

- 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. The parties acknowledge that the fees set out in Schedule 3 in respect of the Services purchased by that Health Service must comply with the requirements set out in clauses 10.1.1 and 10.1.2.

- 10.2 A temporary nurse supplied by the contractor to perform nursing services that would otherwise be performed by a permanently employed nurse must be engaged and paid at the same grade as the permanently employed nurse.

- 10.3 The maximum price payable to the contractor for the supply of a temporary nurse must not exceed:

- 80% above the basic Award / EBA rate for the replacement grade nurse; plus
- 15% above the allowances provision included in the Award / EBA for the replacement grade nurse.

Discounts

- 10.210.4 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

10.310.5 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

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

Other fees

10.510.7 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

10.610.8 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 then 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

10.710.9 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:

10.7.110.9.1 Satisfy the requirements of clause 11; and

10.7.210.9.2 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:)

.....

Signed for and on behalf of **the**)
Contractor in the presence of:)
)
)

.....

SCHEDULE 1 - The Health Services and their Authorised Officers

Metropolitan Health Service	Sites	Authorised Officer
Southern Health	Monash Medical Centre – Clayton	
	Monash Medical Centre – Moorabbin	
	Dandenong Hospital	
	Kingston Centre	
	Hampton Hospital	
	Berwick Hospital (from 2004)	
Bayside Health	The Alfred Hospital	
	Caulfield General Medical Centre	
	Sandringham Hospital	
Royal Vic Eye & Ear Hospital	East Melbourne	
	RVEEH at Broadmeadows Health Service	
	RVEEH at Maroondah Hospital	
Peter MacCallum Cancer Institute	East Melbourne campus	
	Box Hill campus	
	Moorabbin campus	

Provision of Temporary Nursing Services

Western Health	Western Hospital	
	Sunshine Hospital	
	Williamstown Hospital	
	Reg Geary Nursing Home	
	Hazeldean Nursing Home	
	Drug & Alcohol Services	
Dental Health Services Victoria	Royal Dental Hospital of Melbourne	
Sisters of Charity Health Service	St. Vincent's Hospital Melbourne	
	St Georges Health Service	
	Caritas Christi Hospice Fitzroy Kew	
	Prague House	
Northern Health	The Northern Hospital	
	Broadmeadows Health Service	
	Bundoora Extended Care Centre	
Melbourne Health	The Royal Melbourne Hospital	
	Melbourne Extended Care and Rehabilitation Services at Cyril Jewel House (East Keilor),	

Provision of Temporary Nursing Services

	Boyne Russell House (Brunswick)	
	Parkville Hostel on MECCRS site	
	Melbourne Mental Health	
	Melbourne Health Dialysis Centers at	
	RMH	
	Sunshine	
	Broadmeadows	
Austin & Repatriation Medical Centre	Austin Campus	
	Repatriation Campus	
	Royal Talbot Campus	
	Satellite Dialysis Services	
	Community Psychiatry Centres	
Women's and Children's Health	Royal Women's Hospital	
	Royal Children's Hospital	
	Adolescent Forensic Health Service	
	Travancore Mental Health Service	
	Young Peoples Health Service	
Peninsula Health	Frankston Hospital	

Provision of Temporary Nursing Services

	Rosebud Hospital	
	Mt Eliza Geriatric Hospital	
Barwon Health	Geelong Hospital	
	Grace MacKellar Centre	
Eastern Health	Box Hill Hospital	
	Maroondah Hospital	
	Peter James Centre	
	Yarra Ranges Health Service	
	Angliss Health Service	

SCHEDULE 2 - Nursing the Services

- 1 The Contractor is to provide the services of experienced and registered (where necessary) nurses to work on a temporary basis at the sites of the Health Services listed in Schedule 1.
- 2 In providing the Nurses Services, the Contractor shall ensure timely and efficient supply of temporary nursing services to meet operational, business and management needs of the Health Services.
- 3 If requested by a Health Service, the Contractor shall provide suitably qualified and experienced staff in the following areas, specialities and categories, if such staff are available to the Contractor:

Aged Care	Neonatal Intensive Care
Ambulatory services	Nephrology
Cardio-thoracics	Neurology/Neurosurgical
Chemotherapy	Oncology
Coronary Care	Oncology wards surgical and medical
Day Surgery	Operating Theatres
Diagnostic Imaging	Operating Theatres
Emergency	Orthopaedics
Endoscopy	Outpatients
General Medical Units	Paediatrics
General Surgical Units	Palliative Care
Gynaecology	Psychiatry
Hospital in the Home	Radiotherapy

Provision of Temporary Nursing Services

Infectious Diseases	Rehabilitation
Intensive Care	Residential Care
Midwifery	

Clinical Speciality
Acute Medical or Surgical Nursing
Anesthetics
Aphaeresis
Cardiac Catheterisation Laboratory
Cardiothoracic Nursing
Chemotherapy
Coronary Care
Day Procedures
Diagnostic Imaging
Dialysis
Drug & Alcohol Treatment
Emergency Nursing
Endoscopy
Hematology
Intensive Care
Midwifery
Neonatal Intensive Care
Nephrology
Neurosciences
Neurosurgical Nursing
Oncology
Operating Room Nursing
Paediatric Nursing
Psychiatric Nursing
Recovery Nursing
Transplant Nursing

Division	Grade or Level	Year	Award Classification
RN Div 1	1		ZW1
	2	1	ZW2

Provision of Temporary Nursing Services

	2	2	ZW3
	2	3	ZW4
	2	4	ZW5
	2	5	ZW6
	2	6	ZW7
	2	7	ZW10
	2	8	ZW11
	Clinical Nurse Specialist		ZW8
	3A	1	ZW9
	3A	2	ZX1
	3B	1	ZX2
	4A	1	ZX5
	4A	2	ZX6
	4B	1	ZX7
RN Div 2	1		IB21
	2		IB22
	3		IB23
	4		IB24
	5		IB25
	6		IB26

	7		IB27
RPN Div 3	1		NP11
	2	1	NP21
	2	2	NP22
	2	3	NP23
	2	4	NP24
	2	5	NP25
	2	6	NP26
	2	7	NP27
	2	8	NP28
	Psych Clin Specialist		PC11
	3A	1	NP31
	3A	2	NP32
	3A	3	NP33
	3A	4	NP34

Shift Lengths

- 4 The Health Services require temporary nursing staff services to be provided for a variety of shift lengths ranging between four and twelve hours duration. The shift length required at any particular time will depend on the clinical situation, and will be negotiated at the time of booking. No shift will be less than 4 hours, and the duration of all shifts will be in multiples of 15 minutes.

SCHEDULE 3 - Contract Payments

[to be inserted]

SCHEDULE 4 - Key Performance Indicators

[to be inserted]

SCHEDULE 5 - Exclusive Providers