

Rural Health Alliances
Joint Venture Agreement

June 2008

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be delegated by the Members to the Executive Committee and the executive officer. The Executive Committee will be supported by such advisory groups as are established by the Executive Committee.

- I. The Lead Member will act for and on behalf of, and for the benefit of, the alliance, as an agent for the Alliance, within the budget, financial and operating policies agreed by the Alliance. The Lead Member will act only within the scope of its authority as an agent of the Alliance and trustee of the Alliance assets.

THE PARTIES AGREE:

1. DEFINITIONS AND INTERPRETATION

Definitions

- 1.1 In this Agreement, including the recitals, unless the context requires otherwise, the following terms will have the following meanings:

"**Alliance**" means the joint venture established pursuant to this Agreement;

"**Alliance Policy**" means the Department of Human Services policy document relating to the alliances, known as *Rural Public Health Care Agencies' Alliances Policy*, as amended and in force from time to time.

"**Annual Program**" means a work program and budget for the conduct of the Alliance during a financial year, prepared and approved in accordance with clauses 5.11-5.16.

"**Authorisations**" means all authorisations, leases, licences, permits, approvals, delegations and consents of and from any government or governmental or other competent authority which are necessary or desirable to enable the Members to meet their responsibilities under this Agreement.

"**Board**" means the Board of the public health service that is the Lead Member.

"**Business Day**" means a day that is not a Saturday, Sunday, bank holiday or public holiday in the State of Victoria, Australia.

"**Chair**" means the person appointed pursuant to clause 8.11(a) to be Chair of the Executive Committee of the Alliance.

"**Commencement Date**" means the date the last of the mandated members signs or 1 July 2008, whichever is first.

"**Confidential Information**" means, in relation to the Alliance, the Members and this Agreement, information that:

- (a) is by its nature confidential;
- (b) is designated by a party as confidential; or
- (c) a party knows, or ought to know, is confidential;

and includes:

- (d) information comprised in or relating to any Intellectual Property Rights of the Members or the Alliance including information, forms, specifications, processes, statements, formulae, trade secrets, drawings and data (and copies and extracts made of or from that information and data);
- (e) information relating to the operations and dealings of the Alliance or a Member;
- (f) information relating to the organisation, finance, customers, markets, suppliers, intellectual property and know-how of the Alliance or a Member or a related corporation of a Member;

- (g) information relating to those operations and transactions of a Member concerning the business and that party's participation in the Alliance;
- (h) information relating to the financial position of any of the parties and, in particular, includes information relating to the assets or liabilities of any of the parties and any other matter that does or may affect the financial position or reputation of any of the parties;
- (i) information relating to the internal management and structure of any of the parties or the personnel, policies and strategies of any of the parties; and
- (j) information of any of the parties to which any other party has access other than information referred to in sub-clauses (d), (h) and (i) and that has any actual or potential commercial value to a Member or to the Alliance, or to the person or corporation which supplied that information, which is not in the public domain (or which is in the public domain only as a result of a breach by a party of its confidentiality obligations under this Agreement).

"**Contracts**" means the contracts to be entered into by the Lead Member on behalf of the Alliance under the terms of this Agreement.

"**Core Products**" means those ICT products which the Department of Human Services requires the Alliance to make available to all Members, more specifically as listed in Schedule 2 (and as amended from time to time by the Alliance Policy).

"**Core Services**" means those ICT services which the Department of Human Services requires the Alliance to make available to all Members, more specifically as listed in Schedule 2 (and as amended from time to time by the Alliance Policy).

"**Customers**" means agencies and persons other than Members which receive Products or Services from the Alliance.

"**Deed of Assumption**" means a deed in the form of Schedule 1 pursuant to which an applicant becomes a party to this Agreement and thereby becomes a Member.

"**Department of Human Services**" and "**the Department**" means the Department of Human Services of the government of the State of Victoria, or any successor department or entity.

"**Employees**" means those persons including the Executive Officer, who are employed by the Lead Member to provide services to the Alliance.

"**Executive Committee**" means the Executive Committee of the Alliance formed pursuant to clause 8.

"**Executive Committee Member**" means a member of the Executive Committee.

"**Executive Officer**" means the Executive Officer of the Alliance appointed under clause 10.

"**Existing Member**" means a Member at any given time.

"**Foundation Member**" means an original signatory to this Agreement.

"**ICT**" means information and communications technology.

"**ICT Strategy**" means the plans and schedule of activities adopted by the Executive Committee from time to time which determines the way in which the interests of the alliance are to be advanced, and products and services are to be provided.

"**Incoming Party**" means an organisation that is eligible pursuant to clause 13 to become a Member in this Agreement and which intends to become a member but which is not yet an Existing Member.

"Instrument of Authorisation" means a delegation of authority for the purposes of the *Financial Management Act 1994* (Vic) relating to the financial and other management of the Alliance, including incurring and meeting expenses and executing contracts and other agreements on behalf of the Alliance, and for such other purposes as the Executive Committee may determine to ensure the good management and governance of the Alliance.

"Intellectual Property Rights" includes copyright, trade mark, design, patent, inventions, know how, trade secrets, semiconductor or circuit layout rights, trade, business or company names, or other proprietary rights or any rights to registration of those rights existing worldwide, whether created before, on or after the Commencement Date.

"Interest" means in relation to a Member, that Member's undivided right, title and interest at any given time in the Alliance assets and the Products, expressed as a percentage of the aggregate of all Existing Members' interests at that time, and calculated with reference to their respective financial contributions over the preceding three year period.

"Joint Venture Agreement" or "Agreement" means this agreement and each Deed of Assumption and Participation Agreement executed by an Incoming Party.

"Joint Venture Assets" at any time means the property of every kind and nature whatsoever owned or acquired by or on behalf of the Members for the purposes of the Alliance and owned by the Existing Members.

"Joint Venture Funds" means the funds of the Alliance, whether contributed by Members for the purposes of the Alliance or earned through Alliance activities from Core and non-core Products and Services and Products and Services provided by the Alliance to Customers including interest on funds and moneys, and which are managed according to the *Financial Management Act 1994* (Vic) and any directions or guidelines under that Act, and any other guidelines issued by the Department of Human Services from time to time. The Joint Venture Funds will be held in a separate bank account by the Lead Member, and will be used to:

- (a) secure all cash calls; and
- (b) pay out all Alliance expenses.

"Lead Member" means the regional public health service and its successors in the **** Region, appointed pursuant to clause 5.

"Member" means a party to this Agreement and its successors and permitted assigns, and includes the Lead Member, Foundation Members, Existing Members and Subsequent Members.

"Month" means a calendar month

"Product" means ICT products, including but not limited to Core Products that may be provided to Members or Customers

"Regional Director" means the person appointed to the position of Regional Director of the **** Region of the Department of Human Services, or any person acting in that position during a vacancy or the absence of the appointee.

"Secretary" has the meaning given in section 3 of the *Health Services Act 1988* (Vic) and includes any nominee appointed from time to time for general or specific purposes pertaining to this Agreement.

"Service" means ICT services, including but not limited to Core Services that may be provided to Members or Customers.

"Special Resolution" means a resolution that has been passed by at least 75% of the votes cast by Executive Committee Members entitled to vote on that resolution.

"Subsequent Member" means an entity that has become a party to this Agreement pursuant to clause 13 by executing a Deed of Assumption pursuant to schedule 1.

"Works" means all literary, artistic and other works and subject matter in which copyright, patent or design or other industrial or Intellectual Property Rights created by an Employee in the course of his or her duties for the Alliance, or assigned to the Lead Member on behalf of the Alliance whether currently existing or existing in the future.

Interpretation

- 1.2 In this Agreement, unless the context requires otherwise:
- (a) headings and underlines are for convenience only and do not affect the interpretation of this Agreement;
 - (b) words which suggest the singular include the plural and vice versa and reference to one gender includes the other genders;
 - (c) an expression which suggests a natural person includes any company, partnership, joint venture, association, incorporation or other body corporate and any governmental agency;
 - (d) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws as varying, consolidating or replacing and reference to a statute includes all regulations, proclamations, ordinances and bylaws issued under that statute;
 - (e) a reference to a party will include its successors.
 - (f) reference to any document or agreement includes reference to the document or agreement as amended, novated, supplemented varied or replaced from time to time;
 - (g) where any word or phrase is given a definite meaning in this agreement any part of speech or other grammatical form in respect of the word or phrase has a corresponding meaning;
 - (h) reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;
 - (i) reference to a time and date in connection with the performance of an obligation by a Member is a reference to the time and date in Melbourne, notwithstanding the obligation is to be performed elsewhere;
 - (j) the terms "public hospital", "public health service" "multi-purpose service" and "community health centre" have the same meaning as in the Health Services Act 1988 (Vic); and
 - (k) "Subregional health service" means those hospitals identified by the Department as sub regional health services in the Alliance Policy.
- 1.3 Each Member hereby acknowledges that unanimous consent to the strategic, financial and operating decisions of the Alliance will be provided by the approval of a simple majority of Members in the case of the Annual Program, and a simple majority of members of the Executive Committee in all other matters unless a Special Resolution is required by the provisions of this Agreement.

