



Health
Hunter New England
Local Health District

20 July 2011

Dr Anecito Mantilla
C/of Ms Margaret Walsh
Cessnock District Health Service

Dear Mantilla

Temporary VMO Appointment: 25 July 2011 to 24 October 2011

Under delegated authority of the Director of Primary and Community Networks – I wish to offer you an appointment as a Temporary Visiting Medical Officer – General Practice Non Procedural – Cessnock District Health Service for the period 25 July 2011 to 24 October 2011.

In accepting this position as a Visiting Medical Officer, you shall participate in an on-call roster for the provision of medical services at Cessnock District Health Service as may reasonably be required by the Local Health District.

Your appointment is subject to the completion of a number of documents that are enclosed. Please take the time to read the documents carefully and do not hesitate to contact this office if you require any assistance. We would appreciate the return of these documents by the date indicated to avoid delays in contract payments.

I wish to thank you for your assistance during the appointment process.

Yours sincerely

Neil Morrison
Area Operations Manager

cc:
Ms M Walsh, Nursing Admin Secretary, CDHS
Ms J Whiting, Senior Nurse Manager, CDHS
Ms Y Patricks, General Manager, LHC
Mr J Copus, Management Accountant, CDHS
Mr D Bartlett & Ms S Campbell, Vmoney Finance
PAS Team, Waratah Campus

Hunter New England Local Health District
ABN 63 598 010 203
Medical Workforce Development
Byrne House, Ground Floor, Locked Bag 1
Hunter Region Mail Centre NSW 2310, Australia
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Email Lynette.Gunning@hnehealth.nsw.gov.au
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HUNTER NEW ENGLAND LOCAL HEALTH DISTRICT

CONTRACT PACKAGE FOR Dr Anecito Mantilla
FOR THE PERIOD: 26 July 2011 to 24 October 2011

VISITING MEDICAL & DENTAL STAFF

ITEM	DESCRIPTION	COMMENT
1	Contract of Liability Coverage	To be returned asap
2	Service Contract	To be returned asap
3	Information of GST and Taxation	To be returned asap
4	Information for Banking and Superannuation (<i>if requested</i>)	To be returned asap
5	Letter of Acceptance	To be returned asap
6	<p><u>CD Documentation</u></p> <p>a) Terms and Conditions b) Explanation Document c) Guideline to TMF d) TMF Form</p> <p>and</p> <p>f) Other Information including related HNE and NSW DOH Policies</p>	CD to be supplied by Cessnock District Hospital

Neil Morrison
Area Operations Manager
Medical Workforce Development
Byrne House, Ground Floor
Locked Bag 1
Hunter Region Mail Centre NSW 2310

Dear Mr Morrison

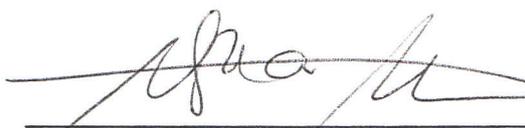
Acceptance of Offer of Appointment

Thank you for your letter of 20 July 2011 offering me an appointment as a Temporary Visiting Medical Officer in General Practice Non Procedural at Cessnock District Health Service for the period 25 July 2011 to 24 October 2011.

I wish to advise my acceptance of your offer.

Yours sincerely

Signature

Name

Dr Anecito Mantilla

Name of Practice
Company (if applicable)

Date



Health

Hunter New England
Local Health District

FEE-FOR-SERVICE CONTRACT – RURAL DOCTOR PACKAGE HOSPITALS

THIS CONTRACT made the 20th day of July 2011, **BETWEEN** Hunter New England Local Health District ("the Hospital/Local Health Network") of the First Part **AND** Dr Anecito Mantilla (MED0001610660) ("the Visiting Medical Officer") of the Second Part.

WHEREAS:

- A. The **Hunter New England Local Health District** has determined to appoint the Visiting Medical Officer to provide services at the hospital or hospitals specified in Schedule 1 hereto (the "specified hospital(s)") and the Visiting Medical Officer agrees to provide such services, subject to the terms and conditions hereunder.
- B. The Visiting Medical Officer is to provide such services as an independent contractor and is to be remunerated on a fee-for-service basis in accordance with the rates and conditions established under the Rural Doctors Settlement Package as defined in this contract, relevant to the services provided by the Visiting Medical Officer under this contract.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. TERM OF CONTRACT

- 1.1 This contract is to be for the period 25 July 2011 to 24 October 2011 unless this contract is properly terminated by either party in accordance with this contract.
- 1.2 The Visiting Medical Officer is, if otherwise qualified, eligible for but not entitled to re-appointment upon the expiry of this contract. Satisfactory fulfilment by the officer of the obligations under this contract shall be one of the considerations to be taken into account in deciding whether to re-appoint the officer. In the event of re-appointment, a new service contract shall be made.
- 1.3 This contract shall not establish the relationship of employer and employee as between the respective parties thereto and the Visiting Medical Officer shall, in providing services under this contract, be and be regarded as an independent contractor.

