and any Supplemental Agreement and Addendum.

4.1.2. HMFP is and shall continue to be a not-for-profit corporation duly organized and validly existing, and possessing all powers, authority, and governmental licenses and permits to engage in the business in which it is currently engaged and to perform its obligations under this Agreement and any Supplemental Agreement and Addendum.

4.2. Authorization, etc. This Agreement has been duly authorized, executed and delivered by and on behalf of BIDMC and HMFP, respectively, and, upon due authorization, execution and delivery by and on behalf of Essent, will constitute the valid and legally binding obligation of BIDMC and HMFP enforceable against BIDMC and HMFP, respectively, in accordance with its terms.

4.3. Compliance with Laws, etc. The execution and delivery of this Agreement by BIDMC and HMFP and BIDMC's and HMFP's performance of their obligations set forth herein do not and will not violate any law, rule or regulation of any governmental authority, or any order, judgment or decree of any court or governmental authority. BIDMC and HMFP agree to comply with all applicable laws, rules and regulations of any governmental authority, any valid and enforceable order, judgment or decree of any court or governmental authority, and the accreditation standards of JCAHO, in the performance of their obligations under this Agreement and any Supplemental Agreement or Addendum, except where the failure to do so will not have a material adverse effect on BIDMC, HMFP or Essent.

4.4. No Conflict. The execution and delivery of this Agreement by and on behalf of BIDMC and HMFP and the performance of their obligations set forth herein do not and will not conflict with, or result in a breach of, any of the terms or provisions of, or constitute a default under, the organizational documents of BIDMC or HMFP, respectively, or any other agreement or instrument to which BIDMC or HMFP is a party or by which they may be bound or to which any of their property or assets are subject.

4.5. Litigation, etc. There is not now pending or to BIDMC's or HMFP's knowledge threatened any action, suit or proceeding to which BIDMC or HMFP, respectively, is subject before or by any court or governmental authority, which would materially affect BIDMC's or HMFP's ability to perform their obligations under this Agreement or any Supplemental

Agreement or Addendum, nor do BIDMC or HMFP know of any circumstances which would give rise to any such action, suit or proceeding.

ARTICLE V

TERTIARY RESOURCES & SERVICES

5.1. Nature of Advisory Services. As a major teaching hospital, physician practice and medical center that provides sophisticated medical services through physicians having expertise across a broad continuum of clinical specialties, subspecialties and services, and utilizing advanced technology, BIDMC and HMFP are in a position to assist Essent in improving and enhancing the availability, quality and cost-effectiveness of health care services in the Service Area. Although it is not practicable or appropriate to replicate BIDMC's and HMFP's tertiary medical services at the Hospital, BIDMC and HMFP shall make resources available to Essent, as agreed to from time to time, by BIDMC, HMFP and Essent. Such resources may include, but are not limited to, advising and assisting Essent in (i) evaluating the current services offered at the Hospital and the feasibility of new or enhanced services, (ii) obtaining the necessary approvals for such services including approvals from DPH, Office of the Attorney General and other regulatory officials in the Commonwealth, (iii) the development of medical service protocols and outcomes measures and procedures, (iv) the development of services and activities to reduce operating costs, (v) the development of health and wellness programs for members of the Hospital community, and (vi) medical education programs in the possible form of teleconferencing and consultation regarding complex cases.

To the extent advisory services provided at the request of Essent by BIDMC or HMFP pursuant to this Section 5.1. require the administrative consulting time and expertise of BIDMC or HMFP employees, then such time shall be compensated for by Essent pursuant to a mutually agreed upon and reasonable rate.

5.2. BIDMC and HMFP Professional Services. In addition to the tertiary resources of an advisory nature set forth above, BIDMC and HMFP have agreed to provide certain professional medical services and other supporting services necessary to the operation of the Hospital. All such services, the responsibilities of each party, and related compensation therefor shall be set forth in a Supplemental Agreement or Addendum. In the event that the advisory services set forth in Section 5.1 hereof develop into operational programs to be provided with the assistance of BIDMC or HMFP, such programs, the responsibilities of each party and related compensation therefore shall be set forth in a Supplemental Agreement or Addendum. No party shall have the right to use any other party's name, mark or logo except as expressly agreed to under a Supplemental Agreement or Addendum. These professional services include, but are not limited to :

5.2.1. Emergency Department Professional Services. The parties intend that effective as of the date of Closing, subject to the ability of the parties to reach a mutually acceptable written agreement to provide such services, BIDMC and HMFP will assume comprehensive and exclusive responsibility to provide professional services and medical

direction for the Hospital Emergency Department. Such services shall be provided pursuant to a definitive written agreement to be negotiated by the parties prior to Closing, in a form substantially similar to the one attached hereto as Exhibit A.

5.2.2. Pathology Professional Services. Within ninety (90) days of the Effective Date, and after receipt of the key statistical data (e.g., volume of surgical pathology cases, payor mix, etc.) and Essent operational goals, BIDMC will perform a comprehensive assessment of and make written recommendations concerning the services comprising Hospital Pathology Services. Upon receipt of BIDMC's recommendations, the parties agree to meet to consider and discuss such findings in order to provide for effective implementation of changes, if any, needed to improve and expand the Hospital Pathology Services to the community. While Essent reserves the right, in its sole discretion, to accept or reject BIDMC's recommendations, the parties agree that during the Term of this Agreement, should Essent elect to contract with an outside provider of Hospital Pathology Services, it will first offer to BIDMC the right to contract to provide such services on the same terms and conditions that Essent had offered to the outside provider.

