

**<<Agency Business Name>>**

**Health Service Agreement  
Hospitals**

**<<Agreement Start Date>> to <<Agreement End Date>>**

**Agreement No. <<Agreement No>>**

## Table of Contents

### **SCHEDULE 1. CONDITIONS OF THIS AGREEMENT**

Clause

1. Definitions and Interpretations
2. Duration of Agreement
3. Services
4. Funding
5. Records and Expenditure
6. Withholding of Funding
7. Review of Agreement
8. Review of Service Plans
9. Reporting
10. Quality Assurance
11. Audit or Review of Hospital
12. Goods and Services Tax
13. Dispute Resolution
14. Intellectual Property
15. Privacy
16. Permitted Disclosure
17. Risk Management, Indemnity and Insurance
18. Unexpended Funding
19. Variation of Agreement
20. Notices
21. Applicable Law

### **SCHEDULE 2 FINANCIAL SUMMARY**

### **SCHEDULE 3 SERVICE PLANS**

### **SCHEDULE 4 DHS / HOSPITAL RELATIONSHIP**

### **SCHEDULE 5 FINANCIAL ACCOUNTABILITY REQUIREMENTS**

THIS AGREEMENT is made on..... (completed by hand when signed)

BETWEEN: **SECRETARY TO THE DEPARTMENT OF HUMAN SERVICES** a body corporate established under the *Health Act* 1958 (“the Secretary”)

AND: <<AGENCY BUSINESS NAME>> (“Hospital”) of  
  
<<Agency Address Line 1>><<=Agency Address Line 2[<< Agency Address Line 2>>]>>  
<<Agency Suburb>> <<Agency State Code>> <<Agency Post Code>><<=Inc. under Corporation Law[  
  
<<Registration Number Label>> <<Agency Licence No>>]>>  
<<=Delegated Authority[  
<<Agency Business Name>> is an Agency of the <<Ultimate Parent Name>> and is authorised by the <<Ultimate Parent Name>> to enter into this Agreement.]>>

#### RECITALS

- A The Department of Human Services wishes to provide Services to members of the community.
- B The Hospital agrees to provide these Services as outlined in this Agreement.

#### OPERATIVE PROVISION

Each Party agrees to be bound by the provisions of this Agreement.

This Agreement is constituted by:

- this document;
- Schedule 1 - CONDITIONS OF THIS AGREEMENT;
- Schedule 2 - FINANCIAL SUMMARY;
- Schedule 3 - SERVICE PLAN(S);
- Schedule 4 - DHS / HOSPITAL RELATIONSHIP;
- Schedule 5 - FINANCIAL ACCOUNTABILITY REQUIREMENTS.

- Each Party agrees to be bound by the provisions of this Agreement SIGNED for and on behalf of <<Signatory Party>>

.....  
*Signature*<<=Delegated Authority[ (for and on behalf of the <<Ultimate Parent Name>>)]>>

Name: <<Signatory Name>>  
 Title: <<Signatory Title>>  
 Address: <<Signatory Address Line 1>><<=Signatory Address Line 2[  
 <<Signatory Address Line 2>>]>>  
 <<Signatory Suburb>>  
 Facsimile No: <<Signatory Facsimile No>>

.....  
*Signature of Witness*

.....  
*Print Name of Witness*

*Address:* .....  
 .....  
 .....

SIGNED for and on behalf and with the authority of the Secretary to the Department of Human Services

.....  
*Signature*

Name: <<Department Signatory>>  
 Title: <<Department Signatory Title>>  
 Address: <<Department Address Line 1>><<=Department Address Line 2[  
 <<Department Address Line 2>>]>>  
 <<Department Suburb>>  
 Facsimile No: <<Department Facsimile No>>

.....  
*Signature of Witness*

.....  
*Print Name of Witness*

*Address:* .....  
 .....  
 .....