Execution in Parts

- 1.4 This Agreement may be executed in counterparts by the respective Parties, each of which when so executed will be deemed to be an original and all of which taken together will constitute one and the same Agreement, provided that this Agreement will be of no force and effect until the Commencement Date.
2. JOINT VENTURE FORMATION
- 2.1 The Members hereby form and agree to engage in an unincorporated joint venture, the name of which will be the **** Rural Health Alliance.

- 2.2 Each Member hereby commits its Interest to the Alliance and agrees to all things necessary to enable the purposes of the Alliance to be carried out.
3. TERM AND TERMINATION
- 3.1 Subject to the terms of this Agreement, this Agreement will continue in force from the Commencement Date until such time as the Secretary informs the Executive Committee that the Department of Human Services policy requires the joint venture to terminate either as a result of a change in policy, or in response to a recommendation pursuant to clause 3.2.
- 3.2 The Executive Committee may by Special Resolution pursuant to clause 8.19(b), recommend to the Secretary that this Agreement be terminated.
- 3.3 This Agreement will terminate on the date, following the termination of the Alliance, that the Members have satisfied all of their liabilities and obligations under the Agreement.
4. SCOPE OF THE AGREEMENT
- 4.1 The scope of this Agreement will be limited to the Existing Members.
- 4.2 All Members acknowledge the need to comply with all applicable law, regulations, orders, rules and government policies, including the Alliance Policy, and to take all steps necessary to ensure such compliance as may be required from time to time.
- 4.3 The Members agree to collaborate in the planning, purchase, implementation and evaluation of Core Services and Core Products to meet clinical and business needs, consistent with government policy, including major projects such as HealthSMART.
- 4.4 Subject to any express obligation to the contrary, the Members will discharge their obligations as set out in this Agreement in a manner consistent with the Alliance Policy and with the provisions of the HealthSMART strategy, including the HealthSMART participation policy, HealthSMART Integrated Patient/Client Management System implementation policy, HealthSMART FMIS Alliance implementation policy, and other Department of Human Services' policies, including "*Rural directions for a better state of health*".
- 4.5 The Lead Member agrees to undertake its obligations on behalf of the Alliance as set out in this Agreement.
- 4.6 The Members confirm that they beneficially own all Alliance assets as tenants in common. Their respective Interests will be as determined by the Executive Committee taking into consideration the financial or other contributions made by each Member towards the Alliance over the immediately preceding three year period. The respective Interests of each Member will be re-evaluated at the end of each financial year and recorded in the annual report of the Executive Officer.
- 4.7 Subject to clause 4.9, each Member will receive and take in kind its share of all the Product and Service and will be entitled to separately use that Product and Service for its own benefit.
- 4.8 For the avoidance of doubt, nothing in clauses 4.6 or 4.7 necessarily entitles a Member to a benefit under this Agreement proportionate to its contribution.
- 4.9 On termination of the joint venture, all assets of the Alliance will (subject to the repayments of any direct funding previously provided by the State or by the Commonwealth to the Alliance) be distributed to, or held for the benefit of, the then Existing Members as determined by the Executive Committee taking into consideration the financial or other contributions made by each Member, or sold. In the event of such sale, the net proceeds will be divided between the then Existing Members of the Alliance in accordance with their Interest, as determined by the Executive Committee.

5. LEAD MEMBER RESPONSIBILITIES

Appointment

- 5.1 The Lead Member will act as the authorised agent of the Alliance, the nominated employer of the Employees and the trustee of the Alliance assets for the term of this Agreement.
- 5.2 The Lead Member for the Alliance is the regional public health service for that region.

Duties

- 5.3 When implementing the directions of the Executive Committee, the Lead Member will:
- (a) have regard to the objectives of this Agreement;
 - (b) implement the recommendations and requests of the Executive Committee, consistent with the Annual Program;
 - (c) comply with any applicable guidelines issued by the Department of Human Services; and
 - (d) act consistently with the Lead Member's obligations as set out in clause 5.4.
- 5.4 Subject to the timely provision of funds by the Members, the Lead Member will implement the directions of the Executive Committee and in so doing, to the extent necessary:
- (a) prepare in consultation with the Executive Committee, execute and maintain an Instrument of Authorisation that provides authorisations relating to the financial and other management of the Alliance;
 - (b) make recommendations to the Executive Committee as to cash calls to be paid into the Joint Venture Funds;
 - (c) authorise, on the recommendation of the Executive Committee, commitment of funds against the Joint Venture Funds;
 - (d) authorise payment when due of all Alliance expenses;
 - (e) ensure that a register of the Joint Venture Assets is created and maintained as required under the *Financial Management Act 1994* (Vic);
 - (f) administer the Joint Venture Agreement on behalf of the Members;
 - (g) ensure that the Authorisations are applied for, obtained and maintained;
 - (h) ensure compliance with all applicable laws and regulations and lawful directions of any government authority having jurisdiction concerning the Alliance or of any of the Members;
 - (i) effect and maintain all usual insurances, for reasonable and prudent amounts, in relation to the Joint Venture Assets, the conduct of the Alliance and Employees or agents engaged in any way in the Alliance (including all necessary workers' compensation insurances);
 - (j) keep the Members fully informed of all matters of which the Lead Member is aware pertaining to the Alliance;
 - (k) take reasonable steps to ensure that Confidential Information is not transmitted to any third party except as authorised by this Agreement; and
 - (l) ensure that the Joint Venture Assets are developed and used for the conduct of the Alliance.

5.5 The Lead Member agrees that it will carry out its duties and obligations in accordance with:

- (a) the Joint Venture Agreement;
- (b) The Instrument of Authorisation;
- (c) the Authorisations;
- (d) with due care and skill, expertise, diligence and vigour,
- (e) Annual Programs (including the initial Annual Program).

5.6 The Lead Member, when acting as lead member, must act in good faith for the benefit of the Alliance.

Powers of Lead Member

5.8 The Lead Member has possession and responsibility for day to day management on behalf of the Members, but not ownership, of the Joint Venture Assets consistent with Clause 5.1.

5.9 Subject to such constraints as are set out in this Agreement, the Lead Member has those powers, functions and authorities from the Members as may be necessary to enable the Lead Member to carry out its duties and obligations set out in clause 5.4, including the power to:

- (a) develop and use the Joint Venture Assets for purposes of the Alliance and permit them to be so developed and used;
- (b) repair and maintain the Joint Venture Assets;
- (c) employ, engage, appoint and contract with engineers and technicians, project managers, accountants, solicitors, barristers and other professional or technical advisers, consultants, contractors and experts to do all things usual or desirable to be done for the purposes of conducting the Alliance;
- (d) negotiate and enter into (and renew, extend or vary) agreements for the supply (by purchase, lease or otherwise) of materials, equipment, buildings and services for the purposes of the Alliance, on behalf of the Members, in accordance with the Annual Program and subsequent or subsidiary programs endorsed by the Executive Committee;
- (e) institute, prosecute, defend and compromise legal proceedings;
- (f) dispose of all Joint Venture Assets whether by sale, assignment, abandonment or other transfer in accordance with prior authorisation from the Executive Committee;
- (g) collect, receipt, record and account for the income and outgoings, charges and expenses, including any rates and taxes, of the Alliance;
- (h) act as the coordinator of financial undertakings for the Alliance, including the receipt, holding and investment of moneys, funds and grants and the payment of salaries, Contract payments and other expenses as specified by the Executive Committee;
- (i) in the case of any emergency or accident affecting the Alliance or a Member, take such action as is necessary for the protection of life and property;
- (j) enter into an employment contract with Employees, including the Executive Officer;
- (k) provide administrative support and resources reasonably required by Employees in the performance of their duties and accounted as part of the operational costs of the alliance.

- (l) facilitate peer support for Employees as may be required by the Employees in the completion of their duties;
- (m) do any other act or thing which may be required of the Lead Member under this Agreement or which the Executive Committee or Members may authorise or require.

5.10 Except as authorised or required by the Executive Committee, the Lead Member must not encumber any of the Joint Venture Assets.