5.2.3. Hospitalist Professional Services. Within ninety (90) days of the Effective Date, BIDMC will perform a comprehensive assessment of and make written recommendations concerning the services comprising the inpatient Hospitalist program at the Hospital. Upon receipt of BIDMC's recommendations, the parties agree to meet to consider and discuss such findings in order to provide for effective implementation of changes, if any, needed to improve and expand the Hospitalist services to the community. While Essent reserves the right, in its sole discretion, to accept or reject BIDMC's recommendations, the parties agree that during the Term of this Agreement, should Essent elect to contract with an outside provider of Hospitalist services, it will first offer to BIDMC the right to contract to provide such services on the same terms and conditions that Essent had offered to the outside provider.

5.3. Clinical Program Steering Committee and Ongoing Consultation.

5.3.1 Clinical Program Steering Committee. Within three (3) months following Closing, BIDMC, HMFP and Essent shall create a Clinical Program Steering Committee (the "Committee"). The Committee shall be a sub-committee of Essent's Advisory Board, described in Section 12.2.7 of the Asset Purchase Agreement. The Committee shall be comprised of representatives from BIDMC, HMFP and Essent and include members of the Hospital's medical staff. The Committee shall meet quarterly, to implement and monitor as well as consider and/or suggest for consideration by the Advisory Board additional means by which the resources and services set forth in this Article may be provided or expanded. The Committee shall consider the recruitment of physicians to meet the medical needs of residents in the Service Area. As appropriate, BIDMC and HMFP may advise Essent regarding the possibility of faculty appointments at Harvard Medical School to physicians recruited jointly by Essent and BIDMC and HMFP. Through the Committee, the parties will explore joint clinical programs and new

service delivery models with the overall goal of improving care, advancing research knowledge and reducing overall health system cost.

5.3.2 Ongoing Consultation. In addition, on a regular and ongoing basis, Essent and BIDMC and HMFP shall consult with each other so that Essent and Essent's Advisory Board and medical and professional staffs will have an opportunity to learn more about the nature and scope of services provided by BIDMC, HMFP and BIDMC's and HMFP's physicians and professional staff, and to discuss and consider suggestions as to the resources that BIDMC and HMFP might be able to provide to Essent. The parties acknowledge and agree, for example, that BIDMC has developed nationally recognized programs for the innovative and improved delivery of quality care relating to such services as cardiovascular, oncology and high-risk obstetrics that are important to the enhancement of services to the Hospital community. As part of the ongoing consultation contemplated by this subsection 5.3.2, the CEO of the Hospital and the Senior Vice President of Network Integration of BIDMC will meet on a monthly basis to evaluate the nature and scope of services provided by BIDMC, HMFP and BIDMC's and HMFP's physicians and professional staff, and to consider and coordinate the future provision of such services when appropriate.

5.4. Non-Exclusivity. The parties do not intend that this Agreement shall preclude Essent from establishing arrangements with other hospitals, facilities or providers of tertiary resources or hospital-based services that BIDMC and HMFP do not provide pursuant to the provisions of this Agreement. BIDMC shall, however, during the Term of this Agreement be given notice of Essent's plan to contract for services with a tertiary hospital provider and BIDMC shall be given the first opportunity to make and submit proposals for the provision of such tertiary resources or hospital-based services. To the extent Essent and BIDMC are unable within a thirty (30) day period to negotiate an agreement satisfactory to both parties for expanded tertiary support services, then Essent shall have the right to enter into an arrangement for such services with a tertiary hospital, facility or provider other than BIDMC or HMFP.

ARTICLE VI

REGULATORY MATTERS

6.1. Compliance with Laws. Essent, BIDMC and HMFP shall comply in all material respects with all Federal, state and local laws, rules and regulations and JCAHO accreditation standards applicable to the performance of the parties' respective obligations under this Agreement and any Supplemental Agreement and Addendum, including, without limitation, the matters discussed in Sections 6.2, 6.3, 6.4, 6.5 and 6.6 below.

6.2. Determinations of Need. If, pursuant to this Agreement or any Supplemental Agreement or Addendum, (a) BIDMC agrees to provide, (b) BIDMC agrees to assist Essent in providing, or (c) Essent and BIDMC agree to engage in a joint activity that provides, any service that requires a Determination of Need from the DPH, the parties shall make timely application for such Determination of Need and shall use their best efforts and work cooperatively to obtain

such Determination of Need, provided, however, that, unless such activity is provided under BIDMC's license, Essent shall have the final obligation to obtain such Determination of Need.

6.3. Licensing. If, pursuant to this Agreement or any Supplemental Agreement or Addendum, (a) BIDMC agrees to provide, (b) BIDMC agrees to assist Essent in providing, or (c) Essent and BIDMC agree to engage in a joint activity that provides, any service that requires a license from DPH or another regulatory body, or modification of a then currently held license from DPH or another regulatory body, the parties shall make timely application for such license and shall use their best efforts and work cooperatively to obtain such license or license modification, provided, however, that, unless such activity is provided under BIDMC's license, Essent shall have the final obligation to obtain appropriate licensing.

6.4. Anti-Kickback Restrictions.

6.4.1. Essent, BIDMC and HMFP shall comply in all respects with fraud and abuse, anti-kickback, self-referral and similar provisions of federal and state laws, rules and regulations prohibiting the inducement of referrals of patients for services or items reimbursable under the Medicare, Medicaid, TriCare or other federal or state governmental healthcare programs.

6.4.2. Without limiting the generality of the foregoing, the parties agree and acknowledge that the terms, obligations and agreements set forth in this Agreement, and in each Supplemental Agreement and Addendum, and the arrangements pursuant to which payments are made, facilities are furnished or services are rendered hereunder and thereunder shall be determined and paid on the basis of fair market value, and are not payment for, are not in any way contingent upon, and are not intended to induce:

6.4.2.1. the admission or referral of any individual to any physician, office or facility employed, controlled, managed or operated by any of the parties or any of their respective affiliates, for the furnishing or arranging for the furnishing of items or services, including items or services for which payment may be made in whole or in part under Medicare, Medicaid, TriCare or otherwise, or

6.4.2.2. the purchase, lease, order, or arrangement for, or the recommendation for the purchasing, leasing, ordering or arranging for, any good, facility, service or item, including any good, facility, service or item for which payment may be made in whole or in part under Medicare, Medicaid or otherwise.

