

- 3.28.3 telephone number;
- 3.28.4 facsimile number; and
- 3.28.5 e-mail address.

Declaration by Tenderer

- 3.29 The tender submission must include a signed declaration in the form contained in Part C of this Request for Tender.

Execution

- 3.30 The tender submission must be signed for and on behalf of the tenderer by a director or duly authorised representative of the tenderer having the authority to make the declarations set out in Part C of this Request for Tender and to bind the tenderer. The name, office and authority of the person signing the tender submission on behalf of the tenderer must be clearly stated.

4 Evaluation of tender

Process of evaluation

- 4.1 All complying tender submissions will be considered by HPV. The evaluation process is expected to take three weeks from the closing date of the tender.

Evaluation of tenders

- 4.2 The criteria that will be used by HPV to evaluate a tender submission will include the following:
- 4.2.1 ability to meet the Health Services operational needs;
 - 4.2.2 overall price rates and ultimate cost to the Health Services, including any discounts;
 - 4.2.3 tenderer's willingness to pay nurses the relevant Industrial Award or Enterprise Bargaining Agreement rate;
 - 4.2.4 ability to provide consistent and reliable services;
 - 4.2.5 financial viability;
 - 4.2.6 workforce capabilities and the tenderer's key personnel who will be devoted to providing the services;
 - 4.2.7 past experience and current work;
 - 4.2.8 responsiveness of services;
 - 4.2.9 operational stability;
 - 4.2.10 depth and strength of management;

- 4.2.11 a commitment to support all reasonable requests made by Health Services personnel;
 - 4.2.12 relevant quality management, risk management, industrial relations and occupational health and safety policies and standards;
 - 4.2.13 references provided by tenderer; and
 - 4.2.14 acceptance of terms and conditions of the Service Agreement.
- 4.3 The criteria in clause 4.2 are not listed in any particular order of importance.

HPV may request additional information

- 4.4 HPV may request a tenderer to submit additional information concerning the tender before any tender is accepted.

HPV may require tenderer to demonstrate

- 4.5 HPV may require a tenderer to demonstrate to its satisfaction that the tenderer is able to meet the requirements of this Request for Tender.

Presentation

- 4.6 A tenderer may be required to present its tender submission to HPV management.

HPV has absolute discretion

- 4.7 HPV has absolute discretion in relation to the evaluation of tenders and the selection of a preferred or successful tenderer and in particular, HPV:
- 4.7.1 is not bound to accept the lowest priced tender;
 - 4.7.2 may accept one or more tenders;
 - 4.7.3 is not bound to accept any tender;
 - 4.7.4 is not bound to enter into an agreement relating to the provision of the services;
 - 4.7.5 may accept a tender which has variations requested by HPV only of that tenderer and subsequent to its submission;
 - 4.7.6 may accept a tender either conditionally or unconditionally;
 - 4.7.7 may refuse to consider a non-conforming tender; and
 - 4.7.8 reserves the right to accept non-conforming tenders.
- 4.8 HPV is not under any obligation to:
- 4.8.1 enter into discussions with tenderers in relation to the rejection of any tender submission; or

4.8.2 give reasons for not accepting any of the tenders.

4.9 Tenderer's attention is specifically drawn to Part A clause 3 of this Request for Tender, which states that the appointment of successful tenderer(s) will not occur if HPV does not receive authorisation for this tender process and the appointment of successful tenderer(s) from the ACCC.

5 Selection and appointment

Appointment of one or more preferred tenderers

5.1 HPV may select one or more preferred tenderers by notice in writing. That does not mean that HPV has accepted any tender. It simply means that the preferred tenderers are entitled to negotiate with HPV and that in the course of such negotiations the terms of the Services Agreement may change. HPV may request further information from each of the preferred tenderers. HPV may subsequently appoint a preferred tenderer as the successful tenderer or as a member of a panel of suppliers, however, it does not have to do so.

Appointment of successful tenderer

5.2 When HPV has selected one or more successful tenderers, it will notify the successful tenderer(s) in writing.

No right of recourse

5.3 A tenderer is not entitled, in any jurisdiction, to challenge any decision by HPV, including the following decisions:

5.3.1 to appoint one or more preferred tenderers or successful tenderers;

5.3.2 to enter into a contract with one or more preferred tenderers or successful tenderers; or

5.3.3 to cancel a tender at any time.

6 Services Agreement

Successful tenderer(s) to enter into Services Agreement

6.1 The successful tenderer(s) will be required to enter into a Services Agreement with HPV as agent for each Health Service substantially in the form set out in Part D of this Request for Tender. The Services Agreement sets out the terms and conditions upon which the services will be provided.

Amendments proposed by tenderers

6.2 As indicated in clause 3.2.3 of Part B of this Request for Tender, tenderers are to indicate whether they accept the terms and conditions of the Services Agreement. If tenderers do not accept a term or condition of the Services Agreement, they must clearly mark the Services Agreement with the

amendments required and provide an explanation as to why that amendment is required.

Services Agreement

- 6.3 HPV and the Health Services reserve the right to include amendments to the Services Agreement in the course of the tender process or in the negotiation of the Services Agreement.