Annual Programs

5.11 Following the annual joint venture planning process, the Executive Committee must, at least two (2) months prior to the commencement of each financial year, prepare and submit for the approval of Members a proposed Annual Program for that financial year. The procedure for obtaining Member approval is at the discretion of the Executive Committee, consistent with Clause 1.3

5.12 Each proposed Annual Program must set out the works to be performed in connection with the Alliance during the relevant financial year and will include in respect of the works:

- (a) a description of the progress of the Alliance up to the commencement of the financial year;
- (b) a plan for the future progress of the Alliance from the commencement of that financial year;
- (c) suitable details of all development, delivery and maintenance of Products and Services works to be carried out in that financial year;
- (d) a suitable itemised budget for Alliance expenses associated with the works to be carried out in that financial year;
- (e) an estimate of the final cost of all the Alliance expenses; and
- (f) a cash flow projection for that financial year.

5.13 The feasibility of completing the Annual Program and the budget for implementation included therein will be agreed by the Board and the Executive Committee (subject to clause 5.15) before the Annual Program is presented for approval of the Members. For the avoidance of doubt, the Board may negotiate with regard to its ability to deliver the Annual Program, and the resources required, but may not negotiate with regard to the ICT Strategy or priorities identified by the Executive Committee^{5.14}. At the time of considering and adopting each Annual Program, the Executive Committee may recommend to Members proposals involving expenditures extending beyond the financial year to which the Annual Program relates.

5.15 Any Annual Program may be revised and amended, from time to time before or during the relevant financial year, by agreement of Members on the recommendation of the Executive Committee. The procedure for obtaining Member approval is at the discretion of the Executive Committee, consistent with Clause 1.35.16 The Lead Member must, for the financial year to which an Annual Program relates, undertake the activities and expenditures set out in the Annual Program.

Progress reports

5.17 The Lead Member must deliver to the Members, within 1 month following the end of each month, a progress report:

- (a) outlining the work performed in connection with the Alliance during that month;
- (b) summarising all Alliance expenses incurred or accrued during that month;
- (c) comparing the work and joint venture expenses for that month with estimates made in the relevant Annual Program and statements delivered pursuant to clause 5.18; and

- (d) outlining the plans for the further work to be performed in conducting the joint venture.
- 5.18 Each progress report will contain the detail necessary for adequate analysis of the report and be prepared in a way that meets the accounting, statutory and taxation requirements of the Members.
- 5.19 If requested by the Executive Committee, the Lead Member must prepare and submit other reports on a monthly basis which will include but not be limited to:
- (a) industrial relations;
 - (b) government affairs;
 - (c) staff organisation;
 - (d) all agreements which the Lead Member has entered into; and
 - (e) matters relating to the Alliance which have been reasonably requested by a Member.
- 5.20 In addition to the reports referred to in clauses 5.17 to 5.19, the Lead Member must provide to the Executive Committee such statements and other information relating to the Alliance as the Executive Committee may reasonably request from time to time.

Records and accounts

- 5.21 The Lead Member must:
- (a) keep or cause to be kept comprehensive, true and accurate records and accounts of:
 - (i) the Alliance;
 - (ii) the Lead Member's performance of its duties under this Agreement;
 - (iii) all Alliance property, real and personal, belonging to the Members; and
 - (iv) all transactions entered into, by or on behalf of the Members, in connection with the Alliance;
 - (b) maintain proper systems of internal control to enable the Alliance assets to be adequately controlled and accounted for and to provide proper control of transactions;
 - (c) ensure that all invoices and financial settlements, financial reports and billings rendered by the Lead Member to the other Members reflect properly the facts of all activities and transactions handled for the account of the Members; and
 - (d) keep all records and accounts in accordance with generally accepted accounting principles in Australia, consistently applied, and in particular as required under the *Financial Management Act 1994* (Vic).
- 5.22 The Lead Member must furnish to each of the Members within one (1) month after the end of each financial year, an audited statement of account reflecting for that financial year:
- (a) all transactions in connection with the Alliance during the financial year, as disclosed by the records and accounts kept or caused to be kept by the Lead Member pursuant to clause 5.21;
 - (b) all Alliance expenses incurred or accrued in respect of the Alliance during the financial year;
 - (c) all Alliance assets in the custody or control of the Lead Member as at the end of the financial year; and

- (d) the Interest of that Member in the Alliance assets and liabilities at the end of the financial year, as determined by the executive committee.

6. MEMBER RESPONSIBILITIES

6.1 The Members will:

- (a) be jointly responsible for their obligations under this Agreement, subject where so specified in this Agreement to apportionment in accordance with their respective obligations to contribute according to the Alliance Policy;
- (b) provide resources and funding to the Lead Member as required by the Executive Committee;
- (c) establish and support the Executive Committee; and
- (d) take reasonable steps to avoid any acts or omissions which might cause the Lead Member to breach any of its obligations under Contracts or other legal obligations which it undertakes on behalf of the Alliance.

6.2 A Member will not be entitled to obtain partition of the assets of the Alliance or any interest therein whether by way of physical partition, sale or otherwise and each Member hereby waives any right to partition in the joint venture assets.

7. ANNUAL MEETING OF MEMBERS

Annual general meeting

7.1 Once in each calendar year, the Executive Committee will cause an annual meeting of Members to be convened.

7.2 The powers of an annual meeting of Members are limited to receiving and noting reports, appointing Executive Committee Members, and making recommendations for consideration by the Executive Committee,

7.3 The annual meeting of Members will be held not less than two months or more than five months after the conclusion of the financial year.

7.4 Not less than 20 Business Days' notice of meeting will be given to each Member. The notice of meeting must state the date, time and place of the annual meeting of Members and list the business to be transacted at the meeting.

7.5 The annual meeting of Members will be chaired by:

- (a) the Chair of the Executive Committee; or failing that person,
- (b) the Deputy Chair of the Executive Committee; or failing that person,
- (c) a person elected by the nominees of Members present.

7.6 The business of the annual meeting of Members must include:

- (a) receipt of a report on the activities and achievements of the Alliance for the preceding financial year (together with the intervening period since the end of the preceding financial year) prepared by the Executive Officer and endorsed by the Executive Committee;
- (b) receipt of a report on the Annual Program and future operational and financial plans;
- (c) appointment of Executive Committee Members as required pursuant to clause 8.
- (d) any other business listed in the notice of meeting.

- 7.7 Each Member is entitled to be represented at the annual meeting of Members by a nominee who will have one vote per Member. For the avoidance of doubt, one person may act as the nominee of more than one Member and may exercise voting rights for all Members represented.
- 7.8 The quorum for the annual meeting of Members will be the next whole number above one half of the total number of votes entitled to be cast at an annual meeting of Members.
- 7.9 The chair of the annual meeting of Members will have the right to exercise his or her voting entitlements (if any) pursuant to clause 7.7 but does not have a casting vote. In the case of an equality of votes, the question will fail.
- 7.10 The Regional Director or a nominee appointed by the Regional Director will be entitled to attend the annual meeting of Members and to speak and be heard, but will not have any voting rights.
- 7.11 Customers of the Alliance may, at the Executive Committee's discretion, attend the annual meeting of Members but will not have any voting rights.
- 7.12 In all other regards the executive committee will regulate the proceedings of the annual general meeting.

Special general meetings

- 7.13 In exceptional circumstances the Lead Member, Executive Committee or a majority of members can call for a special general meeting to be convened by notice in writing to the chair of the Executive Committee providing full details of all business to be conducted at the meeting. On receipt of a notice under clause 7.13 the Chair is required to convene a special general meeting of the Alliance within 40 working days.
- 7.14 Clauses 7.4, 7.5 and 7.7 - 7.12 apply to special general meetings as though the references to 'annual general meetings' were to 'special general meetings'.
- 7.15 The powers of special general meetings are limited to making recommendations for consideration by the Executive Committee.

8. EXECUTIVE COMMITTEE

Establishment and constitution

- 8.1 The Members will establish and support an Executive Committee.
- (a) The Lead Member must convene a first meeting of members to establish the first executive committee. The meeting and election procedure for the initial executive committee will be determined by the members referred to in clause 8.2 (a).
- 8.2 The Executive Committee Members will be:
- (a) the CEO of each regional health service and subregional health service in the region;
- (b) five persons who are chief executives of Member entities other than the regional health service and subregional health services to be elected by all members at the first meeting of members and then at every Alliance annual general meeting; and
- (c) one person who is a chief executive officer of a Member Community Health Centre which is separately incorporated and governed, to be elected by all members at the first meeting of members and then at every Alliance annual general meeting.
- 8.3 The Regional Director or a nominee of the Regional Director will be entitled to attend every meeting of the Executive Committee and to speak and be heard. The Regional Director or nominee is not an Executive Committee Member.