6.4.3. THE PARTIES FURTHER AGREE THAT NOTHING IN THIS AGREEMENT IS INTENDED TO INFLUENCE THE JUDGMENT OF ANY PHYSICIAN IN CHOOSING THE MEDICAL FACILITY OR FACILITIES APPROPRIATE FOR THE PROPER CARE AND TREATMENT OF HIS OR HER PATIENTS. THE PARTIES HEREBY AGREE AND SUPPORT A PATIENT'S RIGHT TO SELECT THE MEDICAL FACILITY OR FACILITIES OF HIS OR HER CHOICE. MOREOVER, NOTHING IN THIS AGREEMENT

SHALL BE CONSTRUED AS IN ANY WAY RESTRICTING A PHYSICIAN FROM ESTABLISHING STAFF PRIVILEGES OR MEDICAL STAFF MEMBERSHIP AT, REFERRING ANY SERVICE TO, OR OTHERWISE GENERATING ANY BUSINESS FOR, ANY OTHER HOSPITAL OR OTHER ENTITY OF HIS OR HER CHOOSING.

6.5. HIPAA. Essent, BIDMC and HMFP shall comply in all material respects with the standards for privacy of individually identifiable health information of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996, and the rules and regulations promulgated thereunder, all as the same may be amended from time to time (collectively, “**HIPAA**”). Prior to the date when compliance with the regulations implementing HIPAA is required pursuant thereto, Essent, BIDMC and HMFP shall enter into a Supplemental Agreement that sets forth the respective responsibilities of each of the parties to comply with HIPAA in accordance with the parties’ respective roles with respect to the particular services and activities provided or engaged in by the parties.

6.6. Access to Books and Records. Upon written request of the Secretary of Health and Human Services or the Comptroller General or any duly authorized representative thereof, BIDMC and HMFP, or any other related organization providing services with a value or cost of Ten Thousand Dollars (\$10,000.00) or more over a twelve (12) month period, shall make available to the Secretary those contracts, books, documents and records necessary to verify the nature and extent of the cost of providing its services. Such inspection shall be available up to four (4) years after such services are rendered.

ARTICLE VII

FEDERAL INCOME TAX MATTERS

7.1. Tax-exempt Status. BIDMC is a not-for-profit corporation that has been recognized as exempt from Federal income taxes pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “**Code**”). The Code, and the regulations of the United States Treasury promulgated thereunder, impose certain requirements, conditions and restrictions (collectively, “**Income Tax Requirements**”) on the manner in which BIDMC may provide services to or otherwise enter into business arrangements with Essent without jeopardizing or adversely affecting BIDMC’s tax-exempt status.

7.2. Furtherance of Exempt Purposes. It is understood and agreed that BIDMC and Essent share a community service area comprised of Ayer, Massachusetts and the surrounding areas (the “**Service Area**”), and it is intended that the arrangement among Essent, BIDMC and HMFP as provided in this Agreement, and the services to be provided by BIDMC and HMFP and the joint activities undertaken by Essent, BIDMC and HMFP, are intended to further BIDMC’s exempt purposes by, among other things:

7.2.1. Improving and enhancing the availability, quality and cost-effectiveness of health care services in the Service Area;

7.2.2. Improving patient convenience and access to physicians in the Service Area; and

7.2.3. Maintaining health care and education programs for the benefit of the Service Area community.

7.3. Compliance with Income Tax Requirements.

7.3.1. BIDMC (a) will not participate with Essent in any arrangement that does not conform with the Income Tax Requirements, and (b) will only provide services to Essent or participate in joint activities with Essent pursuant to financial and other arrangements in a manner by which BIDMC conforms with the Income Tax Requirements.

7.3.2. Nothing contained in this Agreement or in any Supplemental Agreement or Addendum shall require or be deemed to require BIDMC to participate in any financial or other arrangement or otherwise act in any manner that BIDMC in its sole discretion believes could cause BIDMC to violate the Income Tax Requirements.

7.3.3. BIDMC's financial and other arrangements in relation to Essent always will ensure that such arrangements do not entail involvement by BIDMC in any activities of Essent that do not conform with the Income Tax Requirements.

7.3.4. In the event that BIDMC, at any time, in its sole discretion believes that any financial or other arrangements between BIDMC and Essent, whether pursuant to the provisions of this Agreement or any Supplemental Agreement or Addendum or otherwise, could cause BIDMC to violate the Income Tax Requirements, then BIDMC will, at its option, terminate this Agreement or BIDMC's participation in such services or activities as provided in Article XI below.

7.3.5. All financial and other arrangements pursuant to which BIDMC provides services pursuant to this Agreement and any Supplemental Agreement or Addendum (a "**Service**"), and all joint ventures, partnerships, or corporations formed by Essent and BIDMC pursuant to this Agreement and any Supplemental Agreement or Addendum (a "**Venture**"), shall be structured, as applicable, to ensure that BIDMC acts in furtherance of its exempt purposes and not, other than incidentally, for the benefit of Essent or any other for-profit participant, and in this regard:

7.3.5.1. All financial and other arrangements relating to a Service or a Venture shall ensure that Essent does not derive improper financial gain;

7.3.5.2. All financial and other arrangements relating to a Venture shall provide for a proportionate allocation of profits, losses, and tax items;

7.3.5.3. Fair market value consideration shall be paid to Essent, BIDMC and any other participants that provide services, products or facilities relating to a Service or a Venture;

7.3.5.4. To the extent that the following may be applicable to a particular Venture or with respect to a particular Service in which BIDMC contributes capital, the obligation of BIDMC to contribute such capital shall be limited to the capital it agrees to contribute to the Venture or with respect to the Service;

7.3.5.5. To the extent that the following is required by the Code and may be applicable to a particular Venture, supermajority voting rights will be vested in representatives of BIDMC with respect to significant operational matters, including, without limitation, amendments to governing documents, disposition of assets, changes in the activities of the Venture, and management and similar contracts with the Venture; and

7.3.5.6. The Services, and the services provided pursuant to any Venture, shall be made available to all members of the community without regard to their ability to pay, and in accordance with Medicaid and Medicare program participation agreements.