2. PROFESSIONAL RESPONSIBILITIES

- 2.1 The Visiting Medical Officer shall provide medical services to public patients as specified in Schedule 2 consistent with the clinical privileges granted to the officer under this contract and is to be remunerated for these services in accordance with the rates and conditions established under the Rural Doctors Settlement Package.

- 2.2 The Visiting Medical Officer may participate in the teaching and training of postgraduate medical officers where reasonably required and remunerated by the Local Health Network in accordance with the hourly rate determined by the NSW Department of Health.
- 2.3 The Visiting Medical Officer shall participate in committees expressly established or authorised by the board of the Local Health Network and to which the officer is appointed by such board, where reasonably required by the Local Health Network for the proper and efficient functioning of the hospital concerned. The officer will be remunerated for such participation in accordance with the Rural Doctors Settlement Package.
- 2.4 The Visiting Medical Officer shall participate in an on-call roster for the provision of medical services as may reasonably be required by the Local Health Network, and when so rostered the officer shall be readily contactable at all times and be able and prepared to attend the hospital concerned within a reasonable period of time. To enable the officer to be readily contactable whilst he or she is on-call, the Local Health Network will provide and maintain communications equipment (other than normal telephone services) which is reasonably necessary in the circumstances. The equipment will be provided on the condition that the officer will take reasonable precautions to prevent damage to or loss or theft of the equipment. The officer will be remunerated for such participation in accordance with the Rural Doctors Settlement Package
- 2.5 The Visiting Medical Officer:
- 2.5.1 shall be professionally responsible for the proper clinical management and treatment of public patients under the officer's care in the hospital concerned and shall attend patients admitted under the officer's care at a frequency appropriate to the patients' clinical needs;
- 2.5.2 shall take reasonable steps to ensure that the clinical records related to the services provided by the officer, and those provided for patients under the officer's care, are maintained adequately and that such completed records include details of diagnosis, treatments and operations performed and a discharge summary completed in the manner determined by the hospital after consulting with the officer;
- 2.5.3 shall comply with rules and by-laws in force from time to time at the Local Health Network, not being inconsistent with any of the rights and obligations of the officer under this contract.

3. CLINICAL PRIVILEGES

- 3.1 Subject to subclause 3.2 the Visiting Medical Officer's clinical privileges are as specified in Schedule 1 of this contract.
- 3.2 The Local Health Network may review and vary the clinical privileges of the Visiting Medical Officer at any time after advice from the appropriate credentials committee in respect of the specified hospital/s in accordance with any applicable Act or regulations, or by-laws in force at the specified hospital(s).
- 3.3 The medical services which the Visiting Medical Officer provides to patients at the specified hospital(s) shall be consistent with the clinical privileges

determined by the Local Health Network in respect of the Visiting Medical Officer from time to time.

4. HOSPITAL FACILITIES

4.1 The Local Health Network, where reasonably practicable shall provide:

4.1.1 all ancillary, medical, nursing and clerical assistance and facilities, instruments and equipment reasonably necessary for the proper performance of the services to be rendered by the Visiting Medical Officer under this contract; and

4.1.2 to the Visiting Medical Officer upon request and free of charge, sufficient suitable and serviceable outer uniforms and duty garments, which shall remain the property of the Local Health Network and which shall be laundered at the expense of the Local Health Network.

5. GST

5.1 To the extent that the Visiting Medical Officer is liable to pay GST in connection with services supplied under this contract, the fees specified in the Rural Doctors Settlement Package are exclusive of GST.

5.2 The Local Health Network agrees that should the Visiting Medical Officer be liable for GST in connection with the services supplied that the fees specified should be increased by an amount equivalent to the GST payable by the Visiting Medical Officer on the supplies.

5.3 The Visiting Medical Officer shall be registered for GST purposes and shall have an Australian Business ("ABN"). The Visiting Medical Officer shall provide such details to the Local Health Network.

5.4 The Visiting Medical Officer agrees that the Local Health Network will gross up GST liable services in accordance with GST legislation. The Local Health Network will create tax invoices on the Visiting Medical Officer's behalf (being Recipient Created Tax Invoices). The Local Health Network shall provide the Visiting Medical Officer with a copy of the Recipient Created Tax Invoices at the time of payment of the service.

6. UNPAID LEAVE OF ABSENCE

6.1 The Visiting Medical Officer shall be entitled to unpaid leave of absence during any period the officer is unable to render services due to illness or special circumstances of an urgent or compassionate nature provided that the officer shall notify the Local Health Network of such incapacity as soon as is reasonably practicable.

6.2 The Visiting Medical Officer may have other periods of unpaid leave of absence at times agreed between the officer and the Local Health Network. The officer will give the Local Health Network reasonable written notice of proposed periods of leave of absence. The Local Health Network will not unreasonably withhold its agreement to proposed periods of leave of absence and will take into account the reasonable needs of the officer for reasons including professional development, continuing medical education and holidays.