## SCHEDULE 1 — CONDITIONS OF THIS AGREEMENT

### 1. Definitions and Interpretations

1.1 In this Agreement, unless the context otherwise requires:

- (a) “**Applicable Departmental Policies**” means all policies, guidelines and principles of the Department as amended from time to time and as notified to the Hospital, and includes but is not limited to the following:
  - (i) Healthcare Agencies Insurance Program;
  - (ii) DHS Policy and Funding Plan(s);
  - (iii) DHS Information Privacy Policy and Principles;
  - (iv) Victoria - Public Hospital Policy and Funding Guidelines;
  - (v) Fees and Charges for Acute Health Services in Victoria, a Handbook for Public Hospitals;
- (vi) Financial Management Act 1994;
  - (vii) Annual Reporting Guidelines;
  - (viii) Human Services Capital Development Guidelines;
  - (ix) Rural Health streams Program Guidelines;
  - (x) Finance and Accounting Manual for Public Hospitals;
  - (xi) Departmental Incident Reporting System;
  - (xii) Pre-employment/Pre-placement Safety Screening (Police Checks);
  - (xiii) Code of Practice for the Building and Construction Industry;
  - (xiv) Victorian Government Supply Manual;
  - (xv) Victorian Government Instructions, Policies and Procedures for Acquiring or Disposing of and Interest in Land;
  - (xvi) Victorian Government Infrastructure Investment Guidelines;
  - (xvii) Victorian Government Asset Management Services, Principles Policies and Practices; and
  - (xiv) Department of Human Services Agency Kit.
- (b) “**Budget and Target Tables**” means the document agreed between the Hospital and the Secretary which includes detailed budget and target information.
- (c) “**Business Day**” means a day on which the major trading banks are open for ordinary business in Melbourne, Victoria and excludes a Saturday, Sunday or public holiday.
- (d) “**Capital Funding**” means that part of the Funding used to purchase a tangible asset.
- (e) “**Commencement Date**” has the meaning set out in item 2 of Schedule 1.
- (f) “**Completion Date**” has the meaning set out in item 2 of Schedule 1.
- (g) “**Department**” means the Department of Human Services, Victoria.
- (h) “**Dispute Resolution Process**” means the process outlined in clause 13.
- (i) “**Funding**” means money provided by DHS to the Hospital under this Agreement as set out in Schedule 2.
- (j) “**GST**” means GST within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended.
- (k) “**Intellectual Property**” includes copyright, all rights in relation to inventions (including registered and registrable patents), registered and unregistered trade marks, registered and unregistered designs, circuit layouts, know-how and confidential information, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.
- (l) “**DHS**” includes any delegate of DHS.

- (m) “**Services**” means the services which the Hospital agrees to provide to DHS under this Agreement, as described in Schedule 3.
- (n) “**Term**” means the period commencing on the Commencement Date and expiring on the Completion Date.
- (o) “**Confidential Information**” means information exempt within Section 34(1) of the *Freedom of Information Act 1982*, as it relates to trade secrets and or unreasonable disadvantage.

1.2 Unless the context requires otherwise:

- (a) words importing any gender include each other gender;
- (b) the plural includes the singular and vice versa;
- (c) a reference to a person includes any other entity recognised by law and vice versa;
- (d) a reference to a statute, ordinance, code or other law includes subordinate legislation, consolidations, amendments, re-enactments, and replacements of it;
- (e) terms used in other Schedules have the same meaning when used in this Agreement;
- and
- (f) where a term is defined, the definition includes all grammatical forms of that term.

1.3 Inconsistencies between the terms of this Agreement will be resolved in the following order of priority:

- (a) Schedule 1; and
- (b) all other Schedules in numbered order.

## 2. Duration of Agreement

2.1 The Hospital will provide the Services commencing on the Commencement Date (<<Agreement Start Date>>) and, subject to other terms in this Agreement, finishing on the Completion Date (<<Agreement End Date>>).

## 3. Services

3.1 DHS and the Hospital agree that:

- (a) the Hospital will provide the Services as set out in the Schedules; and
- (b) DHS will comply with its obligations under this Agreement.

3.2 In providing the Services, the Hospital agrees to:

- (a) exercise due care, skill and judgment and at all times act in accordance with applicable professional ethics, principles and standards;
- (b) provide them in a timely manner; and
- (c) comply with:
  - (i) the agreed service standards as set out in Schedule 3 and/or 4 and any applicable DHS Policy and Funding Plan(s);
  - (ii) the agreed performance targets as set out in Schedule 3, and in the Budget and Target tables agreed by the Secretary and the Hospital;
  - (iii) all Applicable Departmental Policies; and

- (iv) all State and Federal laws applicable to the Services including, without limitation, those relating to fire protection, health, and general safety which apply to any premises from which the Hospital operates irrespective of whether the relevant laws place the obligation upon the owner or occupier of those premises.