Entry into Services Agreement

- 6.4 When HPV advises a tenderer that it is the successful tenderer pursuant to clause 5.2, HPV will:
- 6.4.1 attach the Services Agreement to the notification in the form agreed to by the parties for execution by the successful tenderer; or
 - 6.4.2 arrange a time with the successful tenderer for the parties to execute the Services Agreement.

Services Agreement to be final

- 6.5 The Services Agreement executed by HPV and the successful tenderer(s) will exclusively govern the relationship between the parties and each Health Service for the term of the agreement.

Failure to execute Services Agreement

- 6.6 Without prejudice to any of its other rights, if the tenderer fails to execute the Services Agreement within 2 weeks of the date the tenderer receives notification that it was the successful tenderer, HPV may, at its sole discretion, cancel its award of the tender to the tenderer and recover from the tenderer any losses HPV and the Health Services have sustained as a consequence of the tenderer's failure to fulfil its obligations.

Part C: Tender Submission

Tender Submission in response to the Request for Tender for Temporary Nursing Services Ref No: HPV 001/2001

To: Health Purchasing Victoria

Declaration

Having examined the Request for Tender and being fully satisfied as to the tenderer's abilities and experience in all aspects to satisfy the requirements of the Request for Tender, the tenderer hereby submits this tender to HPV as a binding and irrevocable offer to provide the services being tendered for:

- on the terms and conditions set out in the Tender Conditions; and
- on the basis of the prices quoted and information provided in the tenderer's submission in accordance with the Tender Conditions.

By submitting this tender, the tenderer undertakes and covenants that it has observed all relevant statutory and other regulatory authority requirements in the formulation of its tender submission and has not:

- accepted or provided secret commissions;
- entered into any improper commercial arrangements with any other tenderer;
- colluded with other tenderers; or
- sought to influence decisions by improper means.

Signed for and on behalf of the tenderer by a director or duly authorised representative of the tenderer having the authority to make the declarations set out above and to bind the tenderer.

Signature

Name (please print)

Position (please print)

Part D: Services Agreement

Draft 1.0
30 November 2001



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Sydney
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Hanoi
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**Provision of Temporary Nursing Services to
Melbourne and Geelong
Public Health Services**
Health Purchasing Victoria
(insert Contractor's name)

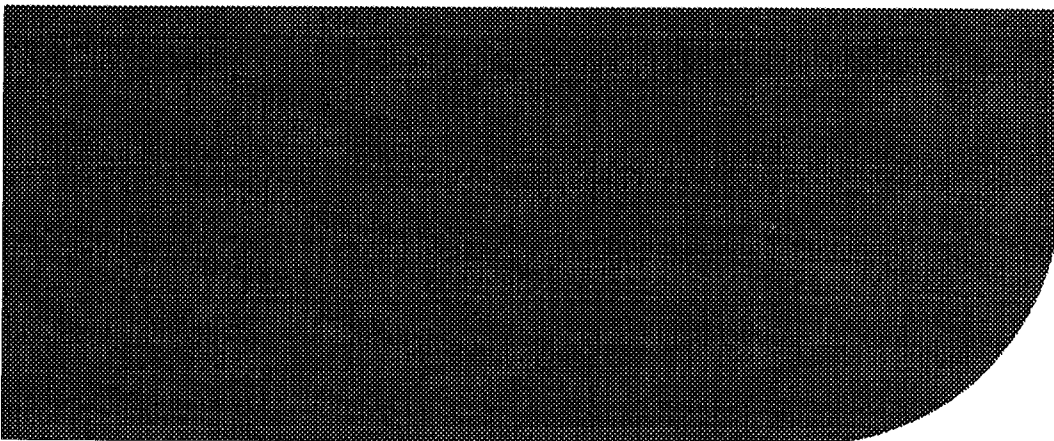


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Parties

Health Purchasing Victoria ABN (insert ABN) of 260 Kooyong Road, Caulfield, Victoria in its own right and as agent for the Health Services named in Schedule 1 (HPV)

(insert name) ABN (insert ABN) of (insert address) (the **Contractor**)

Recitals

- A. The MHS is a body corporate pursuant to the provisions of *Health Services Act* 1988 and is the appointed agent for those Health Services named in Schedule 1 for the purposes of executing this Agreement.
- B. The Contractor is XX.
- C. In (insert date), HPV called for tender submissions for the provision of temporary nursing services to each Melbourne metropolitan public health service, Barwon Health and the Sisters of Charity Health Service. The Contractor was one of the successful tenderers selected by HPV.
- D. In reliance upon the representations made by the Contractor during and after the tender process referred to in Recital C, HPV and the Health Services named in Schedule 1 wish to appoint the Contractor (and the Contractor accepts this appointment) to provide temporary nursing services to those Health Services on the terms and conditions contained in this document.

Operative provisions

1 Contract Period

Commencement and Expiry Dates

- 1.1 This Agreement shall commence on XX ("the Commencement Date") and shall remain in force until XX, unless otherwise terminated or extended in accordance with this document. This document replaces all previous arrangements and agreements which a Health Service may have with the Contractor in relation to the Services.

Extension of Agreement

- 1.2 No later than 6 months prior to the expiry date shown in clause 1.1, one or more of the Health Services shall notify the Contractor whether it wishes to enter into a new agreement for a further period of up to 2 years. If one or more of the Health Services do wish to enter into a new agreement, the new agreement shall

be upon the same terms and conditions as this document except that this clause 1.2 shall be deleted.