- 6.3 Upon the receipt of reasonable written notice and in accordance with clause 6.2, the Local Health Network is to organise such alternative arrangements for the provision of medical services to public patients as the Local Health Network requires whilst the Visiting Medical Officer is on a leave of absence under this clause. At the request of the Local Health Network the officer will provide reasonable assistance to the Local Health Network in organising such arrangements.

7. RECORD OF SERVICES

- 7.1 The Visiting Medical Officer shall maintain a record of services rendered by the officer under the contract in accordance with the Rural Doctors Settlement Package and in a form agreed with the Local Health Network.
- 7.2 The record referred to in subclause 7.1 shall be maintained for each calendar month during which services are provided by the Visiting Medical Officer, and it shall be submitted to the Local Health Network in accordance with the Rural Doctors Settlement Package. Any claim made by the officer must be capable of being verified by the Local Health Network from the records held by the Local Health Network.
- 7.3 The record when so submitted pursuant to subclause 7.2 shall be accompanied by (or be) an account for payment. The Local Health Network in making payment of an account to the officer shall advise details of how the payment is made up as between the various services rendered.

8. SUSPENSION OF CONTRACT

- 8.1 Subject to Chapter 8 of the Health Services Act 1997, the board of the Local Health Network may suspend the appointment of the Visiting Medical Officer in accordance with any applicable by-laws where it is necessary in the interests of the hospital to which the officer is appointed.
- 8.2 Where the Visiting Medical Officer is so suspended, the respective rights and obligations of the parties under the contract shall be suspended for the duration of that suspension.

9. TERMINATION OF CONTRACT

- 9.1 Subject to Chapter 8 of the Health Services Act 1997 the contract shall be terminated:
- 9.1.1 upon the expiry of the period for which it was made or on such earlier date as may be agreed between the Visiting Medical Officer and the Local Health Network;
 - 9.1.2 by three months' notice in writing given by either the Visiting Medical Officer or the Local Health Network;
 - 9.1.3 if the Visiting Medical Officer ceases to be registered as a medical practitioner by the New South Wales Medical Board;
 - 9.1.4 if a condition is placed on the Visiting Medical Officer's registration as a medical practitioner by the New South Wales Medical Board which in the opinion of the Local Health Network precludes the officer from

providing any services of a kind or in a manner that is required under the contract;

- 9.1.5 if the Visiting Medical Officer becomes permanently mentally or physically incapable of rendering any of the services under the contract;
 - 9.1.6 if the Visiting Medical Officer commits serious and wilful misconduct; or
 - 9.1.7 if the Visiting Medical Officer's appointment is terminated by operation of any Act or regulation.
- 9.2 On the termination of the contract, any amount due and payable to the Visiting Medical Officer pursuant to the contract shall be paid at the time of such termination or as soon thereafter as reasonably practicable.

10. DISPUTE RESOLUTION PROCEDURE

- 10.1 The objective of each stage of this procedure is to achieve a result which is fair and equitable in the circumstances. It is expected that both the Visiting Medical Officer and the Local Health Network will be prepared at all times to take part in bona fide negotiations to agree on such a result in any dispute between them without the necessity of taking it to a Liaison Committee for determination under subclause 10.8.

Stage 1 - Consultation

- 10.2 In the event of a dispute arising, the Visiting Medical Officer or the Local Health Network may give notice in writing to the other party identifying the matter or matters the subject of dispute.
- 10.3 As soon as practicable after the giving of notice under subclause 10.2 the parties shall meet to discuss the dispute and attempt to resolve it by a mutually agreed method.

Stage 2 - Hospital level

- 10.4 If the dispute is not resolved within 14 days after the giving of notice under subclause 10.2 or such further time as the parties may agree in writing, the hospital administration shall at the earliest practicable time and in any event within a further 14 days convene a meeting of the following participants:
- (i) the Visiting Medical Officer;
 - (ii) the clinical head responsible for the Department or Unit in which the officer performs his or her duties (if such a position exists), otherwise a medical practitioner nominated by the executive officer/manager (however called) for the hospital at which the officer performs his or her duties;
 - (iii) the executive officer/manager (however called) for the hospital at which the officer performs his or her duties or the nominee of the executive officer/manager;
 - (iv) at the option of the Visiting Medical Officer, a representative of the Rural Doctors Association (NSW) Inc or an independent person of the officer's choice, not being a legal practitioner; and
 - (v) such other persons as may be agreed by the parties to the dispute.

- 10.5 The meeting will consider the dispute with the objective of assisting the parties to resolve the dispute in a fair and equitable manner. With the consent of the parties the meeting may be continued on adjourned dates.