#### **4. Funding**

- 4.1 DHS agrees to pay the Funding to the Hospital in accordance with Schedule 2 provided the Hospital meets its obligations under this Agreement.
- 4.2 Notwithstanding clause 4.1, if the relevant State or Federal Parliament fails to appropriate sufficient funds to enable DHS to provide the Funding as contemplated by Schedule 2, DHS will:
  - (a) immediately notify the Hospital in writing; and
  - (b) change Schedule 2 to reflect the shortfall in funds.DHS will not change Schedule 2 for at least 3 months after the date of notification in 4.2 (a).
- 4.3 If funds for the provision of the Services from the State or Federal Parliament are no longer available to DHS during the Term, DHS must notify the Hospital in writing as soon as practicable.
- 4.4 Where funding levels are affected by either clause 4.2 or 4.3 above, the Parties agree to negotiate an adjustment of the scope of the Services or the other obligations of the Hospital under this Agreement.
- 4.5 The Hospital agrees to comply with State and Federal Government legislation applicable to organisations receiving a financial benefit from the State.

#### **5. Records and Expenditure**

- 5.1 The Hospital agrees to:
  - (a) keep clear records of, and account for, all Funding as required by legislation applicable to the Hospital; and
  - (b) subject to clause 18, expend the Funding only on the provision of the Services or matters reasonably incidental to the provision of the Services; and
  - (c) apply the Funding in accordance with Schedule 3; and
  - (d) maintain three accounts – an operating fund, a specific purpose fund, and a capital fund according to the following rules:
    - (i) the operating fund records entries relating to:
      - (A) programs of the Secretary;
      - (B) Funding - other than those described in clauses 5.1(d)(ii) and 5.1(d)(iii);
      - (C) all recurrent Funding and expenditure related to recurrent costs of providing Services; and
      - (D) other recurrent Funding provided by the Secretary under any other Agreement or arrangement and revenue and expenditure related to the recurrent costs of providing services pursuant to those other Agreements or arrangements;

- (ii) the capital fund records entries relating to transactions which relate to land, buildings, equipment, furniture and investments howsoever funded; and
  - (iii) the specific purpose fund records entries relating to all other transactions not accounted for in the operating fund or the capital fund including all activities and transactions of Business Units of the Hospital including, without limitation, specific purpose endowments and trust funds.
- 5.2 Each Party acknowledges that the Hospital is responsible for paying all expenses and entitlements in relation to its employees unless otherwise specified in this Agreement.
- 5.3 The Hospital agrees to ensure that all capital works expenditure it makes is consistent with the service delivery models in the Hospital's service plans set out in Schedule 3.
- 5.4 The Hospital agrees not to enter into any expenditure (including finance leases) related to capital works, where the estimated total end costs of the works exceeds 10% of the annual revenue of the Hospital or \$2,000,000, whichever is the lesser amount, unless:
  - (a) the Hospital has provided the Secretary with a detailed business plan relating to the proposed expenditure; and
  - (b) the expenditure has been approved by the Secretary.
- 5.5 The approval of the Secretary in relation to any expenditure referred to in clause 5.4 does not imply the provision of any financial support for the works by the Secretary.
- 5.6 Despite any provision of this Agreement, the Hospital agrees to obtain the approval of the Department prior to seeking to borrow funds or enter into third party finance arrangements for capital works expenditure.
- 5.7 The Hospital is responsible for the proper management of all assets including maintenance, serviceability, and appropriateness of all buildings, vehicles, plant, fittings, equipment and computer hardware and software under its control.
- 5.8 The Hospital is required to maintain a consolidated asset register in accordance with the annual reporting requirements and provisions in the *Financial Management Act 1994* (Vic.).
- 5.9 In accordance with the Compliance Framework the Hospital will perform an annual independent assurance review of taxation compliance. Following this review the Hospital CEO will provide the department with certification of compliance.

## 6. Withholding of Funding

- 6.1 If the Secretary is of the opinion that the Hospital is in breach of this Agreement, the Secretary may withhold some or all of the Funding which is due for payment and unpaid on the date of that notice or becomes due after that date, until any breach is remedied.

## 7. Review of Agreement

- 7.1 If the Term is more than a year, the parties will meet annually to review the operation of the Agreement or at such times as are specified in this Agreement. At the review, the parties will use their best endeavours to resolve in good faith any issues affecting the Services. If a party is not satisfied that the issues have been resolved satisfactorily at the end of the review, that party may commence the Dispute Resolution Process.
- 7.2 DHS agrees to pay reasonable costs associated with the review referred to in this clause.