ARTICLE VIII

COMPENSATION

8.1. Tertiary Resources. The parties have agreed to enter into the tertiary resources provisions of this Agreement in exchange for the mutual covenants, promises, and obligations contained herein. BIDMC and HMFP shall be compensated for its services under Article V hereof pursuant to a mutually agreed upon and reasonable rate. In addition, remuneration for BIDMC and HMFP professional services will be set forth in the appropriate Supplemental Agreement or Addendum hereto.

ARTICLE IX

ADVISORY BOARD

9.1 Advisory Board. As of Closing and for the term of this Agreement, a BIDMC representative shall sit on Essent's Advisory Board, described in Section 12.2.7 of the Asset Purchase Agreement. BIDMC shall nominate such representative and such nomination shall be subject to the approval of Essent, which approval shall not be unreasonably withheld. Essent may remove any BIDMC representative from the Advisory Board in its reasonable discretion, in which case BIDMC shall nominate a replacement representative. BIDMC may remove any BIDMC representative from the Advisory Board in its reasonable discretion, in which case BIDMC shall nominate a replacement representative. Notwithstanding any of the foregoing: (i) Essent shall not withhold approval of, or disapprove, a representative nominated by BIDMC; (ii)

Essent shall not remove any BIDMC representative; and (iii) BIDMC shall not remove any BIDMC representative, except in any such case after prior consultation between the chief executive officer of Essent and the chief executive officer of BIDMC.

ARTICLE X

INDEMNIFICATION AND INSURANCE

10.1. Indemnification.

10.1.1. BIDMC shall indemnify, defend and hold harmless Essent, Essent Parties (as defined in subsection 10.1.3 below), and its and their respective heirs, successors and assigns from and against all (a) actions, suits, claims, investigations or legal or administrative or arbitration proceedings, whether at law or in equity in any forum (collectively, "**Claims**") arising in connection with the performance of BIDMC's obligations under this Agreement or any Supplemental Agreement or Addendum including, but not limited to, acts of commission, omission or misconduct (collectively, the "**Acts**") by or on behalf of BIDMC or any of its members, directors, officers, representatives, agents, consultants, employees or any other person or entity with whom BIDMC is in privity of oral or written contract (collectively, "**BIDMC Parties**"); (b) liabilities arising in connection with this Agreement or any Supplemental Agreement or Addendum, out of BIDMC's or BIDMC Parties' negligent Acts concerning its or their duties and obligations as set forth in this Agreement or any Supplemental Agreement or Addendum; and (c) damages, losses, costs and expenses, including but not limited to, attorney's and other professionals' fees, that may arise out of such Claims and/or liabilities for bodily injury, death and/or property damage, but only to the extent caused by the negligent acts or omissions of BIDMC, anyone directly or indirectly employed by BIDMC or anyone for whose acts they may be liable. BIDMC shall not be responsible for indemnifying or holding Essent or Essent Parties harmless from any liability arising due to the act or omission, or willful misconduct, of Essent or Essent Parties, or any other person or entity acting under the direct control or supervision of Essent who is not among the BIDMC Parties.

10.1.2. HMFP shall indemnify, defend and hold harmless Essent, Essent Parties (as defined in subsection 10.1.3 below), and its and their respective heirs, successors and assigns from and against all (a) actions, suits, claims, investigations or legal or administrative or arbitration proceedings, whether at law or in equity in any forum (collectively, "**Claims**") arising in connection with the performance of HMFP's obligations under this Agreement or any Supplemental Agreement or Addendum including, but not limited to, acts of commission, omission or misconduct (collectively, the "**Acts**") by or on behalf of HMFP or any of its members, directors, officers, representatives, agents, consultants, employees or any other person or entity with whom HMFP is in privity of oral or written contract (collectively, "**HMFP Parties**"); (b) liabilities arising in connection with this Agreement or any Supplemental Agreement or

Addendum, out of HMFP's or HMFP Parties' negligent Acts concerning its or their duties and obligations as set forth in this Agreement or any Supplemental Agreement or Addendum; and (c) damages, losses, costs and expenses, including but not limited to, attorney's and other professionals' fees, that may arise out of such Claims and/or liabilities for bodily injury, death and/or property damage, but only to the extent caused by the negligent acts or omissions of HMFP, anyone directly or indirectly employed by HMFP or anyone for whose acts they may be liable. HMFP shall not be responsible for indemnifying or holding Essent or Essent Parties harmless from any liability arising due to the act or omission, or willful misconduct, of Essent or Essent Parties, or any other person or entity acting under the direct control or supervision of Essent who is not among the HMFP Parties.

10.1.3. Essent shall indemnify, defend and hold harmless BIDMC, BIDMC Parties, HMFP, HMFP Parties, and their respective heirs, successors and assigns from and against all (a) Claims arising in connection with the performance of Essent's obligations under this Agreement or any Supplemental Agreement or Addendum including, but not limited to, Acts by or on behalf of Essent or any of its members, directors, officers, representatives, agents, consultants, employees or any other person or entity with whom Essent is in privity of oral or written contract (collectively, "**Essent Parties**"); (b) liabilities arising in connection with this Agreement or any Supplemental Agreement or Addendum, out of Essent's or Essent Parties' negligent Acts concerning its or their duties and obligations as set forth in this Agreement or any Supplemental Agreement or Addendum; and (c) damages, losses, costs and expenses, including but not limited to, attorney's and other professionals' fees, that may arise out of such Claims and/or liabilities for bodily injury, death and/or property damage, but only to the extent caused by the negligent acts or omissions of Essent, anyone directly or indirectly employed by Essent or anyone for whose acts they may be liable. Essent shall not be responsible for indemnifying or holding BIDMC or BIDMC Parties or HMFP or HMFP Parties, respectively, harmless from any liability arising due to the act or omission, or willful misconduct, of BIDMC or BIDMC Parties or HMFP or HMFP Parties, respectively, or any other person or entity acting under the direct control or supervision of BIDMC or HMFP, respectively, who is not among the Essent Parties.