- 8.4 By Special Resolution of the Executive Committee, other persons may be invited to attend all or specified Executive Committee meetings and to speak and be heard. For the avoidance of doubt, such persons are not Executive Committee Members.
- 8.5 Elected Executive Committee Members will hold office until the conclusion of the annual meeting of Members next following the meeting by which they were appointed, or until ceasing to be eligible to be an Executive Committee Member pursuant to the eligibility requirements of clause 8.2.
- 8.6 Executive Committee Members may appoint one alternate Executive Committee Member, provided that any alternate Executive Committee Member must be a chief executive of a Member. An Executive Committee Member may act as an alternate to one other Executive Committee Member and exercise a separate vote on behalf of that Executive Committee Member as well as a vote on his or her own behalf.
- 8.7 Each Executive Committee Member will give notice to the other Executive Committee Members of the appointment of their alternate Executive Committee Member.
- 8.8 An alternate Executive Committee Member will only act in the event that the Executive Committee Member for whom they are appointed alternate is not present at a meeting of the Executive Committee, in which event they will for the purposes of this clause 8 be deemed to be that Executive Committee Member and may exercise all powers of the Executive Committee Member for whom they are appointed alternate to the extent that the Executive Committee Member has not exercised them.
- 8.9 If an elected Executive Committee Member fails to attend three consecutive meetings without leave of the Executive Committee (whether or not that that Executive Committee Member's alternate was present at those meetings) that Executive Committee Member's position on the Executive Committee may be declared vacant by resolution of the executive committee and filled pursuant to clause 8.10.
- 8.10 In the event of a vacancy occurring for an elected Executive Committee Member, the remaining Executive Committee Members will appoint a chief executive of a Member for the balance of the term of office of the former Executive Committee Member, reflecting as far as practicable, the service type, geographic coverage and skills of the Member being replaced.

Chair, Deputy Chair and Secretary

- 8.11 (a) The Chair will be elected by the Executive Committee from the chief executive officers of the regional public health service and the subregional health services.
- (b) Subject to subclause (e), the Chair will hold office until the conclusion of the Executive Committee meeting next following the annual general meeting of Members.
- (c) The Executive Committee must elect a Deputy Chair from the Executive Committee Members.
- (d) Subject to subclause (e), the Deputy Chair will hold office until the conclusion of the Executive Committee meeting next following the annual meeting of Members.
- (e) If the Chair or Deputy Chair ceases to be an Executive Committee Member, the office of Chair or Deputy Chair (as the case may be) will automatically become vacant and the Executive Committee Members must elect a new Chair or Deputy Chair (as the case may be) at the next meeting at which a quorum is present.
- (f) In the event a Chair or Deputy Chair is appointed pursuant to clause 8.11(e), he or she will hold office until the end of the term of the replaced Chair or Deputy Chair as appropriate.
- 8.12 If at any meeting the Chair is not present at the time appointed for holding the meeting, then the Deputy Chair will act as the Chair for that meeting. Where the Chair and Deputy Chair are not present, then the Executive Committee Members present may choose one of their number to preside at that meeting.
- 8.13 The Chair or Deputy Chair, when acting as Chair, will have a deliberative and a casting vote.

- 8.14 The Executive Officer will act as the secretary to the Executive Committee. The Executive Officer will generally attend meetings of the Executive Committee but is not entitled to vote. If the Executive Officer is absent, by request of the Executive Committee or for other reasons, the Chair will determine whether another Employee or an Executive Committee member shall act as secretary.

Quorum

- 8.15 The quorum for each meeting of the Executive Committee will be the next whole number above one half of the number of Executive Committee Members holding office at the time of the meeting.
- 8.16 A quorum must be present before the Executive Committee may transact any business. If a quorum is not present within fifteen minutes of the starting time the meeting may continue as an inquorate meeting with the agreement of the Executive Committee Members present, on the proviso that all recommendations from the inquorate meeting are considered by the Executive Committee at a subsequent quorate meeting for adoption as resolutions of the Executive Committee.

Authority, voting and resolutions

- 8.17 The Executive Committee, has the authority of the Members to manage the Alliance, including the power to make all approvals and make all decisions and determinations required or permitted to be given or made by the Members in the Alliance pursuant to this Agreement with respect to the matters covered by this Agreement, including the power to:
- (a) approve the entering into of contracts by the lead member on behalf of the members;
 - (b) decide on plans and strategies;
 - (c) monitor the activities of the Lead Member, and supervise the activities of the Executive Officer and other Employees; and
 - (d) make such other decisions as to give effect to this Agreement.
- 8.18 The Executive Committee will:
- (a) exercise its powers and discharge its duties with the degree of care and diligence that a reasonable person would exercise;
 - (b) exercise its powers and discharge its duties in good faith in the best interests of the Alliance and Members for a proper purpose;
 - (c) not improperly use its position to gain an advantage for Executive Committee Members or someone else or cause detriment to the Alliance or Members;
 - (d) not improperly use Alliance information to gain an advantage for Executive Committee Members or someone else or cause detriment to the Alliance or Members;
 - (e) consider and, where appropriate, endorse submissions for implementation by the Lead Member (within the resources of the joint venture);
 - (f) provide reports as requested by and to the Regional Director in relation to Alliance operations;
 - (g) coordinate the implementation of Core Products and Core Services, including any government-led programs such as HealthSMART;
 - (h) select an Executive Officer for appointment by the Lead Member, and
 - (i) ensure that it has appropriate procedures to deal with actual or perceived conflicts of interest.

- 8.19 Subject to clause 23.3, a Special Resolution of the Executive Committee is required in order to make a recommendation to the Secretary to:
- (a) vary or amend this Agreement; or
 - (b) terminate this Agreement.
- 8.20 A Special Resolution of the Executive Committee is required in order to instruct the Board to:
- (a) terminate any Contract entered into by the Lead Member on behalf of the Alliance;
 - (b) commence legal or other proceedings on behalf of the Alliance; and
 - (c) add additional parties to this Agreement.
- 8.21 All approvals, decisions and determinations given or made by the Executive Committee will be binding on each of the Members in the Alliance.
- 8.22 All approvals, decisions and determinations at a meeting of the Executive Committee not listed in clauses 8.19 or 8.20 will be made by a simple majority vote of the votes cast at the meeting.
- 8.23 All Executive Committee Members will have an equal vote.
- 8.24 Voting may be by written proxy in a form as approved by the Executive Committee from time to time. Voting may be conducted by show of hands, by poll, or by acceptance by signature by Executive Committee Members who are entitled to vote.

Frequency of meetings

- 8.25 The Executive Committee will meet at least six (6) times per year. In addition, an Executive Committee Member may request a meeting of the Executive Committee by requiring the Executive Officer to give each Executive Committee Member seven (7) days written notice (or such lesser period as the Executive Committee Members agree).

Agendas, minutes and resolutions without meeting

- 8.26 Each notice convening an Executive Committee meeting will enclose the agenda for that meeting and indicate the date, time and place of the meeting and will be sent by pre-paid post, facsimile or e-mail.
- 8.27 Not less than ten (10) days prior to the meeting, a member may request that an item be included in the agenda and the agenda will be amended accordingly.
- 8.28 A copy of the agenda will be given or sent to each Executive Committee Member not less than five (5) days prior to the meeting.
- 8.29 Any matter not included in the agenda will not be dealt with at the meeting unless all members present agree.
- 8.30 The Members in the Alliance agree that the meetings of the Executive Committee will be conducted in a manner which is conducive to the advancement of the objectives of all of the parties.
- 8.31 A meeting of the Executive Committee may be made in person or with the use of other means including teleconferences, videoconferences, electronic or other links.
- 8.32 A written record of decisions made at each meeting of the Executive Committee will be kept by the secretary to the Executive Committee who will distribute copies of the record by post or by email to each Executive Committee Member as soon as practicable after the meeting.
- 8.33 If an Executive Committee Member has not commented on the written record within fourteen (14) days of despatch, that Executive Committee Member will be deemed to have accepted such written record as an accurate recording of the decisions noted therein.

- 8.34 On the written record being accepted by the Executive Committee Members pursuant to clauses 8.32 and 8.33 and being signed by the Chair, it will be prima facie evidence of the decisions and proceedings of the meetings to which it relates.
- 8.35 Any approval, decision or determination which the Executive Committee is competent to give or make may be submitted to the Executive Committee Members for consideration and vote without holding a meeting, and the vote will be treated as a vote made at a meeting of the Executive Committee provided that:
- (a) each Executive Committee Member is given written notice of such matter;
 - (b) each Executive Committee Member or their alternate has a period of at least five (5) Business Days after receiving notice of the matter (or such other agreed period) to vote on the matter; and
 - (c) within such period, no Executive Committee Member requests that such matter be considered at a meeting of the Executive Committee.
- 8.36 Whenever a matter is so submitted, each Executive Committee Member will vote by giving written notice of their vote on paper, by fax or email to the Executive Officer and any matter which receives unanimous approval of the votes so cast will be binding on each Member in the same manner as if the resolution had been passed at a meeting of the Executive Committee.
- 8.37 The written record of each decision made under sub-clause 8.36 will be kept by the Executive Officer and a copy thereof will be distributed to each Member as soon as practicable after the vote is taken.