- 1.3 The new agreement referred to in clause 1.2 shall be made in writing between the Contractor and the Health Services and shall be executed prior to the expiry of this document.

2 Temporary Nursing Services to be provided

Service Provision

- 2.1 During the Contract Period the Contractor makes a standing offer to provide the Services to the Health Services, at the rates specified in Schedule 3 in accordance with the terms and conditions contained in this document.

Request for services

- 2.2 If a Health Service requires the Contractor to provide the Services it shall notify the Contractor, either orally or in writing, of the Nursing Services the Health Service requires.
- 2.3 If the Contractor is able to provide the Nursing Services requested by a Health Service, the Contractor shall confirm this with the Health Service, either in writing or orally as soon as possible.

Failure to discharge duties

- 2.4 If the Contractor is unable or unwilling to carry out, perform or discharge its duties, responsibilities or obligations under this document on any particular occasion then in addition to any other rights which the Health Services may exercise, the Health Services shall be at liberty to retain or engage any other entity or person to provide the required temporary nursing services as may be considered necessary in the circumstances.

Exclusivity

- 2.5 Subject to the provisions of this document and subject to the Contractor fulfilling all of its obligations under this document to the reasonable satisfaction of each of the Health Services, the Contractor, together with the entities named in Schedule 5 shall have sole rights to provide temporary nursing services to the Health Services during the Contract Period.

Nurse bank services

- 2.6 Nothing in this document prevents the Health Services from having, promoting or utilising their own nurse banks.

Causes beyond the Contractor's control

- 2.7 The Contractor shall not be responsible for any failure to comply with the terms of this document or for any delay in the performance of any of the obligations imposed by this document where such failure or delay is due to causes beyond the control of the Contractor provided the Contractor has made all reasonable efforts to remedy or overcome the cause of failure or delay. In the event of any such failure or delay, the Contractor's obligations under this document which cannot be fulfilled shall be suspended until the failure or delay can be reasonably rectified.

Causes

- 2.8 The causes referred in clause 2.7 shall include sabotage, act of God and labour disputes.

Records

- 2.9 The Contractor must keep detailed, full and proper records of the amount and nature of Nursing Services provided pursuant to this document.
- 2.10 The Contractor must keep the records referred to in clause 2.9 for at least 7 years after the expiry or termination of this document and shall make them available to the Health Services, upon request. For the avoidance of doubt, such a request may be made after the expiry or termination of this document.

3 Standard of service

Service standards

- 3.1 The Services shall, at all times, be provided to the highest practicable standard.

Quality of service

- 3.2 The Contractor recognises the necessity for and commits itself to a philosophy of continuous improvement in quality of service and professional standards. The Contractor will maintain and develop policies, procedures and training activities utilised by it to enable the Services to be provided to the standard required by clause 3.1. The Contractor shall produce evidence of these policies, procedures and training activities to a Health Service when requested by that Health Service.

Confidential Information

- 3.3 The Contractor and the Contractor's staff shall regard as confidential and shall not disclose to any person other than a person approved by the Authorised Officer any information acquired by the Contractor or the Contractor's staff in or in connection with the provision of the Services, concerning the Health Services, their staff or procedures. The Contractor shall ensure that its staff are made

aware and comply with the provisions of Section 141 of the *Health Services Act* 1988 which relates to the unlawful disclosure of patient information.

- 3.4 Failure to observe the terms of clause 3.3 will be regarded as serious misconduct which requires disciplinary action to be taken by the Contractor against an offender. The Health Services may, in consequence of a breach of the obligations imposed under clause 3.3, insist that the nurse involved not be assigned for duty with that Health Service in future.

Disclosure of information

- 3.5 The Contractor consents to the Health Services and/or HPV publishing the name of the Contractor, the value of this document and the terms and conditions of this document generally.

Performance Indicators

- 3.6 The Contractor shall ensure the Services conform with the Performance Indicators set out in Schedule 4. Failure to comply with those indicators shall entitle the Health Services to:
- 3.6.1 require more frequent reporting and monitoring of the Contractor's performance of the Services, the extent of which shall be in the Health Services' absolute discretion; and/or
 - 3.6.2 impose the financial reductions specified in Schedule 4. The parties acknowledge that the reductions are a genuine pre-estimate of the loss which would have been suffered by the Health Services as a result of the Contractor's acts or omissions and is not intended to be a penalty.

Non-compliance with the Performance Indicators may also be taken into account by the Health Services when considering whether to extend this Agreement. Nothing in this clause affects the rights contained in clause 14.

4 Authorised Officers

- 4.1 The person designated by each Health Service as the Authorised Officer, or that person's successor, shall be the duly authorised representative of that Health Service for all purposes connected with this document. Any notice, information or communication given by or made to an Authorised Officer shall be deemed to have been given or made to the Health Service which appointed the officer. The Authorised Officers at the date of this document are named in Schedule 1.
- 4.2 Each Health Service shall give notice in writing to the Contractor of any subsequent appointment as its Authorised Officer. Until notice of a subsequent appointment shall have been given, the Contractor shall be entitled to treat as

Authorised Officer the person last notified by each Health Service to the Contractor as being the Authorised Officer.