10.2. BIDMC Liability Insurance.

10.2.1. BIDMC, at its expense, shall, throughout the Term of this Agreement, maintain in full force and effect comprehensive general liability insurance, professional liability insurance and other insurance coverage specified below in such amounts as are customary for similar institutions. All policies of insurance shall provide that Essent shall be provided 30 days' prior written notice before cancellation of any such policies. BIDMC shall maintain such insurance as will protect Essent and Essent Parties from the claims set forth below that may arise as a result of BIDMC's performance or failure to perform its obligations pursuant to this Agreement or any Supplemental Agreement or Addendum, whether such performance or failure to perform is attributable to BIDMC or

to anyone directly or indirectly employed by BIDMC, or to anyone for whose acts or omissions BIDMC may be liable.

10.2.1.1. Claims under workers' compensation, disability benefit and other similar employee benefit acts;

10.2.1.2. Claims for damages because of bodily injury, occupational sickness or disease, or death of its employees under applicable employer's liability law;

10.2.1.3. Claims for damages because of bodily injury, or death of any person other than BIDMC's employees which result from the BIDMC's activities pursuant to this Agreement or any Supplemental Agreement or Addendum; and

10.2.1.4. Claims for damages insured by personal injury liability coverage and professional liability coverage which are sustained (a) by any person as a result of an action directly or indirectly related to the employment of such person by BIDMC, or (b) by any other person resulting from the performance by BIDMC or any failure by BIDMC to perform its obligations under this Agreement or any Supplemental Agreement or Addendum.

10.2.2. Self-Insurance. At its option in its sole discretion, BIDMC may self-insure against one or more of the perils specified in subsection 10.2.1.1 or 10.2.1.2 above.

10.3. HMFP Liability Insurance.

10.3.1. HMFP, at its expense, shall, throughout the Term of this Agreement, maintain in full force and effect comprehensive general liability insurance, professional liability insurance and other insurance coverage specified below in such amounts as are customary for similar institutions. All policies of insurance shall provide that Essent shall be provided 30 days' prior written notice before cancellation of any such policies. HMFP shall maintain such insurance as will protect Essent and Essent Parties from the claims set forth below that may arise as a result of HMFP's performance or failure to perform its obligations pursuant to this Agreement or any Supplemental Agreement or Addendum, whether such performance or failure to perform is attributable to HMFP or to anyone directly or indirectly employed by HMFP, or to anyone for whose acts or omissions HMFP may be liable.

10.3.1.1. Claims under workers' compensation, disability benefit and other similar employee benefit acts;

10.3.1.2. Claims for damages because of bodily injury, occupational sickness or disease, or death of its employees under applicable employer's liability law;

10.3.1.3. Claims for damages because of bodily injury, or death of any person other than HMFP's employees which result from the HMFP's activities pursuant to this Agreement or any Supplemental Agreement or Addendum; and

10.3.1.4. Claims for damages insured by personal injury liability coverage and professional liability coverage which are sustained (a) by any person as a result of an action directly or indirectly related to the employment of such person by HMFP, or (b) by any other person resulting from the performance by HMFP or any failure by HMFP to perform its obligations under this Agreement or any Supplemental Agreement or Addendum.

10.3.2. Self-Insurance. At its option in its sole discretion, HMFP may self-insure against one or more of the perils specified in subsection 10.3.1.1 or 10.3.1.2 above.

10.4. Essent Liability Insurance.

10.4.1. Essent, at its expense, shall, throughout the Term of this Agreement, maintain in full force and effect comprehensive general liability insurance, professional liability insurance and other insurance coverage specified below in such amounts as are customary for institutions similar to the Hospital. All policies of insurance shall provide that BIDMC and HMFP shall be provided 30 days' prior written notice before cancellation of any such policies. Essent shall maintain such insurance as will protect BIDMC, BIDMC Parties, HMFP and HMFP Parties from the claims set forth below that may arise as a result of Essent's performance or failure to perform its obligations pursuant to this Agreement or any Supplemental Agreement or Addendum, whether such performance or failure to perform is attributable to Essent or to anyone directly or indirectly employed by Essent, or to anyone for whose acts or omissions Essent may be liable.

10.4.1.1. Claims under workers' compensation, disability benefit and other similar employee benefit acts;

10.4.1.2. Claims for damages because of bodily injury, occupational sickness or disease, or death of its employees under applicable employer's liability law;

10.4.1.3. Claims for damages because of bodily injury, or death of any person other than Essent's employees which result from Essent's activities pursuant to this Agreement or any Supplemental Agreement or Addendum; and

10.4.1.4. Claims for damages insured by personal injury liability coverage and professional liability coverage which are sustained (a) by any person as a result of an action directly or indirectly related to the employment of such person by Essent, or (b) by any other person resulting from the performance by Essent or any failure by Essent to perform its obligations under this Agreement or any Supplemental Agreement or Addendum.

10.4.2. Self-Insurance. At its option in its sole discretion, Essent may self-insure against one or more of the perils specified in subsection 10.4.1.1 or 10.4.1.2 above.

10.5. Waiver of Subrogation. The policies of insurance required to be obtained pursuant to the provisions of this Article X shall contain waivers by the insurer(s) of their rights of subrogation against all insureds.