Costs of Executive Committee

- 8.38 The costs and expenses incurred by the Members relating to the attendance of Executive Committee Members appointed under clause 8.2 will be borne by them and will not be part of the Alliance expense.
- 8.39 The costs and expenses incurred by Employees relating to their attendance at Executive Committee meetings will be part of the Alliance expense.

Terms of reference for Executive Committee

- 8.40 The regulation of the proceedings of the Executive Committee is a matter for the Executive Committee

9. SUB-COMMITTEES AND OTHER ALLIANCE BODIES

- 9.1 The Executive Committee may establish such sub-committees and other bodies as the Executive Committee deems appropriate. The Executive Committee will determine the functions of sub-committees and other Alliance bodies. The functions of sub-committees and other bodies will be advisory.

Advisory Sub-committees

- 9.2 The Executive Committee may, at its discretion, form advisory sub-committees, or assign equivalent status to an existing regional committee, whose purpose is to advise the Executive Committee through terms of reference established by the Executive Committee. The terms of reference will include but will not be limited to statements of purpose, scope, membership, procedures for establishment of chair, general conduct of meetings and reporting to the Executive Committee.
- 9.3 Advisory sub-committees can only make recommendations to the Executive Committee.
- 9.4 The continuation of, and the continuing terms of reference of, advisory sub-committees are to be confirmed or otherwise determined by resolution of the Executive Committee every twelve months.
- 9.5 Recommendations of advisory sub-committees are to be made in writing and placed on the agenda of the Executive Committee.

Business Advisory Groups

- 9.6 The Executive Committee may establish and support business advisory groups to enable Member policy input from the main areas of their respective businesses.
- 9.7 Business advisory groups may include, but are not limited to groups for ICT operations, finance systems and services, service coordination, patient or client management systems and services, clinical systems and services, and human resource systems and services.
- 9.8 Business advisory groups will meet regularly with a formal agenda and minutes and must report to the Executive Committee as required.

Annual Joint Venture Forum

- 9.9 At least once each year the Executive Committee will conduct a regional strategic advisory forum to communicate and collaborate with persons from executive management levels in Members and other stakeholders about the Alliance's ICT Strategy and such other matters as the Executive Committee may determine.
- 10. EMPLOYEES (INCLUDING THE EXECUTIVE OFFICER)
- 10.1 The Lead Member will be the employer of any Employees deemed necessary and appropriate by the Executive Committee for the purposes of the Alliance and as agreed in the Alliance budget.
- 10.2 All Members will indemnify the Lead Member for all liabilities to Employees.
- 10.3 An Executive Officer will be employed by the Lead Member to manage and coordinate all activities and tasks necessary for the planning, implementation and evaluation of the Products and Services at the direction of the Executive Committee.
- 10.4 The Executive Officer will be appointed by the Board on recommendation from a selection panel determined by the Executive Committee that must include the Executive Committee Chair.
- 10.5 The appointment of the Executive Officer will be by executive employment contract for up to five years, subject to Government Service Executive Remuneration Panel guidelines. Subject to all applicable employment laws, the employment contract will provide that the appointment will be subject to the continuing approval of the Executive Committee and Lead Member provided that reasonable notice of termination be given.
- 10.6 The Members will provide all reasonable assistance to the Executive Officer to enable the Executive Officer to undertake his or her duties under this clause.
- 11. CONTRACTUAL ARRANGEMENTS
- 11.1 The Members acknowledge that the Lead Member acts on their behalf in negotiating, entering into, signing and managing the Contracts. Subject to any other provision of this Agreement, and with the approval of the Executive Committee, the Lead Member may enter into contracts on behalf of the Members.
- 11.2 Each Member will fulfil its individual obligations in respect of the Contracts in keeping with its contribution obligations as determined by the Executive Committee according to Department of Human Services policy.
- 11.3 Each Member will contribute the resources and funds to the Lead Member in respect of a Contract consistent with its contribution obligations as determined by the Executive Committee according to Department of Human Services policy.

12. WITHDRAWAL FROM THE ALLIANCE

- 12.1 Members who are not required by Alliance Policy to participate may at any time prior to the termination of this Agreement withdraw from the joint venture by giving to the Chair of the Executive Committee no less than twelve calendar months notice in writing.
- 12.2 Upon withdrawal, a withdrawing Member will have no rights to the Joint Venture Funds, operating money or assets of the Alliance and will be liable for all outstanding costs owed by that Member.
- 12.3 Upon withdrawal, a Member's Interest will be shared amongst the other Members in the proportions that each of the other Members' Interests bear to the total Interests of all of the other Members.
- 12.4 Upon receipt of written notice from a Member withdrawing from the Alliance, the Lead Member will use its reasonable endeavours to amend or vary the relevant Contracts to mitigate any adverse impact of the intended withdrawal upon the Alliance.
- 12.5 Following withdrawal, the withdrawing Member will compensate and indemnify the Lead Member and the other Members for the full cost of expenses and liabilities incurred as a direct or indirect result of the withdrawal. Such payments must be made promptly upon the receipt of a written demand from the Executive Officer outlining the expenses and liabilities incurred. Without limiting the foregoing, these expenses and liabilities may include all direct and indirect costs, including the cost of establishment and management, legal costs and damages or settlement payments. The costs of withdrawal from the Alliance will not be offset by the withdrawing Member's Interests but will be paid in whole in cash by the withdrawing Member following receipt of the written demand.
- 12.6 Upon the withdrawal of a Member, the Executive Committee will determine whether the activities of the Alliance and the contributions of the remaining Members should be adjusted. The remaining Members will comply with any such determination.

13. SUBSEQUENT MEMBERS

- 13.1 The Executive Committee must admit as an Incoming Party to the Alliance, with the same rights and obligations as an Existing Member, any publicly funded health care organisation that is listed in Attachment 1 to the Alliances Policy and is therefore entitled to become a Member of the alliance in their region on the same terms as existing members.
- 13.2 Where the Department's policy allows for other publicly funded health related agencies to apply to become members, the Executive Committee must consider a request of such an agency to become a member, subject to any provisions in the policy. If such an agency is admitted as a member of the alliance, this will be done on the same terms as existing members and the agency will have the same rights and obligations as an existing member subject to any specific requirements in the Department's policy.
- 13.3 The admission of an Incoming Party pursuant to clause 13 will be of no effect until the Incoming Party and the Executive Officer execute a Deed of Assumption under seal pursuant to which the Incoming Party becomes a Subsequent Member in this Agreement.

14. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIAL INFORMATION

- 14.1 Subject to this Agreement expressly allowing a party to disclose certain information, the parties will treat the Confidential Information as confidential.
- 14.2 A Member must not, without the prior written approval of the Executive Committee (which approval will not be unreasonably withheld) make public or disclose to any person any information about the Confidential Information of the Alliance. In giving written approval, the Executive Committee may impose such terms and conditions as it thinks fit. The foregoing does not, however:
 - (a) prevent or prohibit the disclosure by a Member of any information concerning this Agreement or the Alliance to the Department of Human Services upon request by the Department; or

- (b) authorise the disclosure of the Confidential Information of an individual Member without that Member's express consent except in the circumstances described in clause 14.2(a).
- 14.3 The Members will take all reasonable steps to ensure that their employees and agents do not make public or disclose Confidential Information except as provided under this clause.
- 14.4 The Members will require their employees and agents to execute a Deed of Confidentiality as approved by the Executive Committee if so stipulated by the Executive Committee.
- 14.5 A party will not be in breach of this clause if it discloses the Confidential Information as required by law or as required by Government policy. If such a disclosure is required, however, the disclosing party will, to the extent practicable, provide as much advance notice as possible of its intention to disclose such information.
- 14.6 The Members agree that the Lead Member will hold all Intellectual Property Rights in the Works in its own name on behalf of the Alliance.
- 14.7 The Members will retain the beneficial ownership of the Intellectual Property Rights in the same proportion as the Members Interests in the Alliance assets.
- 14.8 This clause will survive the termination of this Agreement.
- 14.9 Nothing in this clause affects the prior ownership of Intellectual Property Rights of any Member.