5 Contractor's Representative

- 5.1 The Contractor shall appoint one of its senior staff to be the Contractor's Representative.
- 5.2 The Contractor's Representative shall be the duly authorised representative of the Contractor for all purposes connected with this document. Any notice, information, instruction or other communication given or made to the Contractor's Representative shall be deemed to have been given or made to the Contractor.
- 5.3 The Contractor shall forthwith give notice in writing to the Authorised Officers of the identity of the person appointed Contractor's Representative and any subsequent appointment. Until notice of a subsequent appointment shall have been given the Health Services shall be entitled to treat as the Contract Representative the person last notified by the Contractor as being the Contractor's Representative.
- 5.4 The Contractor shall ensure that the Contractor's Representative or a competent deputy duly authorised to act on his or her behalf is available for consultation with the Health Services between 8.30am and 5.30pm on weekdays other than public holidays.
- 5.5 The Contractor shall inform the Authorised Officers of the administrative arrangements made by the Contractor whereby one of its employees acts as deputy for the Contractor's Representative under clause 5.4.
- 5.6 The Contractor's Representative or his or her deputy shall consult with the Authorised Officers and the Health Services' staff as often as may reasonably be necessary for the efficient provision of the Services in accordance with the terms of this document.

6 Agency nurses

Use of Health Service staff

- 6.1 The Contractor cannot provide and a Health Service will not accept Nursing Services from a person who is a current member of that Health Service's permanent staff.

Payment of nurses

- 6.2 The Health Services expect that nurses providing the Nursing Services will be remunerated by the Contractor on the basis of the relevant Industrial Award or Enterprise Bargaining Agreement which apply to those nurses.

Staff standards

- 6.3 The Contractor represents and warrants that all persons engaged in the provision of the Services are competent, hold appropriate professional qualifications and hold and maintain all such practice registrations as may be required by law.
- 6.4 Without limiting the generality of clause 6.3, the Contractor shall ensure that each of the following requirements are satisfied with respect to each nurse who provides the Nursing Services:
- 6.4.1 the relevant nurses must be registered on the Roll held by the Nurses Board of Victoria in Division 1, 2 or 3. Current registration certificates must be available for inspection at the request of the manager of the area in which a nurse is deployed;
 - 6.4.2 an appropriate representative of the Contractor has interviewed the nurses and found him/her suitable, appropriately qualified and experienced for the task for which he/she is being provided;
 - 6.4.3 an appropriate representative of the Contractor has checked the employment references of the nurses and deemed them to be suitable to perform the services which are to be supplied;
 - 6.4.4 an appropriate representative of the Contractor has been satisfied that the nurses have demonstrated basic competency in the clinical area and speciality for which they are being provided.
- 6.5 The Contractor shall undertake annual performance reviews of its staff to ensure that they remain suitable for the services which they provide. The Contractor shall make the findings of those reviews available to the Health Services on request.
- 6.6 The Contractor shall accept any feedback which it receives in relation to the standards of service and performance issues from the Health Services and shall take all necessary steps to address any issues which it considers to be valid.

Compliance with policies, rules, procedures and standards

- 6.7 The Contractor, in providing the Nursing Services, shall ensure that its staff comply with the policies, rules, procedures and standards of the Health Service to whom the Nursing Services are provided, as amended from time to time.

Medically fit

- 6.8 The Contractor shall ensure that all staff it employs or engages to provide Nursing Services are medically fit to provide that service.

Orientation programs

- 6.9 A Health Service shall provide orientation programs for the Contractor's staff when considered necessary by that Health Service.

Training and instruction

- 6.10 The Contractor shall ensure that every person engaged by the Contractor in relation to the provision of the Nursing Services is at all times properly and sufficiently qualified, trained and instructed with regard to:
- 6.10.1 the clinical speciality for which they are engaged by a Health Service;
 - 6.10.2 all relevant rules, procedures and standards of the Health Service for whom they provide services;
 - 6.10.3 all relevant legislation, rules and procedures regarding occupational health and safety at work;
 - 6.10.4 the need for those working in a public hospital environment to observe the highest standards of hygiene, courtesy and consideration;
 - 6.10.5 infection control provisions; and
 - 6.10.6 the competencies specified in clause 6.4.4.

Responsibility for engagement/employment and conditions of service

- 6.11 The Contractor shall be entirely responsible for the engagement/employment and conditions of service of the nurses who provide the Nursing Services. As such, the Contractor shall meet all payment obligations to such nurses and shall pay all statutory taxes, fees, levies or charges applicable with respect to the engagement of or payments made to those nurses. The Contractor shall comply with all reasonable requests from the Health Services for verification of such payment obligations.
- 6.12 The fees payable in accordance with this document are inclusive of Payroll tax and if this document is deemed to be an "employment agency contract" within the meaning of the *Payroll Tax Act 1971*, the Contractor shall pay the payroll tax on behalf of the Health Services with respect to all wages paid or payable as defined in that Act.