## 8. Review of Service Plans

- 8.1 If the Term is more than a year, all service plans included in this Agreement are subject to review annually, or at any reasonable time, by DHS.

## 9. Reporting

- 9.1 The Hospital will:

- (a) provide DHS with information and reports as required under the Schedules, and any applicable DHS Policy and Funding Plan(s); and
- (b) comply with the financial reporting and certification requirements (if any) as set out in Schedule 5.

## 10. Quality Assurance

- 10.1 The hospital shall be accredited through the Australian Council on Healthcare Standards (ACHS) Evaluation and Quality Improvement Program (EQUIP), International Standards Organisation (ISO) 9000 Quality Management System or other equivalent programs. An “equivalent program” must comply with specific criteria to be deemed suitable, and hospitals electing to use such programs must seek prior approval from the Department.
- 10.2 If the hospital has been delayed in presenting for, or achieving accreditation, a comprehensive quality plan must be submitted to the Department for assessment.

## 11. Audit or Review of Hospital

- 11.1 DHS may, at its own expense, conduct a performance review of the Hospital at any reasonable time
  - (a) if the performance of the Hospital gives rise to reasonable concerns of DHS; or
  - (b) as part of DHS service monitoring procedures
- 11.2 DHS may, at its own expense, conduct an audit of the Hospital at any reasonable time:
  - (a) if the financial returns of the Hospital give rise to reasonable concerns of DHS as to the Hospital’s compliance with this Agreement;
  - (b) to establish or investigate the Hospital’s financial viability where Department funding comprises a significant proportion of the Hospital’s total budget;
  - (c) to investigate allegations or suspected misuse of Department funds;
  - (d) to establish whether funding has been applied for the approved purposes.
- 11.3 The Hospital agrees to:
  - (a) co-operate with DHS in relation to the conduct of any such audit or performance review; and
  - (b) make available to DHS all relevant information and documents required for the purposes of the audit or performance review within 14 days of a written request by DHS or as agreed with the Hospital.
- 11.4 The Hospital agrees to comply with State and Federal laws applicable to the auditing of Agencies.

## 12. Goods and Services Tax

- 12.1 Where GST is payable in respect of taxable supplies represented by all or part of the Services provided by the Hospital and tax invoices are required under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth):
  - (a) the Department and the Hospital acknowledge that they are registered for the GST when they enter the agreement and that they will notify the other party if they cease to be registered during the Term of this Agreement;
  - (b) the Hospital will not issue tax invoices in respect of the taxable supplies of goods or services to the Department; and
  - (c) the Department will issue a Recipient Created Tax Invoice (RCTI) in respect of the taxable supplies represented by all or part of the Services provided to it within 28 days of making, or determining the value of the taxable supply.

### **13. Dispute Resolution**

13.1 If a dispute arise between the Parties concerning the terms and conditions of this Agreement or the provision of the Services, the Parties shall take immediate action to resolve the dispute at an appropriate level.

### **14. Intellectual Property**

14.1 The Intellectual Property of each party, which exists at the date of this Agreement, remains the property of that party.

14.2 All Intellectual Property developed by either party under this Agreement and relating to the Services and Funding vests in the State of Victoria.

14.3 The Hospital may in writing seek a licence from the State of Victoria through the appropriate Minister to use the Intellectual Property which vests in the State of Victoria under this Agreement, and the Hospital acknowledges that the granting of such a licence is solely at the discretion of the Minister.

14.4 The Hospital warrants that it will not use any Intellectual Property under this Agreement if that use would breach the rights of any other person.

14.5 On or prior to the Completion Date, the Hospital will deliver to DHS immediately following a written request by DHS, all materials in which Intellectual Property vests in the State of Victoria under this clause. The Hospital may keep a copy of all such material.

### **15 Privacy**

15.1 Subject to clause 15.2, the Hospital agrees to comply with and be bound by the provisions of: the *Information Privacy Act 2000 (Vic)* and *Health Records Act 2001(Vic)* (both as amended or replaced from time to time), and their respective Information Privacy Principles and Health Privacy Principles and any applicable code of practice with respect to any act done, or practice engaged in, by the Hospital for the purposes of this Agreement in the same way and to the same extent as DHS would have been bound by them in respect of that act or practice had it been directly done or engaged in by DHS.