15. RELATIONSHIP BETWEEN THE ALLIANCE MEMBERS

The Members agree that:

- (a) the Alliance will be conducted so as to enhance the ability of publicly funded health or community services to meet the needs of communities and to improve the quality and effectiveness of those health or community services through the efficient acquisition and coordination of Products and Services;
- (b) the financial responsibility of the Members will in every case be several according to their respective obligation to contribute and not joint or joint and several;
- (c) the relationship between the Members will be one of joint venturers and limited to the joint procurement and provision of Core Products and Core Services and related Products and Services, or any other activities if permitted by DHS policy and approved by the Executive Committee from time to time with a view to improving health or community service provision in the **** Region of the Department of Human Services;
- (d) nothing contained in this Agreement will constitute the appointment of the Lead Member to carry out its duties under this Agreement as either trustee or agent (as the case may be) of the Alliance, or a relationship of agency or partnership for any purpose whatsoever, except in relation to the activities of the Alliance;
- (e) except as otherwise specifically provided in this Agreement, a Member will not have any authority to act for, or to create or assume any responsibility on behalf of, any other Member.

16. CHARGES, FEES AND METHOD OF PAYMENT

- 16.1 The Executive Committee will agree a work program and budget with the Board within two months of the Commencement Date and thereafter for each financial year at least one month prior to the expiry of the then current financial year.
- 16.2 The budget will include estimates of payments to external contractors, salary and accrued costs and overheads of staff to be employed on behalf of the Alliance, or assigned by the Lead Member to work on behalf of the Alliance, and allowances for administrative overheads born by the Lead Member determined in accordance with the Alliance Policy.

- 16.3 The contribution(s) and timing of payments from each Member to enable the Alliance annual expenditure budget to be met will be determined in accordance with the Alliance Policy.
- 16.4 In determining the contributions of Members and prices to be charged to Customers, the Alliance will recognise the full costs of service provision, including the proper maintenance and renewal of all assets, and the strategy adopted by the Alliance for the replacement of major infrastructure when required.
- 16.5 If necessary the Executive Committee may vary the expenditure budget during the course of the year. Where this results in increased expenditure, or an advance in the timing of expenditure, the Alliance may issue a cash call on Members. The cash call will be paid by Members within 14 days or as required by the Alliance to ensure financial viability is maintained. Payment of a cash call by a Member will not prejudice the rights of that Member to subsequently protest or question the correctness of the cash call.
- 16.6 The Lead Member will be directed by the Executive Committee to:
- (a) deliver monthly contribution statements to the Members;
 - (b) deliver monthly progress reports to the Executive Committee; and
 - (c) keep accurate records and accounts of the Alliance.
- 16.7 The Lead Member will maintain the Joint Venture Funds in a separate bank account.
- 16.8 The Lead Member will cause the accounts of the Alliance to be kept in accordance with the requirements of the *Financial Management Act 1994 (Vic)* and to be audited at least annually in accordance with the Department of Human Services requirements.

17. INDEMNITY, LIABILITY AND INSURANCE

Loss or damage caused by Lead Member

- 17.1 The Lead Member will not be responsible to the other Members for any liability, loss, harm, damage, cost or expense (including legal fees) that the other Members may suffer, incur or sustain arising out of the activities of the Lead Member in performing its respective duties or obligations under or by virtue of this Agreement, except to the extent that such liability, loss, harm, damage, cost or expense arises directly from the wilful misconduct or bad faith of the Lead Member or their failure to apply due care and diligence to the activities undertaken on behalf of the Alliance.

Loss or damage incurred by Lead Member

- 17.2 The Members irrevocably and unconditionally indemnify the Lead Member from and against any and all liability, loss, harm, damage, cost or expense (including legal fees) that the Lead Member may suffer, incur or sustain in performing its respective duties or obligations under or by virtue of this Agreement, except to the extent that such liability, loss, harm, damage, cost or expense arises directly from the wilful misconduct or bad faith of the Lead Member or their failure to apply due care and diligence to the activities undertaken on behalf of the Alliance.

Loss or damage caused to Lead Member

- 17.3 Each Member agrees to indemnify the Lead Member as appropriate for any action taken against the Lead Member by a third party as a result of the failure by the Member to carry out its obligations under this Agreement or due to any negligence, default, omission or commission by the Member or any employee or other person providing services for and on behalf of the Member in connection with this Agreement. Each of the Members agrees that this indemnity will be a continuing indemnity and will survive the termination of this Agreement.

Scope of indemnity under clauses 17.1, 17.2 and 17.3

- 17.4 For the purposes of clauses 17.1, 17.2 and 17.3, references to the "Lead Member" include references to the servants, employees, contractors, sub-contractors, consultants and agents of the Lead Member.

Loss or damage caused by one Member to another Member

- 17.5 Each Member ('indemnitor') irrevocably and unconditionally indemnifies each of the other Members and their respective directors, officers, employees, agents and representatives ('indemnitee') from and against any and all liability, loss, harm, damage, cost or expense (including legal fees) that the indemnitee may suffer, incur or sustain as a result of any act or omission of, or any purported assumption of any obligation or responsibility by, the indemnitor or any of its directors, officers, employees, agents or representatives, done or omitted to be done or undertaken or apparently done or omitted to be done or undertaken, on behalf of the indemnitee in connection with the Alliance in circumstances where such act or omission or apparent act or omission is not authorised by this Agreement.

Members to indemnify a Member for liability beyond its Interest

- 17.6 If at any time a Member incurs a liability for the purposes of the Alliance (and with the authority of the Executive Committee) to an extent greater than its obligations, and this is not explicitly directed by the Department of Human Services policy, then each other Member will indemnify and account to that Member such that all Members share the liability in the proportions required by their contribution obligations.

Members to jointly share liability to third parties

- 17.7 If any Member becomes liable to a third person arising out of any activity pursuant to and authorised under this Agreement, and such liability is incurred on behalf of or for the benefit of the Alliance, and except where the liability arises due to the wilful misconduct or bad faith or default of the Member, then each of the other Members will indemnify that Member according to its obligation to contribute and will indemnify and account to each other Member to the extent that it does not do so.

Members to hold insurance

- 17.8 Each Member will have the benefit of the following insurance policies effected by the Department of Human Services with the Victorian Managed Insurance Authority:
- (a) professional indemnity insurance for a sum insured limit of not less than \$10m any one claim; and
 - (b) public and products liability insurance for a sum insured limit of not less than \$20m any one occurrence.

18. DISPUTE RESOLUTION PROCESS

- 18.1 If the Executive Committee and the Board are unable to agree on those matters identified under Clauses 5.13 and 5.16 of this Agreement, the disagreement will be referred to the Regional Director. The Regional Director will provide advice to the Executive Committee and the Board to assist them to resolve the matter. If the matter remains unresolved, the matter will be referred to the Secretary for binding resolution under clause 18.5.
- 18.2 Subject to clause 18.1, if the parties to this Agreement are unable to agree on any matter under this Agreement and that disagreement cannot be resolved by the Executive Committee, a party may give written notice to the others stating details of the matter in dispute and requiring the matter to be resolved by a meeting between the parties.
- 18.3 The parties must in good faith seek to resolve any area of dispute within seven days of the serving of a notice under clause 18.2.

- 18.4 If the parties cannot resolve a dispute under clause 18.2 within 7 days of the initial meeting as set out in clause 18.3 above, the parties agree to refer the dispute to the Department. The parties will request the Department to make a determination which takes account of the objectives of the Alliance as set out in Department policy and the Recitals to this Agreement. This request must be conveyed to the Regional Director.
- 18.5 In any dispute referred for resolution to the Department under this clause 18, the parties will not have legal representation, the decision of the Department will be final and binding and the costs of such dispute resolution will be shared equally between the parties in dispute.
- 18.6 Pending determination of any dispute under this Agreement the parties agree to continue to perform all their obligations under this Agreement.
- 18.7 Nothing in this clause will prevent a party from seeking urgent interlocutory relief from the courts if that party would suffer irreparable harm in not being able to seek and obtain such relief.
19. DEFAULT
- 19.1 If, for any reason other than force majeure, there is an irremediable default by a Member (in this clause 19, the 'defaulting Member') then:
- (a) another Member is entitled to give the defaulting Member written notice of such default (in this clause a "default notice");
 - (b) the Executive Committee will meet, within seven (7) days after receipt of the default notice, to determine by Special Resolution (not including the vote of the defaulting Member):
 - (i) the amount of compensation payable by the defaulting Member to the other Members or the Alliance; and
 - (ii) whether the defaulting Member's rights under this Agreement should be suspended or (in the case of a Non-Mandatory Member only) terminated;
 - (c) if, within fourteen (14) days after receipt of the default notice, the Executive Committee is unable to agree on the amount of compensation payable or whether the Member's rights should be suspended or terminated then the matter will be determined by the Secretary of the Department of Human Services; and
 - (d) the defaulting Member will, within seven (7) days of receipt of a written demand issued by the Executive Officer containing the compensation payable under this clause, pay such amount to the other Members and, in default of paying that amount within that specified time pay interest on the amount of compensation from the due date of payment to the date of actual payment at the Penalty Interest Rate as set by the Attorney General under the *Penalty Interest Rates Act 1983*.
- 19.2 If, for any reason other than force majeure, there is a default (not being an irremediable default) by a Member in the observance or performance of an obligation under this Agreement and if the default continues for a period of fourteen (14) days after another Member has given written notice of the default to the defaulting Member then until the default is remedied:
- (a) the defaulting Member's rights in the conduct and control of the Alliance may be suspended at the discretion of the Executive Committee;
 - (b) an Executive Committee Member or alternate Executive Committee Member who is the chief executive or other representative of the defaulting Member (if any) will not be entitled to be present or to vote at any meeting of the Executive Committee;
 - (c) for the purposes of determining a quorum at each meeting of the Executive Committee, a representative (if any) of the defaulting Member will be disregarded;