Stage 3 - Local Health Network level

- 10.6 If the dispute is not resolved within 14 days after the convening of the meeting under subclause 10.4 or such further time as the parties may agree in writing, the Local Health Network shall at the earliest practicable time and in any event within a further 14 days convene a meeting of the following participants:
- (i) the Visiting Medical Officer;
 - (ii) an appropriate clinical head nominated by the relevant chief executive officer (however called) of the Local Health Network;
 - (iii) an executive of the Local Health Network nominated by the relevant chief executive officer (however called) of the Local Health Network;
 - (iv) at the option of the Visiting Medical Officer, a representative of the Rural Doctors Association (NSW) Inc or an independent person of the Visiting Medical Officer's choice, not being a legal practitioner.
 - (v) such other persons as may be agreed by the parties to the dispute.
- 10.7 The meeting will consider the dispute with the objective of assisting the parties to resolve the dispute in a fair and equitable manner. With the consent of the parties the meeting may be continued on adjourned dates.

Stage 4 – Mediation by Disputes Committee

- 10.8 If the dispute is not resolved within 14 days after the convening of the meeting under sub-clause 10.6 or such other time as the parties may agree in writing, then the Visiting Medical Officer or the Local Health Network may serve a further notice in writing on the other referring the dispute to a Disputes Committee for mediation. Such dispute shall thereupon be and is hereby referred to a Disputes Committee for mediation.
- 10.9 A Disputes Committee will have a total of not more than six members of which there will be an equal number of nominees of the Rural Doctors Association (NSW) Inc and the Director-General of the NSW Department of Health.
- 10.10 A Disputes Committee may call on expert advice as and when necessary.
- 10.11 The cost of a Disputes Committee will be shared equally between the Visiting Medical Officer and the Local Health Network unless otherwise ordered by a Disputes Committee.
- 10.12 In any proceedings before a Disputes Committee, the Visiting Medical Officer and the Local Health Network shall have the right to appear in person or with the leave of a Disputes Committee be represented by an agent. However, no party is to be represented by a legal practitioner except with the consent of all parties and by leave of the Disputes Committee.
- 10.13 It is agreed between the parties that a Disputes Committee shall determine all questions arising for determination by reference to considerations of general justice and fairness.

Stage 5 – Arbitration

- 10.14 If the dispute is not resolved within 14 days after the appointment of the mediator or such other time as the parties may agree in writing, then the Officer or the Local Health Network may serve a further notice in writing on

the other referring the dispute to arbitration. Such dispute shall thereupon be and is hereby referred to arbitration by a single arbitrator to be agreed upon by the Visiting Medical Officer and the Local Health Network or, in the absence of agreement, to be appointed by the President or other most senior bearer of the Council of the Law Society of New South Wales or its successor.

- 10.15 The arbitrator's fee shall be negotiated on the appointment of the arbitrator and shall be shared equally between the Visiting Medical Officer and the Local Health Network, unless otherwise ordered by the arbitrator.
- 10.16 The Visiting Medical Officer and the Local Health Network shall each appoint an assessor to sit with the arbitrator in a consultative capacity, but the determination shall be made solely by the arbitrator.
- 10.17 The Visiting Medical Officer and the Local Health Network shall have the right to appear before the arbitrator and may be represented by a barrister or by a solicitor or, with the leave of the arbitrator, by an agent.
- 10.18 At the request of the Visiting Medical Officer, the Rural Doctors Association (NSW Branch) shall be entitled to appear and be represented in the arbitration.
- 10.19 At the request of the Local Health Network, the NSW Department of Health shall be entitled to appear and be represented in the arbitration.
- 10.20 In the event of either the Rural Doctors Association (NSW Branch) or the NSW Department of Health appearing in the arbitration pursuant to a request under subclause 10.18 or 10.19, the other organisation shall be entitled to appear and be represented as of right.
- 10.21 It is agreed between the parties that the arbitrator shall determine all questions arising for determination in the course of the arbitration by reference to considerations of general justice and fairness.
- 10.22 The determination of the arbitrator shall be final and binding upon the Visiting Medical Officer and the Local Health Network.

Definitions

10.23 In this clause:

10.23.1 "dispute" means any dispute arising between the Visiting Medical Officer and the Local Health Network at any time as to any matter or thing of whatsoever nature arising under the contract or in connection herewith; including but not limited to matters relating to clinical privileges, but excluding a matter relating to the non-reappointment, suspension or termination of appointment of the Visiting Medical Officer;

10.23.2 "local hospital" means a health facility conducted by the Local Health Network at which the Visiting Medical Officer provides services under the contract.

11. NOTICES

Any notice required by the contract to be given in writing shall be properly served if delivered by hand to the addressee personally or if sent by prepaid registered mail, facsimile or telex transmission to the addressee at the address furnished in writing to the addressor, and shall be deemed to have been received by the addressee on the date of hand delivery or on the date the facsimile or telex transmission was recorded or seven days after the date of posting.