10.6. Evidence of Insurance. Essent shall, upon request, deliver to BIDMC and HMFP, and BIDMC and HMFP shall, upon request, deliver to Essent, reasonably satisfactory evidence that the insurance coverages required pursuant to this Article X are in full force and effect.

ARTICLE XI

EVENTS OF DEFAULT AND TERMINATION

11.1. Events of Default. In addition to any other rights and remedies that may be available to the parties under applicable law, each party shall have the right to terminate this Agreement by giving written notice to the other parties in the event that any of the following **Events of Default** occurs and is continuing:

11.1.1. Any warranty, representation or other statement of a party contained in this Agreement or in any Supplemental Agreement or Addendum is false or misleading in any material respect and cannot be cured within thirty (30) days after notice to the breaching party;

11.1.2. The institution by or against a party of bankruptcy or similar proceedings having the same effect, either voluntary or involuntary, under any Federal or state statute, an assignment by a party for the benefit of creditors, or the appointment of a receiver for a party;

11.1.3. Failure of a party to maintain insurance as required by Article X;

11.1.4. Failure of a party to perform or observe any other material covenants, agreements or conditions prescribed in this Agreement or under any Supplemental Agreement or Addendum, including agreements to provide professional services in the manner and quantity specified in a Supplemental Agreement, and the continuance thereof for a period of thirty (30) days after notice thereof from the non-defaulting party or parties; and

11.1.5. Upon the institution of an investigation regarding or indictment for or conviction of a felony or of any other crime directed against a party involving moral turpitude or immoral conduct, including any crime involving third party reimbursement or billing, or any action regarding submission of false claims to any payor.

11.2. Additional Rights to Terminate.

11.2.1. In addition to the right to terminate as provided in Section 11.1 above, each party shall have the right to terminate this Agreement as provided in subsection 12.9.2 below by giving thirty (30) days written notice to the other parties.

11.2.2. In addition to the right to terminate as provided in Sections 11.1 and 11.2.1 above, each party shall each have the right to terminate this Agreement without cause by giving one hundred twenty (120) days written notice to the other parties. Essent agrees that it shall not exercise its right to terminate without cause under this Section 11.2.2 without the majority approval of its Advisory Board.

11.2.3. In addition to the right to terminate as provided in Sections 11.1, 11.2.1 and 11.2.2. above, this Agreement shall terminate automatically if Closing has not occurred on or before January 31, 2003.

11.3. Termination of Certain Obligations; Survival of Certain Obligations. All obligations of the parties under this Agreement and, except as may be specifically provided therein to the contrary, under any Supplemental Agreement and Addendum, shall cease and terminate upon the termination of this Agreement. Notwithstanding the foregoing, (a) the termination of this Agreement shall not affect the liability of a party for breach of any provision of this Agreement or any Supplemental Agreement or Addendum occurring or arising prior to termination, (b) the provisions of Sections 6.6 and 10.1 above shall survive any such termination, and (c) the termination of any Supplemental Agreement or Addendum, pursuant to the termination provisions set forth therein, shall not result in the termination of this Agreement or any other Supplemental Agreement or Addendum without complying with termination provisions set forth in such other agreement.

11.4. Wind-down of Services and Ventures. In the event of the termination of this Agreement in whole or in part, the parties shall cooperate to wind-down and discontinue the Services and Ventures in an orderly manner and as consistent as practicable with the rights, benefits and obligations of the parties as set forth in this Agreement and the Supplemental Agreements and Addenda in light of the circumstances. Notwithstanding any such wind-down, the parties will give primary consideration to the quality of patient care provided at the Hospital, and make every effort to ensure that an appropriate level of such quality of care is maintained throughout the wind-down period. The parties acknowledge that in some cases this may require the continued care of patients by BIDMC or HMFP in accordance with the terms of this Agreement and the Supplemental Agreements and Addenda until the earlier of 1) the appropriate transition of the patient's care to another provider, or 2) the appropriate discharge of the patient from Essent's continuing care.

ARTICLE XII GENERAL PROVISIONS

12.1. Supplemental Agreements and Addenda. Each Supplemental Agreement and Addendum shall be subject to all of the provisions of this Agreement, which are hereby incorporated in each Supplemental Agreement and Addendum in the same manner and with the same effect as if such provisions were set forth in their entirety in each Supplemental Agreement and Addenda. In the event of any conflict between any provisions of this Agreement and any Supplemental Agreement or Addendum, the provisions set forth in the Supplemental Agreement or Addendum shall control except as may be specifically provided to the contrary.

12.2. Retention of Authority. Notwithstanding any delegation of authority with respect to specific responsibilities pursuant to any Supplemental Agreement or Addendum, each of the parties shall retain authority and control over the governance, management and operation of their respective businesses, activities and facilities. Without limiting the generality of the foregoing, none of the parties shall be responsible for nor have control over the means, methods or manner of delivery of services by the other parties or their agents, employees, physicians or other personnel, and none of the parties shall be responsible for the actions or omissions of the other parties or their agents, employees, physicians or other personnel.

12.3. No Partnership or Joint Venture. BIDMC and HMFP are each independent contractors that are being engaged by Essent to provide specific services, and except as may be specifically provided in a Supplemental Agreement or Addendum for the formation of a partnership or joint venture with respect to a particular Service or Venture, nothing in this Agreement is intended to create any partnership or joint venture by, between or among the parties, or by, between or among the parties and any of their respective affiliates. Except as may be specifically provided in a Supplemental Agreement or Addendum, none of the parties nor any of their respective agents or employees shall be deemed to be the agent, partner, co-venturer, employee or representative of another party.