- (d) a nominee of the defaulting Member will not be entitled to be present or to vote at any annual meeting of Members and the quorum of the meeting will be adjusted to exclude a nominee of the defaulting Member;
- (e) for the purpose of making decisions, taking actions or giving notice in accordance with the agreement:
 - (i) the Interest of a defaulting Mandatory Member will be treated as shared amongst other Mandatory Members in the proportions that each of their Interest bears to total Interests of the other Mandatory Members; and
 - (ii) the Interest of a defaulting Non-Mandatory Member will be treated as shared amongst all other Members in the proportions that each of their Interest bears to total Interests of all other Members;
- (f) the defaulting Member will not be entitled to receive any progress reports or monthly statements from the Lead Member, Executive Committee or Executive Officer; and
- (g) the defaulting Member will not be entitled to its share of the Product which will instead be shared:
 - (i) in the case of a defaulting Mandatory Member, amongst the other Mandatory Members in proportions pro rata to their respective Interests; and
 - (ii) in the case of a defaulting Non-Mandatory Member, amongst all other Members in proportions pro rata to their respective Interests.

19.3 Without limiting clause 19.2, if there is a default by a Member in the payment by the due date of a sum of money which the defaulting Member is required to pay under this Agreement and the default continues for a period of fourteen (14) days after the Executive Committee has given written notice to the defaulting Member ('default notice'), then:

- (a) the defaulting Member may be required to pay interest to the Joint Venture Funds on the amount of the overdue payment from the due date for payment to the date of actual payment at the interest rate, interest to be calculated and payable monthly with interest on overdue interest at the Penalty Interest Rate as set by the Attorney General under the *Penalty Interest Rates Act 1983*;
- (b) as soon as practicable after expiry of the notice period specified by the default notice, the Executive Committee will determine whether the current Annual Program should continue unchanged, be amended in any way, or postponed or cancelled as a result of the defaulting Member's failure to pay a sum of money;
- (c) if it is determined pursuant to paragraph (b) above that the current Annual Program should continue (whether unchanged or amended) and as a consequence of the default the Lead Member does not have sufficient Joint Venture Funds to carry out the Annual Program, then the other Members may be required to fund the shortfall pro rata in accordance with their respective Interests at times determined by the Executive Committee;
- (d) all payments under paragraph (c) constitute debts due and payable by the defaulting Member to the other Members that are required to provide additional funding and are recoverable accordingly in any court of competent jurisdiction, and will bear interest from the date of the payment by the non-defaulting Member at the interest rate prevailing under this Agreement;
- (e) any interest paid by or on behalf of a defaulting Member will be returned to the Joint Venture Funds; and
- (f) a default in the payment of any unpaid sum of money will not be deemed remedied until the unpaid sum and accrued interest to the date of payment have been paid by the defaulting Member or on behalf of the defaulting Member by any other person other than another Member.

- 19.4 The provisions of this clause 19 are in addition and without prejudice to all other rights at law or in equity.
- 19.5 During the period of default by a Member, the Alliance will continue and the defaulting Member will continue to be responsible for the payment of all moneys that it is obliged to pay under this Agreement, notwithstanding that any such payments may have been met on an interim basis by other Members.
- 19.6 Notwithstanding any provision contained in this Agreement or any rule of law or equity to the contrary, the granting of time or any other indulgence by one party to another party or the occurrence of any event of default or otherwise does not affect or diminish the rights of the party granting such indulgence and in particular, but not by way of limitation, does not affect or diminish the right of that party to exercise in any subsequent time any rights it may have in respect of any such event of default.

20. FORCE MAJEURE

If a party to this Agreement is prevented from performing its obligations under this Agreement by reason of events beyond that party's reasonable control events such as fire, earthquake, flood, mechanical or electrical failure, strikes, epidemic, war, civil unrest, any act of God or like events), that party's obligations apart from its obligations to pay debts then due and payable to the other parties will be deemed to be suspended for the duration of the intervening conditions.

21. ASSIGNMENT

Except as otherwise provided under this Agreement, a party will not assign its rights or obligations under this Agreement without the prior written consent of all of the other parties and the Secretary.

22. ENTIRE AGREEMENT

- 22.1 This Agreement is the whole agreement between the parties, and any other warranties or representations previously made in respect of its subject matter, whether orally or in writing, are of no legal effect from the Commencement Date.
- 22.2 Each Member must provide all reasonable cooperation and assistance in order to give effect to this Agreement.
- 22.3 None of the terms or conditions of this Agreement, or any act, matter or thing done under or by virtue of this Agreement or any other agreement, instrument or document, or judgment or order of any court or judicial proceeding, will operate as a merger of any rights and remedies of the Members under this Agreement, and those rights and remedies will at all times continue in force.
- 22.4 If any provisions of this Agreement are void, voidable, unenforceable or illegal, but would not be void, voidable unenforceable or illegal if read down, the provisions will be read down accordingly.
- 22.5 In order to give effect to clause 22.4:
- (a) if the provision would be void, voidable, unenforceable or illegal if a word or words were omitted, that or those words are taken as severed; and
 - (b) in any other case, the whole provision is to be taken as severed;

and the remainder of this Agreement will be of full force and effect.

23. VARIATION OR WAIVER

- 23.1 This Agreement will not be varied, except according to clause 8.19(a) or 23.3.
- 23.2 Variations must be in writing and signed by the parties.
- 23.3 If required by the Department, the parties will execute a variation to reflect material changes in relevant Department of Human Services policies.

24. LEGAL COSTS AND STAMP DUTY

The Members will share in the legal costs associated with the preparation and negotiation of this Agreement according to their Interest and will pay the cost of all stamp duty (if any) upon this Agreement.

25. NOTICES

Method of Communication

A notice, consent or other communication under this Agreement is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
 - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (ii) sent by fax to that person's fax number and the machine from which it is sent produces a report that states that it was sent in full; or
 - (iii) sent by email to that person's email address and there is evidence that the email message came to the attention of the addressee.

Deemed Communications

25.2 A notice, consent or other communication that complies with this clause is regarded as given and received:

- (a) if it is delivered or sent by fax:
 - (i) by 5 pm (local time in the place of receipt) on a Business Day – on that day; or
 - (ii) after 5 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day – on the next Business Day;
- (b) if it is sent by mail:
 - (i) within Australia – three (3) Business Days after posting; or
 - (ii) to or from a place outside Australia – five (5) Business Days after posting; and
- (c) if it is sent in electronic form – when the email message comes to the attention of the addressee.

Addresses

25.3 A person's postal and email address and fax number are those set out in schedule 3, or as the person notifies the sender.

26. GOVERNING LAW

This Agreement will be governed by and construed in accordance with the law of the State of Victoria. The parties agree to submit to the jurisdiction of the courts of Victoria and all courts of appeal there from.

SIGNED

[See policy document for potential members. Create a signature block for each member. Enter names of members and delete surplus signature blocks and this comment]

for and on behalf of :

(name of Organisation):.....

by (name of authorised signatory): signature:

Date:

Position:

In the presence of:

(Name of witness): *signature:*

Date:.....

for and on behalf of :

(name of Organisation):.....

by (name of authorised signatory): signature:

Date:

Position:

In the presence of:

(Name of witness): *signature:*

Date:.....

for and on behalf of :

(name of Organisation):.....

by (name of authorised signatory): signature:

Date:

Position:

In the presence of:

(Name of witness): *signature:*

Date:.....

for and on behalf of :

(name of Organisation):.....

by (name of authorised signatory): signature:

Date:

Position:

In the presence of:

(Name of witness): *signature:*

Date:.....

for and on behalf of :

(name of Organisation):.....

by (name of authorised signatory): signature:

Date:

Position:

In the presence of:

(Name of witness): *signature:*

Date:.....

for and on behalf of :

(name of Organisation):.....

by (name of authorised signatory): signature:

Date:

Position:

In the presence of:

(Name of witness): *signature:*

Date:.....

for and on behalf of :

(name of Organisation):.....

by (name of authorised signatory): signature:

Date:

Position:

In the presence of:

(Name of witness): *signature:*

Date:.....

for and on behalf of :

(name of Organisation):.....

by (name of authorised signatory): signature:

Date:

Position:

In the presence of:

(Name of witness): *signature:*

Date:.....

for and on behalf of :

(name of Organisation):.....

by (name of authorised signatory): signature:

Date:

Position:

In the presence of:

(Name of witness): *signature:*

Date:.....