12. DEFINITIONS

In this contract:

"appointment" means appointment as a visiting medical officer and includes reappointment, and appointed and re-appointed have a corresponding meaning;

"Local Health Network" means an Local Health Network as defined in the Health Services Act;

"board" means a board of an Local Health Network as defined in the Health Services Act;

"chief executive officer" means the chief executive officer of the Local Health Network or his or her nominee.

"clinical privileges" means the clinical privileges as defined in Part 4 of Chapter 8 of the Health Services Act;

"fee-for-service contract" means fee-for-service contract as defined in the Health Services Act;

"GST" means Goods and Services Tax imposed in accordance with the A New Tax System (Goods and Services Tax) Act 1999, related Acts and Regulations;

"GST legislation" means the A New Tax System (Goods and Services Tax) Act 1999, and related Acts and Regulations;

"hospital" means a hospital as defined in the Health Services Act;

"medical practitioner" means a person registered for the time being under the Medical Practice Act 1992;

"officer" means the visiting medical officer;

"on-call" means rostered to be available to attend public patients pursuant to an on-call roster prepared by a hospital or an Local Health Network, as the case may be in consultation with the relevant hospital.

"public patient" means a patient in respect of whom the hospital or Local Health Network, as the case may be, provides comprehensive care, including all necessary medical, nursing and diagnostic services, by means of its own staff or by other agreed arrangements;

"Rural Doctors Settlement Package" means the rates on a fee-for-service basis of remuneration, agreed between the NSW Department of Health and

the Rural Doctors Association (NSW) Inc and specified in Departmental instructions from time to time, in respect of certain services provided by visiting medical officers under modified fee-for-service contracts;

"service contract" means a service contract as defined in the Health Services Act;

"services" means medical services provided to a public patient by the visiting medical officer under a fee-for-service contract, including teaching, training and participation on committees, but excluding attendance at meetings of a medical staff council (howsoever called);

"visiting medical officer" means a visiting medical officer as defined in the Health Services Act who performs the said work under a fee-for-service contract, but excluding a pathologist and a radiologist; and

"visiting practitioner" means a visiting practitioner as defined in the Health Services Act

NOTE Other conditions of appointment

Any other conditions to which the Visiting Medical Officer's appointment is subject are required to be specified in the service contract if they are to have effect.

SIGNED for and on behalf of)
the Public Health Organisation)
in the presence of)

.....
Mr Neil Morrison
Operations Manager
Medical Workforce Development

.....
Witness: Lynette Gunning
Systems and Contracts Support Administrator
Medical Workforce Development

SIGNED by the Visiting Medical)
Officer in the presence of)

.....
Dr Ancito Mantilla



.....
Witness signature

.....
Please print name of witness



SCHEDULE 1

Name and Address of Hospital (s)	Clinical privileges granted to the Visiting Medical Officer in respect of specified hospital (s)
Cessnock District Hospital	General Practice Non Procedural

SCHEDULE 2

Medical services to be provided to public Patients (under clause 2.1 of the contract)

Cessnock District Hospital	General Practice Non Procedural
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**RURAL VMO/HMO CONTRACT OF LIABILITY COVERAGE
(INCLUDING PRIVATE INPATIENT INDEMNITY COVER)**

THIS CONTRACT is made on the 20th day of July 2011, BETWEEN Hunter New England Local Health District ("the PHO") and AND Dr Anecito Mantilla whose AHPRA number is MED0001610660 ("the VMO"/"HMO").

WHEREAS:

- A. The VMO/HMO has been appointed as a visiting medical officer under a written service contract with the PHO, subject **service contract** (the "service contract") **is annexed as Attachment A to this contract.**
- B. The PHO agrees to indemnify the VMO/HMO (and where the service contract is with the VMO's/HMO's practice company, that practice company) for certain health care claims in accordance with the terms of this contract.
- C. The NSW Department of Health has prepared an Explanation Document to assist VMOs, HMOs and public health organisations to understand the standard contract of liability coverage. **A copy of the document current at the date of this contract is annexed as Attachment B.** This document may be subject to variation from time to time by the Department as issues concerning the TMF indemnity arrangements which require further explanation or clarification arise.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. Term of Contract

*****For Visiting Medical Officers obtaining TMF cover part way through their current term of appointment***

- 1.1 *Unless sooner terminated in accordance with this contract, the term of this contract is from the date of this contract to the date of expiration or termination of the service contract (including any extension of the service contract term by written agreement of the parties). ***

*****For Visiting Medical Officers obtaining TMF cover at the commencement of new appointment or re-appointment:***

- 1.1 *Unless sooner terminated in accordance with this contract, the term of this contract is concurrent with the term of the service contract (including any extension of the service contract term by written agreement of the parties). ***
- 1.2 Where the VMO/HMO is re-appointed in writing for a consecutive term of not more than 3 months, the term of this contract is extended for the term of that further appointment, unless sooner terminated in accordance with this contract.