- 6.13 The Contractor shall register with the Commissioner of State Revenue for the purpose of payment of such tax and shall keep all appropriate records of tax paid on behalf of the Health Services.
- 6.14 The Contractor shall provide quarterly reports to the Health Services as to the wages declared, the tax paid, and the specific employees to whom the wages and payment relate.
- 6.15 The Contractor indemnifies each Health Service, its officers, servants, employees and agents and shall keep them indemnified against:
 - 6.15.1 Any obligation to make any payment to the Contractor's staff and other personnel engaged in the provision of the Services; and
 - 6.15.2 Any obligation to pay any related statutory taxes, fees, levies or charges.
- 6.16 The Contractor shall provide, on request by a Health Service, copies of standard form contracts between the Contractor and its staff in relation to their employment/engagement with the Contractor.

Industrial disputes

- 6.17 If the Services to be provided by the Contractor under this document are reduced during industrial disputes involving the Contractor's own staff or its suppliers of goods or services, the Contractor shall be required to co-operate with the Authorised Officer in order to ensure, as far as is reasonably possible, the continued provision of the Services. If in such circumstances, the Contractor is unable to provide a reasonably adequate level of services to the Health Services, directly or through an approved sub-contractor, then the Health Services shall be at liberty to obtain the Services elsewhere for the duration of the dispute. In so doing the Health Services shall not be or deemed to be in breach of any term of this document.

Staff behaviour

- 6.18 The Contractor shall ensure that its staff carry out their duties and behave at a Health Services' premises in such a way as not to cause disruption to the activities of the Health Services.

Unsuitable staff

- 6.19 If the Authorised Officer gives written notice to the Contractor that a person who is engaged in providing the Services is an unacceptable person and the reasons for that decision, the Contractor will not use that person in the provision of the Services.

Smoking

- 6.20 The Contractor shall prohibit its staff from smoking within a Health Service's premises and within 15 metres of any entrance to a Health Service except if a Health Service permits smoking in any designated area at its premises, the staff of the Contractor are permitted to smoke in that designated area.

Presentation

- 6.21 The Contractor's staff shall, at all times while at a Health Service's premises be properly and presentably dressed in appropriate uniforms of a standard equal to that of the Health Service's own staff engaged on reasonably comparable duties. At a minimum, the staff shall have:

- 6.21.1 trousers or skirts (no shorts);
- 6.21.2 white shirt or blouse;
- 6.21.3 clean and tidy appearance; and
- 6.21.4 footwear appropriate to the tasks carried out by the staff.

The cost of uniforms or other work wear shall not be borne by the Health Services.

Identification badge

- 6.22 The Contractor shall provide and shall require its staff to wear at all times when on the premises of a Health Service, an identification badge in such form as may be agreed or in default of agreement as specified by the Authorised Officer. The Contractor shall supply the badge, at its own cost.

Relevant legislation, statutory rules and enactments

- 6.23 The Contractor shall ensure that its staff comply with all relevant legislation, statutory rules and other enactments applicable to its operations or staff which concern safety of its activities, occupational health or safety at work.

WorkCover

- 6.24 The Contractor warrants that it is registered as an employer in accordance with the requirements of the *Accident Compensation Act* 1985 and that its insurance arrangements relating to its employees are and will remain current during the Contract Period.
- 6.25 At the beginning of each financial year throughout the Contract Period and upon request by a Health Service, the Contractor shall provide to each Health Service to whom they provide the Services, a Certificate of Currency for WorkCover in respect to all staff provided to that Health Service pursuant to this document.

7 Assignment or Transfer

- 7.1 The Contractor shall not sub-contract any part of the provision of the Services in respect of a Health Service without the prior approval in writing of that Health Service.
- 7.2 The Contractor shall not transfer or assign this document or any part of this document in respect of a Health Service without the prior approval in writing of that Health Service, which approval may be granted or denied by the Health Service in its absolute discretion.
- 7.3 The following shall be deemed to be an assignment for the purposes of clause 7.2:
 - 7.3.1 a change of 40% or more of the beneficial interest in the Contractor; and/or
 - 7.3.2 a change of 40% or more in the registered owners of the issued capital of the Contractor.
- 7.4 For the purposes of clause 7.3 “a change” shall be measured from the Commencement Date or the date of any assignment granted by the Health Services, whichever is the later.

8 Indemnity to the Health Services

- 8.1 The Contractor shall be liable for and shall indemnify each Health Service (‘the indemnified Health Service’), its officers, servants, employees and agents against any liability, loss, claim or proceedings whatsoever arising under any statute or at common law in respect of:
 - 8.1.1 The provision of the Services by or on behalf of the Contractor under this document;
 - 8.1.2 Any negligence or other wrongful act or omission of the Contractor or the Contractor’s staff, employees, or agents or of any other person for whose acts or omissions the Contractor is vicariously liable;
 - 8.1.3 Any damage to property, real or personal, including any infringement of third party patents, copyright and registered designs;
 - 8.1.4 Any injury to persons, including injury resulting in death and economic loss; and
 - 8.1.5 Any breach of this document by the Contractor.

- 8.2 The Contractor's liability under this clause shall be reduced to the extent to which any action, proceeding, claim or demand arises out of any negligence or other wrongful act or omission of the indemnified Health Service or any person for whose acts or omissions that Health Service is legally liable.
- 8.3 The indemnity contained in this clause shall be continuous and shall survive the expiry or termination of this document.