15.2 The Hospital agrees to comply with and be bound by the relevant DHS Information Privacy Policy (as amended or replaced from time to time) until the respective provisions of the *Information Privacy Act 2000 (Vic)* and *Health Records Act 2001(Vic)* commence legal operation."

### **16 Permitted Disclosure**

16.1 The parties agree that notwithstanding the provisions of this clause, the terms of this Agreement may be disclosed to the public, including disclosure on the internet, provided such disclosure does not involve trade secrets or proprietary information of a party where disclosure would result in a significant commercial disadvantage to that party.

16.2 Notwithstanding clause 16.1 and the other provisions of this clause, the parties recognises that if so requested by the Auditor-General or the Ombudsman of the State of Victoria in the course of performing their statutory duties, they will permit disclosure of the Confidential Information and the terms of this Agreement to the Auditor-General or the Ombudsman as the case may be.

### **17. Risk Management, Indemnity and Insurance**

17.1 The Hospital must ensure that in carrying out its obligations under this Agreement it exercises the highest level of care and skill so as not to cause loss or damage to the property of any person or personal injury or death to any person.

17.2 The Agency agrees to indemnify DHS against a claim by any person for loss or damage in respect of:

- (a) property;
- (b) death or personal injury; and
- © a breach of privacy legislation applicable to this Agreement,

caused by a breach by the Agency of its obligations under this Agreement, or by a breach by the Agency of any statutory duty, or by an illegal act or negligent act or omission by the Agency in the course of providing the Services under this Agreement. To the extent that any loss or damage for which the Agency is required to indemnify DHS is found to have been caused by the unlawful or negligent act or omission of DHS, the liability of the Agency will be proportionately reduced.

17.3 The Secretary acknowledges that the Hospital is covered for the following insurances by the Department's Healthcare Agency insurance program:

- (a) public liability;
- (b) directors and officers liability;
- (c) professional indemnity;
- (d) medical malpractice;
- (e) material loss or damage and business interruption; and
- (f) contract works.

## **18. Unexpended Funding**

18.1 This clause does not apply if contrary arrangements regarding unexpended funding are set out in Schedule 2,3 and/or 4.

18.2 If the Hospital complies with the terms of this Agreement, the Hospital may retain all unexpended Funding, except where clause 18.3 applies.

18.3 If the Hospital does not expend all Funding provided for a specially identified purpose, the Secretary may adjust Funding for the following year at the Secretary's discretion.

## **19. Variation of Agreement**

19.1 Notwithstanding the commitments made by the Hospital and by DHS in this Agreement, it is understood that the Agreement may be varied, and that, subject to clause 19.2, it may only be varied in writing signed by each party.

19.2 The Hospital may not be required to sign and return a service agreement variation where the variation is for a CPI or award adjustment, increased minor capital funding or for termination of the agreement

## **20. Notices**

20.1 Any notice, approval, consent or other communication given from one party to another, must be in writing and be signed by the informing party's authorised officer.

20.2 A notice shall be taken to be served:

- (a) in the case of a delivered letter, on the day of delivery, unless delivery is made on a non-Business Day or after 4.30 pm on a Business Day, in which case it shall be taken to be served on the next Business Day;
- (b) in the case of a posted letter, on the third (or seventh in the case of airmail) Business Day after posting;

- (c) in the case of a facsimile, on receipt by the party giving the notice of a transmission confirmation report showing an error free transmission, unless within one Business Day of receipt the Recipient has informed the party giving the notice that the transmission was incomplete or garbled, provided that in any case if transmission is completed after 4.30 pm (local time in the place of receipt) or is received on a non-Business Day, the notice shall be taken to be served on the next Business Day; and
- (d) in the case of an email, upon receipt by the sender of confirmation that the email has reached the recipient's mailbox.

## **21. Applicable Law**

21.1 This Agreement is governed by the law of Victoria. The parties submit to the jurisdiction of the courts of Victoria and courts entitled to hear appeals from those courts.

## **22. Termination Without Fault**

22.1 Either party may terminate this Agreement at any time by giving a reasonable amount of notice in writing to the other party. In no circumstances can that notice be less than 3 months.

22.2 A party giving notice under this clause must pay the reasonable direct costs and other liabilities incurred by the other party arising directly out of the termination but not loss of profit. Each party must use its best endeavours to minimize those costs and liabilities.