** Delete whichever is inapplicable

2. Liability Coverage

- 2.1 Subject to clauses 2.3 and 4, the PHO will indemnify the VMO**/HMO** (and if the service contract is with the VMO's**/HMO's** practice company, the practice company) for civil liability arising from any health care claim in respect of occurrences during the coverage period*** relating to the provision, by the VMO**/HMO**, of:
- 2.1.1 health care, under the service contract, to public patients in public hospitals, or through health services, under the control of the PHO, and includes health care which the PHO directs the VMO to provide to public patients for and on behalf of another public health organisation; and
 - 2.1.2 health care to private inpatients in public hospitals under the control of the PHO.
- 2.2 The references to "health care to public patients in public hospitals or through health services" in clause 2.1.1 and to "health care to private inpatients in public hospitals" in clause 2.1.2 includes the provision of medical advice by the VMO**/HMO** to a person as part of obtaining the person's consent to undergo or receive a medical procedure or treatment, notwithstanding that the provision of the advice in obtaining consent to the procedure or treatment did not occur in a public hospital or other health service under the PHO's control, provided that:
- 2.2.1 the VMO**/HMO** subsequently provides that medical procedure or treatment to the person as an inpatient in a public hospital or other health service; and
 - 2.2.2 the VMO**/HMO** substantially complies with the NSW Department of Health's policy on consent to medical treatment as specified from time to time by circular issued to public health organisations.
- 2.3 The indemnity under clause 2.1 does not apply to the following:
- 2.3.1 any health care claim arising out of conduct on the part of the VMO**/HMO** that constitutes a criminal offence or any other serious and wilful misconduct;
 - 2.3.2 any claim arising from the manufacture of any products or the construction, alteration, repackaging, repair, servicing, treating of any products sold, supplied or distributed by the VMO**/HMO**, other than where the product is supplied to the VMO**/HMO** by the PHO; or
 - 2.3.3 any claim arising out of the failure of any product to fulfil the purpose for which it was designed, specified, warranted or guaranteed to perform, other than where the product is supplied to the VMO**/HMO** by the PHO.

*** "Coverage period" is defined in clause 11.

** Delete whichever is inapplicable

3. Visiting Medical Officer's Responsibilities

Prompt notification of certain incidents

- 3.1 The VMO**/HMO** is required to promptly report in writing to the PHO any incident which could reasonably be expected to trigger the indemnity under this contract in the future, as soon as the VMO**/HMO** becomes aware of such an incident. The report must be in the form of the NSW Treasury Managed Fund (TMF) Incident Report as varied from time to time. **The TMF Incident Report Form current as at the date of this contract is Attachment C to this contract.**

Quality assurance, quality improvement and risk management

- 3.2 The VMO**/HMO** is required to cooperate with and participate in any clinical quality assurance, quality improvement or risk management process, project or activities as required by the PHO.

In particular, the VMO**/HMO** is required to actively participate in the PHO's programs to implement the initiatives set out in the NSW Department of Health document titled "The Clinician's Toolkit for Improving Patient Care". This involves activities to minimise and deal with human error and improve patient safety. It includes the VMO**/HMO** undertaking the following activities:

- 3.2.1 facilitated incident monitoring
- 3.2.2 participation in sentinel event management.
- 3.2.3 the use of clinical indicators for the purpose of improving clinical practice.

Health Care Claims History

- 3.3 The VMO**/HMO** must, within ten working days of receiving a written request from the PHO, provide to the PHO his or her record of health care claims history for the past 6 year period.

Private inpatient classification and billing

- 3.4 The VMO**/HMO** must ensure that:
- 3.4.1 in respect of health care provided by the VMO**/HMO** to private inpatients, who are compensable patients where a fee/s for health care of the kind provided to such patients by the VMO**/HMO** is specified under motor accidents, workers compensation or other statutory scheme, such patients, or the relevant insurers on the patients' behalf, are not charged more than the specified fee/s for that health care.
 - 3.4.2 in respect of health care provided by the VMO**/HMO** to private inpatients who are entitled veterans:
 - (a) where a fee/s for health care of the kind provided to such patients by the VMO**/HMO** are recoupable from the Commonwealth Department of Veterans Affairs (however

called), those patients are not charged more than the recoupable fee/s for that health care; or

- (b) in any other case, such patients are not charged more than 100% of the applicable Medicare Benefits Schedule fee/s for that health care.

4. Reporting, management and conduct of claims

- 4.1 The VMO**/HMO** must report in writing to the PHO any claim against the VMO**/HMO** (or his or her practice company) for which the practitioner seeks indemnity under clause 2 as soon as practicable.
- 4.2 The management and conduct of a health care claim indemnified under this contract passes entirely to the PHO and the NSW Treasury Managed Fund. The PHO and the NSW Treasury Managed Fund are responsible for the incurring and payment of legal and other costs in managing and conducting the claim. The PHO and the NSW Treasury Managed Fund are entitled at any time to conduct, in the name of the VMO**/HMO** (or, where applicable, his or her practice company), the investigation, defence or settlement of any such claim.
- 4.3 The indemnity provided under clause 2 is conditional upon the rights of subrogation and the co-operation of the VMO**/HMO** (and, where applicable, his or her practice company) in the management and conduct of the claim as set out in Schedule 1 to this contract.
- 4.4 Where a health care claim against the VMO**/HMO** or his or her practice company is not the subject of indemnity under this contract but the PHO holds information in respect of the particular occurrence giving rise to the claim the PHO will, upon request, provide such information to the VMO**/HMO**, or the medical indemnity provider of the VMO or his or her practice company, provided it is lawful and reasonable to do so.