SCHEDULE 1

Deed Poll

Assumption of Joint Venture Agreement

[Incoming Party]

and

**** Rural Health Alliance

DEED OF ASSUMPTION

THIS DEED POLL is made on _____ between:

PARTY

The party whose name appears in Attachment 1A (the "Incoming Party")

RECITALS

- A. The Executive Committee of the Alliance has by Special Resolution pursuant to clause 8.20 of the Joint Venture Agreement, attached as Attachment 1B, determined to admit the Incoming Party as a Subsequent Member to the Alliance.
- B. The Incoming Party wishes to become a Subsequent Member in the Alliance and to assume all obligations of a party to the Joint Venture Agreement, whether arising before or after the Effective Date of this document.
- C. The Incoming Party will also adopt the **** Rural Health Alliance – Subsequent Member Agreement' appearing as Attachment 1C of this deed. This agreement explains the main rights and obligations of Members and assists with the interpretation of selected clauses of the Joint Venture Agreement.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless the context otherwise requires, terms defined in the Joint Venture Agreement have the same meaning where used in this document, and:

"Alliance" means the alliance known as the **** Rural Health Alliance, constituted by the Joint Venture Agreement.

"Effective Date" means the date this document is executed under seal by the Incoming Party.

"Joint Venture Agreement" or "Agreement" means the agreement dated XXXXX for the establishment of the Alliance as amended from time to time.

1.2 Rules for interpreting this document

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;

- (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
- (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The word "**agreement**" includes an undertaking or other binding arrangement or understanding, whether or not in writing.

2. OBLIGATIONS OF INCOMING PARTY

The Incoming Party agrees in favour of each Existing Party to the Joint Venture Agreement, that it is bound by the provisions of the Joint Venture Agreement as a party to that Agreement and will assume all the rights and will observe and perform all of the obligations of a party under or in relation to that Joint Venture Agreement whether arising before or after the Effective Date.

3. REPETITION OF REPRESENTATIONS AND WARRANTIES

The representations and warranties contained in the Joint Venture Agreement are taken to be repeated by the Incoming Party on the Effective Date, on the basis of the facts and circumstances as at that date.

4. RELIANCE ON REPRESENTATIONS AND WARRANTIES

The Incoming Party acknowledges that the Executive Committee has agreed to admit the Incoming Party to the Alliance in reliance on the representations and warranties that are made or repeated by means of clause 3 of this document.

5. GOVERNING LAW AND JURISDICTION

This document is governed by the law in force in Victoria. The Incoming Party submits to the non-exclusive jurisdiction of the courts of Victoria and any courts which may hear appeals from these courts in respect of any proceedings in connection with this document.

ATTACHMENT 1A

The Incoming Party: [full name, ACN, and address]

EXECUTED as a deed.

Organisation

Signature of CEO/director

Name

Signature of Witness

Name

ATTACHMENT 1B

SPECIAL RESOLUTION

[Attach copy of Special Resolution which authorises the admission of the Incoming Party]

****** Rural Health Alliance**
Subsequent Member Agreement
("the Agreement")

[Date]

[See clause 13. All parties do not have to sign. The Executive Committee must pre-approve a new Member and the terms of this Deed. The Deed can then just be signed by the Lead Member.]

1 **** Rural Health Alliance – Subsequent Member Agreement - Signing

Agreement made [date] between

THE INCOMING PARTY

Organisation:

Authorised Signature:

Name:

Position:

and

THE **** RURAL HEALTH ALLIANCE

Authorised Signature:

Name:

Position:

Term: [Optional and may include conditions]

Options for term extension: [Optional and may include conditions]

2 Preamble

The **** Rural Health Alliance (the Alliance) is established under a Joint Venture Agreement which, inter alia, details the role of the Executive Committee, the rights of Alliance Members and the processes relating to contracting, dispute resolution and management of the Alliance.

All Members acknowledge the need to comply with all applicable law, regulations, orders, rules and government policies, including the Alliance Policy, and to take all steps necessary to ensure such compliance as may be required from time to time.

This Agreement is also to be read in conjunction with the **** Rural Health Alliance Joint Venture Agreement

In addition, interpretations of selected clauses of the **** Rural Health Alliance Joint Venture Agreement are set out in section 5 below and such interpretations will constitute the meaning of the clauses for this Agreement and for the **** Rural Health Alliance Joint Venture Agreement.

This Agreement documents both the Services and Products to be delivered to the Incoming Party when it becomes a Subsequent Member in the Alliance as well as the potential Services, Products and benefits that can be established for each Member, which may incur additional costs for the Subsequent Member.

3 Subsequent Member Services and Products

[Specific services and products to be specified]

4 Other Matters

[Specify existing contractual obligations with which the Incoming Party must continue to comply during the transitional period, and transition arrangements]

5 Interpretations of Selected Clauses of the **** Rural Health Alliance Joint Venture Agreement

[Specify JVA clauses that require special interpretation and the interpretations that are to apply. This should not be inconsistent with the JVA or the Alliance Policy. This may only be completed in consultation with, and agreement of, the Department.]

SCHEDULE 2

CORE SERVICES OR PRODUCTS

The Core Products and Core Services are:

The alliances' primary role is to provide members with Core Products and Core Services. These must include:

- ICT strategic planning
 - The chief information officer (CIO) of each alliance will be available to members to assist in the research and documentation of a strategic ICT plan for each agency.
- Advocacy
 - Each alliance will seek funding for strategic regional initiatives. Member agencies will not compete with their alliance for funding.
- Representation
 - Each alliance will represent its members at state ICT forums such as HealthSMART groups.
- Standards and policy development for infrastructure and ICT practice
 - Alliances will operate according to and support member services with template standards and policies for infrastructure, change control and other matters where appropriate, including standards and a standard operating environment for workstations.
- Wide area networking to support connections between members within the region
- Network management and monitoring
 - All network routing and core switch appliances on all links of shared WAN infrastructure, agency access routers and associated agency core switches will be deployed under 4 hour maintenance agreements and monitored 24 hours, seven days a week, or 10 hours, five days a week, depending on the needs of the member agency and provider price.
- Internet services
 - a guaranteed minimum bandwidth
 - email and internet access
 - secure remote access to alliance networks and member services.
 - content, virus and spam filtering
- Web Services
 - intranet/internet/extranet template development and hosting.
 - All members will have access to intranet/internet/extranet infrastructure and associated content delivery and management software delivered by each alliance.

Note: Initial web site development, content management and continuing education and training are not core services.
- Internet Protocol (IP) based telephony and video communication services and least cost routing.
- Desktop services, including at least:
 - Imaging and installation of devices
 - Second level support services
- Helpdesk services

- Help desk support must be provided for core services, but may be managed on a user pays basis to cover other services.
- Implementation of HealthSMART projects and other DHS policies and strategies. This will include:
 - Representing members at appropriate forums
 - Advising members about progress, opportunities, issues, options etc
 - Coordinating activities related to planning and implementation
 - Managing implementations (note: costs for major projects are outside the core services)
- Joint procurement: the lead member may, on behalf of the alliance, purchase ICT related products for members.

Alliances may also provide some or all members or customers with additional services on a user-pays or other agreed basis.

Note – This Schedule is current as at the Commencement Date. It will be formally updated in accordance with clause 23.3. Regardless of whether the Schedule has been formally updated, the Schedule will at all times be deemed to include Core Products and Core Services as determined in accordance with prevailing Department of Human Services policy.

SCHEDULE 3

ADDRESSES

A person's postal address, fax number and email address are those set out below:

Secretary

[Name and Full Title of Secretary]

Postal Address:

Fax number: (03)

Email: @

Attention:

Lead Member

[Name of Lead Member]

Postal Address:

Fax number: (03)

Email: @

Attention:

[Member 1]

Postal Address:

Fax number: (03)

Email: @

Attention:

[Member n]

Postal Address:

Fax number: (03)

Email: @

Attention:

Regional Director of the ** Region of the Department of Human Services**

Postal Address:

Fax number: (03)

Email: @dhs.vic.gov.au

Attention: Regional Director, **** Region, Department of Human Services

Secretary to the Department of Human Services

Postal Address:

Fax number: (03)

Email: @dhs.vic.gov.au

Attention: Director, Rural & Regional Health Services