9 Insurance

General requirement

- 9.1 Without prejudice to the Contractor's liability to indemnify the Health Services under clause 8, the Contractor shall throughout the Contract Period maintain such insurances as are necessary to indemnify the Contractor and the Health Services against the costs associated with any liability which may be incurred by the Contractor under this document.

Specific obligations

- 9.2 At the time of execution of this document the Contractor shall provide to HPV documentary evidence suitable to the reasonable requirements of the Health Services that the Contractor has effected liability insurance with a reputable insurer approved by the Health Services (which approval shall not be unreasonably withheld) and has paid the full premium required by such insurer. Such insurance shall:
- 9.2.1 be maintained continuously throughout the Contract Period;
 - 9.2.2 be written on a claims made basis;
 - 9.2.3 contain a minimum limit of indemnity in respect of any one occurrence or series of occurrences arising out any one event of \$10 million and an aggregate limit of indemnity in respect of any one year of \$10 million;
 - 9.2.4 provide indemnity, coverage and benefits equivalent to the indemnity, coverage and benefits (other than limits of indemnity) provided by the Victorian Managed Insurance Authority, on behalf of the Health Services,, as amended from time to time;
 - 9.2.5 provide retro-active coverage unlimited as to date; and
 - 9.2.6 provide indemnity in respect of injury, loss or damage caused by or arising from the use of diagnostic equipment or procedures involving the omission of ionising radiations;

- 9.2.7 not include any exclusion relating to human immuno-deficiency virus or acquired immune deficiency syndrome.

In the event that the Contractor cannot or does not comply with all of the provisions of this clause, the Health Services may (but are not obliged to) effect insurance which so complies at the expense of the Contractor which expense shall be promptly paid by the Contractor to the Health Services.

Documentary evidence

- 9.3 The Contractor shall upon request produce to the Authorised Officer documentary evidence that the insurances required under this clause are current and effective.

10 Contract Payments

Fee payable

- 10.1 Subject to the remainder of this clause, unless a Health Service and the Contractor agree on a lower rate of fees, each Health Service shall pay to the Contractor the fees set out in Schedule 3 in respect of the Services purchased by that Health Service which are satisfactorily delivered in the reasonable opinion of the purchasing Health Service.

Discounts

- 10.2 The Health Services shall be entitled to those discounts specified in Schedule 3 if the criteria for discounts (as stated in that Schedule) have been satisfied.

Reduced fees

- 10.3 If a Health Service and the Contractor agree on a lower rate of fees than those specified in Schedule 3 that lesser rate shall apply in lieu of the fees set out in Schedule 3 in respect of that Health Service.

Variation of fees

- 10.4 The fees set out in Schedule 3 shall be varied in accordance with the provisions of that Schedule.

Other fees

- 10.5 The only sums payable by the Health Services for the provision of the Services shall be the sums specified in this clause 10. All other costs, charges, fees and expenses of whatever kind for or arising out of or in connection with the provision of the Services shall be paid by the Contractor.

Payment terms

- 10.6 The sum payable under the terms of this clause 10 shall be paid by the Health Services who have purchased the Services to the Contractor monthly in arrears. The Contractor shall submit an invoice at the end of each completed month of the Contract Period to the Health Service to whom the Services have been provided and the that Health Service shall pay such amounts as may properly be due to the Contractor under the terms of this document within 30 days of the receipt of that invoice.

Invoice requirements

- 10.7 Any invoice submitted by the Contractor to a Health Service in accordance with this clause 10 shall be in such form and contain such information and particulars as are reasonably required by the Health Service. At a minimum the invoices shall:
- 10.7.1 Satisfy the requirements of clause 11; and
 - 10.7.2 Show the working hours recorded on the timesheet signed by an authorised employee of the relevant Health Service.

11 Goods and Services Tax

- 11.1 Terms used in this clause have the same meaning as those terms in *A New Tax System (Goods and Services Tax) Act 1999*
- 11.2 The fees referred to in clause 10 and Schedule 3 includes any amount of GST that the Health Service is required to pay in relation to the supply made by the Contractor.
- 11.3 The Contractor must issue a tax invoice in the format required by the law to the Health Service for the supply made to that Health Service. The tax invoice must set out the amount of the GST payable by that Health Service. The tax invoice must be issued at the same time as the consideration for the supply is due from the Health Service.
- 11.4 The Contractor warrants that it is registered or will be registered for Australian Business Number and for GST purposes at each time a taxable supply is made. The Contractor must continually indemnify each Health Service for any loss it suffers as a result of the Contractor not being registered for Australian Business Number and GST purposes. On request by a Health Service, the Contractor must produce evidence that it is registered.
- 11.5 Each party must do everything reasonable to assist each other party to comply with its GST obligations in relation to this document.

12 Use of the Health Services' Premises

Access to premises and staff facilities

- 12.1 The Health Services shall during the Contract Period permit the Contractor and its staff to have reasonable access to its premises and staff facilities (excluding car parking) as is reasonably necessary and appropriate for the provision of the Services.

Car parking

- 12.2 The Contractor's staff shall be entitled to access parking areas at the Health Services designated for use by members of the public, when those areas are available and at the rates determined by the relevant Health Service from time to time.