12.4. No Assumption of Liabilities. By entering into and performing their respective obligations under this Agreement and any Supplemental Agreement and Addendum, none of the parties assumes or shall become liable for any of the existing or future obligations, liabilities, debts, commitments or undertakings of another party, or of any of its respective affiliates. Without limiting the generality of the foregoing, neither BIDMC nor HMFP shall be responsible for Essent's compliance with the terms and conditions of any regulatory approvals obtained by Essent in connection with Essent's acquisition or lease of the Hospital assets.

12.5. No Joint and Several Liability. The obligations of the parties under this Agreement and under each Supplemental Agreement and Addendum shall be separate and several, not joint and several, and neither the parties nor their respective affiliates shall have any obligation for any obligations, liabilities, debts, commitments or undertakings of the other parties or their affiliates.

12.6. Expenses. Except as may be specifically provided in a Supplemental Agreement or Addendum, each party hereto shall bear all expenses incurred by such party in connection with the negotiation, preparation, execution and performance of this Agreement and each Supplemental Agreement and Addendum. If legal action is commenced by any party to enforce

or defend its rights under this Agreement, or under any Supplemental Agreement or Addenda, the prevailing party in such action shall be entitled to recover costs and reasonable attorneys' fees in addition to any other relief granted.

12.7. Press Releases and Public Announcements. Except as required by law, neither Essent nor BIDMC nor HMFP shall issue any press release, make any public announcement or otherwise disclose any information for the purpose of publication by any print, broadcast or other public media, relating to the execution and delivery of this Agreement or any Supplemental Agreement or Addendum, without the prior approval of the other parties, which will not be unreasonably withheld.

12.8. Notices. All notices, demands, claims, requests, undertakings, consents and other communications which may or are required to be given under this Agreement or under a Supplemental Agreement or Addendum, or with respect hereto or thereto, shall be given by (a) personal delivery, (b) certified mail, return receipt requested, (c) recognized national overnight courier services, or (d) facsimile transmission, addressed to the respective parties as follows:

(a) If to Essent:

Essent Healthcare – Ayer, Inc.
3100 West End Avenue, Suite 900
Nashville, TN 37203
Attn: W. Hudson Connery, Jr., Chief Executive Officer
Fax: (615) 312-5101

With a copy to:

Kennedy Covington Lobdell & Hickman, L.L.P.
Post Office Box 14210
Research Triangle Park, NC 27709
Attn: Patricia T. Meador
Fax: 919-831-7040

(b) If to BIDMC:

Beth Israel Deaconess Medical Center, Inc
330 Brookline Avenue
Boston, Massachusetts 02215
Attn: Paul F. Levy, Chief Executive Officer
Fax: 617-667-3526

With a copy to:

CareGroup, Inc.

375 Longwood Avenue
Boston, Massachusetts 02215
Attn: General Counsel
Fax: 617-632-7135

(b) If to HMFP:

Harvard Medical Faculty Physicians at Beth Israel Deaconess Medical Center, Inc.
110 Francis Street
Boston, Massachusetts 02215
Attn: Chief Executive Officer
Fax: 617-667-4921

or to such other address or number, and to the attention of such other person or officer, as each party may designate, at any time, in writing in conformity with these notice provisions.

12.9. Severability.

12.9.1. In the event that any governmental or ethical law, rule or regulation is adopted or amended, or if any administrative ruling or judicial interpretation is issued or modified, relating to matters affecting tax-exempt organizations and their affiliates, or to the provision of services or items to beneficiaries of the Medicaid, Medicare or other governmental programs, or otherwise relating to the practice of medicine or any other matter contemplated by this Agreement and any Supplemental Agreement or Addendum, with the effect that any provision of this Agreement or of any Supplemental Agreement or Addendum becomes illegal, invalid or unenforceable, and if the rights or obligations of the parties under this Agreement or any Supplemental Agreement or Addendum will not be materially and adversely affected thereby and the parties will not be subjected to an onerous financial or other burden on account thereof, (a) such provision will be fully severable; (b) this Agreement and the Supplemental Agreement and Addendum will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof or thereof; (c) the remaining provisions of this Agreement and all Supplemental Agreements and Addendum will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision of by its severance herefrom or therefrom; and (d) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement and each Supplemental Agreement or Addendum, as applicable, a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible. In the event there is any dispute between or among the parties as to the applicability of any provision of this subsection 12.9.1, other than any matter involving the applicability of the Income Tax Requirements, the parties shall obtain a legal opinion from a law firm selected by the parties with nationally recognized expertise in healthcare law. The law firm's opinion shall be binding on all of the parties.

12.9.2. In the event of the adoption of any governmental law, rule or regulation, or any administrative or judicial interpretation, as described in subsection 12.9.1 above, which materially and adversely affects the rights or obligations of the parties under this Agreement or any Supplemental Agreement or Addendum, or which subjects one or more of the parties to an onerous financial or other burden on account thereof, then (a) the parties shall attempt to renegotiate this Agreement and any applicable Supplemental Agreements and Addenda in a manner intended to provide the parties with the benefits contemplated by this Agreement and the applicable Supplemental Agreements and Addenda, or (b) if reasonable efforts to renegotiate this Agreement are not successful, any party may terminate this Agreement as provided in Article XI above.

12.10. Drafting. No provision of this Agreement or any Supplemental Agreement or Addendum shall be interpreted for or against any party hereto or thereto on the basis that such party was the draftsman of such provision, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement or any Supplemental Agreement or Addendum.

12.11. Choice of Law. This Agreement, and each Supplemental Agreement and Addendum, shall be governed by and construed in accordance with the internal laws of the Commonwealth of Massachusetts without regard to any conflict of laws.