5. Process prior to termination

- 5.1 Prior to being given written notice of termination under this contract, the Fund Manager or PHO, as the case may be, must:
 - 5.1.1 request in writing that the VMO**/HMO** show cause why termination should not occur. This "show cause" letter must outline the reasons for the proposed termination, and provide the VMO**/HMO** with a period of 30 days from the date of receipt of the letter within which to respond; and
 - 5.1.2 advise the VMO**/HMO** in writing of the outcome of its consideration of the response to the "show cause" letter.

6. Termination

- 6.1 This contract may be terminated by written notice given to the VMO**/HMO** by the Fund Manager. Subject to clause 5 the Fund Manager may give such notice where:
 - 6.1.1 the VMO**/HMO** has an incident and/or health care claims experience which the Fund Manager considers warrants termination of the contract; or

- 6.1.2 the VMO**/HMO** breaches clause 3.1.
- 6.2 Subject to clause 5 the PHO may terminate this contract by the giving of written notice in the event that the VMO**/HMO** repeatedly fails to comply with clauses 3.2, or 3.4, or fails to comply with a request under clause 3.3.
- 6.3 The VMO**/HMO** may at any time terminate this contract by written notice given to the PHO.
- 6.4 Termination does not take effect unless the notice of termination contains advice to the VMO**/HMO** as to the process for requesting a review of the decision to terminate.
- 6.5 Where the VMO**/HMO** requests a review under clause 7, termination does not take effect unless the outcome of a review (which complies with clause 7) has determined that termination of the contract should occur.
- 6.6 Termination does not take effect until whichever is the later of the following:
 - 6.6.1 the expiration of three months following the giving of notice under this clause; or
 - 6.6.2 where the VMO**/HMO** requests a review in accordance with clause 7, the expiration of 30 days following receipt by the VMO**/HMO** of written advice of the outcome of a review undertaken in accordance with clause 7.

7. Review

- 7.1 The VMO**/HMO** may make a request in writing to the Director-General for review of a decision:
 - 7.1.1 to give notice of termination of this contract under clause 6; or
 - 7.1.2 that indemnity is not to be provided, or will cease to be provided, in accordance with the terms and conditions of this contract,within 30 days of receipt of notice of termination or written advice of a decision that indemnity is not, or is no longer, to be provided in accordance with the terms of the contract in respect of a claim.
- 7.2 A review panel convened by the Director-General will consider the request for review.
- 7.3 A review panel is to consist of the following persons:
 - 7.3.1 the person for the time being holding the position of Chief Health Officer of the NSW Department of Health (however called);
 - 7.3.2 the person for the time being holding the position of Chief Financial Officer of the NSW Department of Health (however called);
 - 7.3.3 the person holding the position of General Counsel with the NSW Department of Health (however called); and

7.3.4 a nominee of the Australian Medical Association (NSW), or if the Visiting Medical Officer is remunerated under the Rural Doctors Settlement Package arrangements, a nominee of the Rural Doctors' Association (NSW).

7.4 If, following review, the review panel determines that the termination decision should not proceed or that indemnity is, or will continue, to be provided in accordance with the terms and conditions of this contract in respect of the relevant claim, the Director-General will direct the Fund Manager or the PHO, as the case may be, to withdraw the notice of termination or to provide or continue to provide indemnity for a particular claim and will advise the VMO**/HMO** of the outcome of the review. Where the Director-General has directed that a notice of termination be withdrawn, a further notice of termination may not be issued under this contract for at least three months following the date of withdrawal of the notice.

7.5 If, following review, the review panel determines that termination of the contract should occur or indemnity in respect of a claim is not, or is no longer, available in accordance with the terms and conditions of this contract, the Director-General will advise the VMO**/HMO** of the outcome of the review.

8. Continuing Rights

The rights and obligations conferred by clause 2, clause 4 and, insofar as clause 7 confers an entitlement to review of a decision not to provide or to cease to provide an indemnity, clause 7 of this contract survive the expiration or termination of this contract.

9. Notices

The addresses of the parties for the purposes of giving any notice shall be as may from time to time be specified in writing between the parties.

10. Applicable Law

This contract will be governed by, and construed in accordance with, the law for the time being in force in New South Wales, and the parties submit to the jurisdiction of the courts of that State.

11. Definitions

coverage period means the term of this contract.