Use of premises and staff facilities

- 12.3 The Contractor shall use the premises and facilities referred to in clause 12.1 only in connection with the provision of the Services and shall ensure that the Contractor's staff use those premises and facilities only for that purpose.

Personal permission

- 12.4 The permission hereby given to use the said facilities is personal to the Contractor and the Contractor's staff and shall cease immediately this document ceases to be in force. Only the Contractor's own staff involved in the provision of the Services may enter or use any part of the Health Service's premises without the prior written permission of that Health Service's Authorised Officer

13 Default

Consequences of default

- 13.1 If the Contractor fails to provide any part of the Services to a Health Service ('the dissatisfied Health Service') at any time when they ought to have been provided, or to the standard required to be provided, under the terms of this document then, without prejudice to any other right or remedy which the dissatisfied Health Service may possess in respect of such failure, that Health Service may subject to clauses 2.7 and 2.8:
- 13.1.1 require the Contractor to remedy the default in a reasonable manner and within a reasonable time as may be specified in writing by the Authorised Officer; and/or
 - 13.1.2 without terminating this document in whole or in part, themselves provide or procure the provision by others of that part of the Services until the Contractor has proved to the reasonable satisfaction of the

Chief Executive Officers of the dissatisfied Health Service that the Services will once more be provided by the Contractor to the standard and in the manner and at the times required by this document; and/or

- 13.1.3 without terminating the whole of this document, terminate this document in respect of such part of the Services only and thereafter themselves provide or procure from others such part of the Services.

Successive remedies

- 13.2 The remedies of the Health Services under clause 13.1 may be exercised successively in respect of any given default by the Contractor.

Recovery of costs

- 13.3 The Health Services may recover such proportion of the cost of any services procured or provided by it in accordance with this clause as exceeds the amount which would otherwise have been payable under the terms of this document to the Contractor if the Contractor had provided such services, together with an administration charge equal to 10% of the additional cost. This amount may be recovered by the Health Services from the Contractor by deduction from any payment otherwise due from the Health Services to the Contractor.

14 Termination

Right of termination

- 14.1 If, in the reasonable opinion of an Authorised Officer, any of the Services required to be provided by the Contractor under this document are not being satisfactorily performed or the Contractor is not meeting any of its obligations under this document, and the procedures specified in clause 15.1 have been followed without a resolution reasonably satisfactory to the Health Service concerned having been achieved, then subject to clauses 2.7 and 2.8, that Health Service may:
 - 14.1.1 by notice in writing to the Contractor specify in what respect the Services are unsatisfactory and/or the breach of the Contractor's obligations relied on by the Health Service; and
 - 14.1.2 if after 7 days from the notification has been served, the Authorised Officer of the Health Service exercising its rights is still of the reasonable opinion that the Services (in whole or in part) continue to be performed unsatisfactorily;
 - 14.1.3 the Health Service may terminate this document in whole or in part on giving 7 days' notice in writing. This termination shall not afford to the Contractor a ground for any claim for damages, compensation or costs

or expenses of any kind but shall not prejudice the rights of either party in respect of any antecedent breach of the Agreement.

Acts of insolvency

14.2 If the Contractor or any proprietor of the Contractor:

14.2.1 suspends payment;

14.2.2 convenes or holds a meeting of creditors;

14.2.3 commits or takes or proposes any compromise or makes any arrangement with the Contractor's creditors or any arrangement for the benefit of such creditors; or

14.2.4 any judgment against the Contractor (for more than \$1,000) shall remain unsatisfied for more than 14 days;

then the occurrence of any of such contingencies shall constitute a breach of this document.

Consequence of breach

14.3 If a breach of this document in accordance with clause 14.25 the Health Services may, without prejudice, to any of its other remedies under this document and without prejudice to any rights of action which shall accrue or shall have already accrued to the Health Services suspend payment to the Contractor and retain any amounts due to the Contractor pursuant to this document or otherwise from the Health Services.

Termination by a Health Service

14.4 Termination of this document by a Health Service does not terminate this document in relation to the other Health Services and the Contractor. In this circumstance, the remaining parties must continue to abide by their obligations under this document and the Contractor cannot seek to recover any costs as a result of the number of parties being reduced, from the remaining parties. From the date that a Health Service terminates this document all references to "the Health Services" or "a Health Service" in this document shall be deemed to be a reference to the Health Service(s) which remain bound by this document.

15 Dispute resolution

15.1 In the event of a disagreement arising between a Health Service ('the Health Service in dispute') and the Contractor in relation to the Services or any matter the subject of this document (other than an issue to which clause 14 applies), that Health Service and the Contractor will adhere to the following procedure:

- 15.1.1 in the first instance, the Authorised Officer of the Health Service in dispute and a representative of the Contractor shall meet and endeavour to resolve the dispute in an expeditious and informal manner.
- 15.1.2 If the dispute is not resolved within three working days of the meeting referred to in clause 15.1.1, the Chief Executive Officer of the Health Service in dispute and the proprietors of the Contractor shall meet for the purpose of endeavouring to resolve such dispute expeditiously and informally.
- 15.1.3 If the parties cannot resolve the dispute in accordance with the above procedures, within ten working days of the initial meeting referred to in clause 15.1.1, either party in dispute may give the other a notice requiring that an attempt be made to resolve the dispute with the help of a mediator to be appointed jointly by those parties. If the parties do not agree on a mediator within 7 days after the notice is given, the mediator is to be appointed by The Institute of Arbitrators and Mediators Australia. The mediation is to be conducted in accordance with the Institute's Rules for Mediation of Commercial Disputes. Each disputing party must co-operate fully with the mediator. Each disputing party must pay an equal share of the fees and expenses the mediator is entitled to.
- 15.2 Pending determination of any dispute under this document, the parties agree that each will continue to adhere to and perform all of their respective obligations under this document.