12.12. Assignment. No party may assign this Agreement or any Supplemental Agreement or Addendum, or any of its rights, benefits or obligations hereunder or thereunder, without first obtaining the express written consent of the other parties, which consent may be withheld in the other parties' sole discretion. Notwithstanding the foregoing, (a) BIDMC shall have the right to designate any firm or entity under the control of BIDMC, or under common control with BIDMC, as the party to provide any Service or participate in any Venture pursuant to the provisions of any Supplemental Agreement or Addendum, and BIDMC may assign its rights, benefits and obligations under any such Supplemental Agreement or Addendum to such firm or entity, provided that BIDMC shall continue to be responsible for all rights, benefits or obligations with respect thereto, (b) HMFP shall have the right to designate any firm or entity under the control of HMFP, or under common control with HMFP, as the party to provide any Service or participate in any Venture pursuant to the provisions of any Supplemental Agreement or Addendum, and HMFP may assign its rights, benefits and obligations under any such Supplemental Agreement or Addendum to such firm or entity, provided that HMFP shall continue to be responsible for all rights, benefits or obligations with respect thereto, and (c) Essent shall have the right to designate any firm or entity under the control of Essent, or under common control with Essent, as the party to provide any Service or participate in any Venture pursuant to the provisions of any Supplemental Agreement or Addendum, and Essent may assign its rights, benefits and obligations under any such Supplemental Agreement or Addendum to such firm or entity, provided that Essent shall continue to be responsible for all rights, benefits or obligations with respect thereto.

12.13. Benefit. This Agreement, and each Supplemental Agreement and Addendum, shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and permitted assigns.

12.14. No Third Party Beneficiaries. The terms and provisions of this Agreement and each Supplemental Agreement and Addendum are intended solely for the benefit of the parties hereto and thereto and their respective successors and permitted assigns, and it is not the intention of the parties to confer third-party beneficiary rights upon any other person or entity.

12.15. Waiver of Breach. The waiver by any party of a breach or violation of any provision of this Agreement or of any Supplemental Agreement or Addendum shall not operate as, or be construed to constitute, a waiver of any subsequent breach of the same or any other provision hereof or thereof.

12.16. Interpretation. In this Agreement and in each Supplemental Agreement and Addendum, unless the context otherwise requires:

- (a) Subject to the provisions of Section 12.12, references to any party to this Agreement or to any Supplemental Agreement or Addendum shall include references to its respective successors and permitted assigns;
- (b) References to any document (including this Agreement and any Supplemental Agreement or Addendum) are references to that document as amended, consolidated, supplemented, novated or replaced by the parties from time to time in accordance with the applicable provisions of this Agreement and the Supplemental Agreements and Addenda;
- (c) Each representation, warranty and covenant contained herein shall have independent significance and, if any party hereto has breached any representation, warranty or covenant contained herein in any respect, the fact that there exists another representation, warranty or covenant relating to the same subject matter (regardless of the relative levels of specificity) which such party has not breached shall not detract from or mitigate the fact that the party is in breach of the first representation, warranty or covenant; and
- (d) The gender of all words herein shall include the masculine, feminine and neuter, and the number of all words shall include the singular and plural.

12.17. Survival. All of the representations, warranties, covenants and agreements made by the parties in this Agreement and in any Supplemental Agreement and Addendum or pursuant hereto or thereto, may be fully and completely relied upon by the parties hereto, notwithstanding any investigation heretofore or hereafter made by any of them or on behalf of any of them, and shall not be deemed merged into any other instrument, document or agreement.

12.18. Divisions and Headings. The divisions of this Agreement into sections and subsections and the use of captions and headings in connection therewith are solely for convenience and shall have no legal effect in construing the provisions of this Agreement or any Supplemental Agreement or Addendum.

12.19. Force Majeure. No party shall be liable nor deemed to be in default for any delay or failure in performance under this Agreement or other interruption of service which is caused, directly or indirectly, by acts of God, military authority, acts of public enemy, terrorism, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, machinery or supplies, vandalism, strikes or other work interruptions beyond the reasonable control of the party. However, all parties shall make good faith efforts to perform their respective obligations under this Agreement and under any Supplemental Agreement or Addendum in the event of any such circumstances.

12.20. Entire Agreement; Amendment. This Agreement supersedes all previous agreements and understandings between or among the parties with respect to the subject matter hereof, and constitutes the entire agreement of whatsoever kind or nature existing between or among the parties with respect to the subject matter hereof and no party shall be entitled to any rights or benefits, or shall have any obligations to the others, other than those specified herein and in all Supplemental Agreements and Addenda. The parties specifically acknowledge that in entering into and executing this Agreement, the parties rely solely upon the representations and agreements contained in this Agreement and in all Supplemental Agreements and Addenda and no others. All prior representations or agreements, whether written or verbal, not expressly incorporated herein or in a Supplemental Agreement or Addendum are superseded unless and until made in writing and signed by all parties, and no oral statement or prior written material not specifically incorporated herein shall be of any force and effect. This Agreement may not be amended or modified except by a written instrument executed by all of the parties hereto.

12.21. Counterparts. This Agreement, and each Supplemental Agreement and Addendum, may be executed in several counterparts by only one of the undersigned and all such counterparts so executed shall together be deemed and constitute one final agreement, as if one document had been signed by all parties hereto or thereto; and each such counterpart shall be deemed an original, binding the parties subscribed hereto or thereto, and multiple signature pages affixed to a single copy of this Agreement or any Supplemental Agreement or Addendum shall be deemed to be a fully executed original agreement.

IN WITNESS WHEREOF, Essent, BIDMC and HMFP have executed this Agreement on the date(s) set forth below.

ESSENT HEALTHCARE -- AYER, INC.

Date _____

By _____

Its _____

Hereunto duly authorized

**BETH ISRAEL DEACONESS MEDICAL CENTER,
INC.**

Date _____

By _____

Paul F. Levy
Its Chief Executive Officer
Hereunto duly authorized

**HARVARD MEDICAL FACULTY PHYSICIANS AT
BETH ISRAEL DEACONESS MEDICAL CENTER,
INC.**

Date _____

By _____

Its _____
Hereunto duly authorized