



respect of occurrences during the coverage period\*\*\* relating to the provision, by the VMO\*\*/HMO\*\* under the service contract, of health care 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.

2.2 The reference to “health care to public patients in public hospitals or through health services” in clause 2.1 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 a public patient 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.

### 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.**

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

\*\* Delete whichever is inapplicable

*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.

**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:

\*\* Delete whichever is inapplicable

- 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 clause 3.2 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

\*\* Delete whichever is inapplicable

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.

\*\* Delete whichever is inapplicable

## 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

*\*\*In respect of a VMO/HMO whose appointment occurred prior to 1 January 2002 and who has signed this contract by 30 April 2002, **coverage period** means 1 January 2002 until the date of expiration or termination of this contract.\*\**

*\*\*In respect of a VMO/HMO whose appointment occurred between 1 January 2002 and 30 April 2002 and who has signed this contract by 30 April 2002, **coverage period** means the date of the VMO's\*\*/HMO's\*\* appointment under the service contract until the date of expiration or termination of this contract.\*\**

*\*\*In respect of any other VMO/HMO, **coverage period** means the term of this contract.\*\**

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

**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;

**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;

**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 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;

\*\* Delete whichever is inapplicable



## 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.