Compensable patient means a patient:

- who is receiving public hospital services for an injury, illness or disease; and
- who has received, or has established a right to receive, payment by way of compensation or damages (including payment in settlement of a claim for compensation or damages) under a law that is or was in force in a State or Territory (other than Veterans; Affairs legislation) in respect of the injury illness or disease for which he or she is receiving health care;

Director-General means the person for the time being holding the office of Director-General of the NSW Department of Health (however called);

eligible person means eligible person as defined by section 3 of the Commonwealth Health Insurance Act 1973;

entitled veteran means an entitled veteran as defined by the Australian Health Care Agreement applying from time to time;

Fund Manager is the body engaged from time to time by the NSW Treasury to manage the NSW Treasury Managed Fund;

health care means any care, treatment advice, service or goods provided in respect of the physical or mental health of a person;

health care claim means a claim for damages or other compensation, whether by verbal or written demand or the commencement of legal proceedings, in respect of an injury or death caused wholly or partly by the fault or alleged fault of the VMO**/HMO** in providing or failing to provide health care;

ineligible patient means a patient who is an ineligible person;

ineligible person means a person who is not an eligible person;

NSW Treasury Managed Fund is the self-insurance and risk management scheme established by the NSW Government to cover certain liabilities of the State and its agencies. A reference in this contract to the NSW Treasury Managed Fund is taken to include any officer or employee of the NSW Government, the Fund Manager or any employee or agent of the Fund Manager involved in the investigation, management or conduct of health care claims indemnified under this contract;

practice company means a practice company as defined by the Health Services Act 1997;

private inpatient means a patient who is admitted to a public hospital under the control of the PHO, and who is not a public patient. Unless the contrary intention is expressed in this contract, "private inpatient" includes a compensable patient, entitled veteran and an ineligible patient. It does not include, for the purposes of this contract only, an ineligible person who the VMO**/HMO** is required, by the PHO, to treat as a public patient in a public hospital or public health service under the VMO**/HMO** service contract;

public health organisation means a public health organisation as defined by the *Health Services Act 1997*;

public hospital means a public hospital as defined by the *Health Services Act 1997*;

public patient means an eligible person who receives or elects to receive health care at a public hospital or public health service free of charge. It also means, for the purposes of this contract only, an ineligible patient who the VMO**/HMO** is required, by the PHO, to treat as a public patient in a public hospital or public health service under the service contract;

record of health care claims history means a record of the number of health care claims, or incidents that may give rise to health care claims, notified to the VMO**/HMO** professional indemnity provider, including date of notification of each health care claim, date and brief description of each relevant incident and the compensation range within which the health care claim fell, or is estimated to fall, as follows:

- (i) < \$50,000
- (ii) \$50,000 - <\$100,000
- (iii) \$100,000 - <\$250,000
- (iv) \$250,000 - <\$500,000
- (v) \$500,000 - <\$1 million
- (vi) \$1 million +.

SIGNED for and on behalf of)
 the Public Health Organisation)
 in the presence of :)



.....
 Neil Morrison
 Area Operations Manager, MWD



.....
 Witness: Lynette Gunning

SIGNED by the Visiting Medical)
 Officer/Honorary Medical Officer**)
 in the presence of:)



.....
 Dr Anecito Mantilla

Sign Here

.....
 Signature of Witness

.....
 Print name of witness

Witness Sign Here

SCHEDULE 1

Conditions related to the management and conduct of claims

- 1.1 It is a condition precedent to the provision of indemnity under clause 2 of this contract in respect of a claim that the VMO**/HMO**:
- (i) give the PHO, the NSW Treasury Managed Fund and any legal representatives appointed by the NSW Treasury Managed Fund all information and assistance in relation to the claim as they may reasonably require to determine liability, investigate, defend or settle the claim;
 - (ii) release to the PHO and the NSW Treasury Managed Fund all documents that they may require to determine the existence or extent of the PHO's obligations and assertion of its rights of contribution as against any and all other persons, entities or organisations;
 - (iii) waive in favour of the PHO and the NSW Treasury Managed Fund any client legal privilege that may arise between the VMO**/HMO** and the legal representatives appointed by the NSW Treasury Managed Fund or by or on behalf of the PHO in the management or conduct of the claim.
- 1.2 The continued provision of indemnity under clause 2 in respect of a claim is conditional upon the VMO**/HMO** continuing to comply with the requirements of clause 1.1 (i), (ii) and (iii) of this Schedule during the period that the claim is being managed and conducted by the PHO or the NSW Treasury Managed Fund.

Subrogation

2. The PHO is entitled to all of the VMO's**/HMO's** rights of recovery in respect of a claim for which indemnity is, or is to be, provided under clause 2 of this contract and the VMO**/HMO** will do everything to secure and preserve such rights, including but not limited to the execution of documents necessary to allow the PHO or the NSW Treasury Managed Fund to take legal action in the name of the VMO**/HMO** in exercise of the PHO's rights under this contract.