16 Notices

Giving notices

- 16.1 A notice, consent, information, application or request that must or may be given or made to a party under this document is only given or made if it is in writing and:
 - 16.1.1 delivered or posted to that party at its address set out below; or
 - 16.1.2 faxed to that party at its fax number set out below.

If a party gives the other party 3 business days' notice of a change of its address or fax number, a notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or faxed to the latest address or fax number.

HPV and the Health Services:

Chief Executive
Health Purchasing Victoria
260 Kooyong Road
Caulfield Vic 3162

Fax: (03) 9276 6781

The Contractor:

(insert address and fax details of the Contractor)

Time notice is given

16.2 A notice, consent, information, application or request is to be treated as given or made at the following time:

16.2.1 if it is delivered, when it is left at the relevant address;

16.2.2 if it is sent by post, 2 business days after it is posted; or

16.2.3 if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

If a notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, after the normal business hours of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

17 Miscellaneous

Costs

17.1 Except as otherwise agreed by the parties in writing, each party must pay its own costs in relation to preparing, negotiating and executing this document and any document related to this document.

Entire agreement

17.2 This document contains everything the parties have agreed on in relation to the provision of the Services. No party can rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that party, before this document was executed, save as permitted by law.

Execution of separate documents

- 17.3 This document is properly executed if each party executes either this document or an identical document. In the latter case, this document takes effect when the separately executed documents are exchanged between the parties.

Further acts

- 17.4 The parties will promptly do and perform all acts and things and execute all documents as may from time to time be required, and at all times will act in good faith, for the purposes of or to give effect to this document.

Governing law and jurisdiction

- 17.5 This document is governed by the law of the State of Victoria. The parties submit to the non-exclusive jurisdiction of its courts. The parties will not object to the exercise of jurisdiction by those courts on any basis.

No agency or partnership

- 17.6 No party is an agent, representative, partner of any other party by virtue of this document.

Status of the Health Services

- 17.7 Each Health Service is entitled to exercise its rights under this document independently of the other Health Services. The Contractor acknowledges that the Health Services are not jointly liable for each others actions. For the avoidance of doubt, the rights and obligations of each Health Service are identical, and may be exercised and enforced without reference to any of the other Health Services.

No authority to act

- 17.8 No party has any power or authority to act for or to assume any obligation or responsibility on behalf of another party, to bind another party to any agreement, negotiate or enter into any binding relationship for or on behalf of another party or pledge the credit of another party except as specifically provided in this document or by express agreement between the parties.

Severability

- 17.9 If a clause or part of a clause of this document can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this document, but the rest of this document is not affected.

Time for action

- 17.10 If the day on or by which something is required to be done or may be done is not a business day, that thing must be done on or by the next business day.

Variation

- 17.11 No variation of this document will be of any force or effect unless it is in writing and signed by the parties to this document.

Waiver

- 17.12 The fact that a party fails to do, or delays in doing, something the party is entitled to do under this document, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

18 Definitions and Interpretation

Definitions

- 18.1 In this document, unless the contrary intention appears:

“**Agency Services**” shall mean the co-ordination and provision of the Nursing Services to be provided by the Contractor pursuant to this document.

“an **Authorised Officer**” shall mean the representative of a Health Service, as referred to in clause 4.

“**Contract Period**” shall mean the period during which this document remains in force.

“**Contractor’s Representative**” means the person appointed by the Contractor in accordance with clause 5.

“**Health Services**” means the health services named in Schedule 1 and “Health Service” means any one of them.

“**Nursing Services**” means the nursing services provided by the Contractor’s staff pursuant to this document and as described in Schedule 2.

“**Performance Indicators**” means the Performance Indicators set out in Schedule 4.

“**the Services**” shall mean the Agency Services and the Nursing Services.

Interpretation

- 18.2 In this document, unless the context otherwise requires:
- 18.2.1 a reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
 - 18.2.2 a reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time;
 - 18.2.3 a reference to a recital clause or schedule is a reference to a recital, clause or schedule in this document;
 - 18.2.4 an expression importing a natural person includes any company, trust, partnership, joint venture, association, corporation, body corporate or governmental agency;
 - 18.2.5 a reference to a business day means a day on which all banks are open for business generally in Melbourne, Victoria;
 - 18.2.6 a covenant or agreement on the part of two or more persons binds them jointly and severally; and
 - 18.2.7 the schedules form part of this document.

Execution

EXECUTED as an Agreement

Date:

Signed for and on behalf of **Health**)
Purchasing Victoria in its own right)
and as agent for the Health Services the)
presence of:)

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Signed for and on behalf of **the**)

Contractor in the presence of:)

)

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