

## Standardised Licence Arrangements for VMOs Providing Private Non Admitted Services

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**Functional Sub group** Corporate Administration - Fees  
Personnel/Workforce - Industrial and Employee Relations  
Personnel/Workforce - Conditions of employment

**Summary** Guidelines (including a standard licence agreement) to give effect to the expansion of rights of private practice of Visiting Medical Officers to include non-admitted activity.

Enquiries regarding the licence agreement are to be directed to the Department's Legal and Legislative Services Branch and enquiries regarding insurance arrangements to the Finance and Business Management Branch.

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**Applies to** Area Health Services/Chief Executive Governed Statutory Health Corporation, Board Governed Statutory Health Corporations, Affiliated Health Organisations - Non Declared, Affiliated Health Organisations - Declared, Public Health System Support Division, NSW Dept of Health

**Audience** All Chief Executives, Directors of Clinical Operations, Directors of Corporate Services

**Distributed to** Public Health System, NSW Department of Health

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**Status** Active

## **STANDARDISED LICENCE ARRANGEMENTS FOR VISITING MEDICAL OFFICERS (VMOs) PROVIDING PRIVATE NON ADMITTED SERVICES**

### **Purpose**

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The 2008 NSW Government Mini-Budget announced the introduction of standardised arrangements to permit VMOs to treat privately referred non-inpatients (PRNI) at NSW public hospitals.

The purpose of these Guidelines are to establish a framework, including principles and a standardised licensing framework, for Public Health Organisations to follow when negotiating commercial licensing arrangements for the provision of services by VMOs to PRNI at public hospitals. This reform will ensure that VMOs are able to participate in similar arrangements to those that exist for Staff Specialists in terms of access to private patients.

### **Key Principles**

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The following principles are to apply to negotiations between Public Health Organisations and VMOs in respect of these arrangements:

1. Participation by VMOs in these arrangements is purely voluntary.
2. Within the broad framework of these principles and the standard form licence agreement at annexure 1 to this guideline, arrangements are to be kept as flexible as possible to reflect local, professional and service needs.
3. That the initial approach adopted support the operation of these arrangements on a purely commercial basis with the option to consider other possible approaches in the future if required. Under this commercial approach, the VMO will claim all of revenues from services provided to PRNI and be responsible for any declarations of income to the Australian Taxation Office.
4. Consistent with commercial arrangements, VMOs will reimburse the Public Health Organisation (PHO) an agreed amount/rate for resources of the PHO consumed by the VMO in the provision of services.
5. The level of reimbursement to PHO is to be consistent, where possible, with existing infrastructure fees for VMOs. The Department's deputy Director-General, Health System Support is to endorse any deviations from this so that flow on effects can be evaluated and considered.
6. There is to be flexibility in relation to the reimbursement arrangements adopted. There are two broad approaches that can be applied – a volume based charging arrangement or a flat payment arrangement.
7. VMOs participating in these arrangements can either make their own insurance and indemnity arrangements or can opt, subject to conditions, to obtain liability coverage by the NSW Treasure Managed Fund (TMF) in respect of services to PRNI.

8. Patients have the choice to be a private or a public patient. Patients are still able to elect to be public even if they carry a referral that may permit private patient status.

## **Use of the guideline**

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### **Medical remuneration and operation of models**

It is the responsibility of individual medical practitioners to ensure that their billing practices comply with all relevant Australian Government requirements.

Billing by medical practitioners must comply with the relevant provisions of the Medicare Benefits Schedule (MBS) and the *Health Insurance Act 1973* (Cth). Medical practitioners should consult the current version of the MBS and any other supporting information issued by Medicare Australia.

Decisions about the level of the licence fee to be paid by medical practitioners involved in these arrangements should be made on the basis of the information contained in Model A and Model B of the attached framework.

PHOs are to ensure that all arrangements comply with the National Healthcare Agreement 2009 particularly in relation to patient referral and election procedures. A summary of these requirements are provided in the attached framework.

### **Revision history**

<b>Version</b>	<b>Approved by</b>	<b>Amendment notes</b>
June 2009 (GL2009_008)	DDG Strategic Development	New policy issued as a result of the Mini Budget.

## **ASSOCIATED DOCUMENTS**

1. Framework for the development of standardised licence arrangements for VMOs providing private services to non-admitted patients at public hospitals.
2. Standard form licence agreement between PHOs and VMOs

**FRAMEWORK FOR THE DEVELOPMENT OF STANDARDISED  
LICENCE ARRANGEMENTS FOR VMOS PROVIDING PRIVATE  
SERVICES TO NON-ADMITTED PATIENTS AT PUBLIC HOSPITALS**

June 2009

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## **Licence agreement and licence fee**

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PHOs negotiating with VMOs to provide health care services to non-admitted private patients in facilities operated by the PHO health service grounds or buildings should use the standard licence agreement at Attachment 2.

The PHO in reaching agreement with the VMO on the licence fee model to be applied (see standard licence agreement – clause 6 and Schedule 1, Item 13) may offer the following two options.

### **Model A: Volume based**

This means:

- VMO has responsibility for ensuring all privately referred non-inpatients are referred to him/her by name
- VMO may manage own billing arrangements **or** allow the PHO to bill on the VMO's behalf with billings placed into a VMO named trust account
- VMO retains ownership of billings and associated declaration of income to the Australian Taxation Office.
- PHO invoices the VMO for a licence fee at an agreed rate. The level of the licence fee is to be geared to throughput (hours, patient numbers or occasions of service), having regard to the existing infrastructure fees for VMOs.
- PHO provides an agreed level of service such as accommodation, fixed line communications, office fit-out, equipment and patient bookings
- Payment for public patient treatment would be a separate transaction based on a fee for service or sessional basis.
- Where a VMO seeks to have TMF indemnity, the licence fee paid by the VMO is to incorporate an amount to reflect the cost of the liability coverage.

### Risk share

- Revenue for the PHO is dependent on the agreed licence fee and VMO private patient throughput. This revenue is likely to vary from month to month.

### **Model B: Flat rate charge**

This means:

- VMO has responsibility for billing all privately referred non-inpatients (patients referred to the VMO by name)
- VMO retains these billings
- VMO pays an agreed periodic payment (monthly under the standard licence agreement) to the PHO for contractually agreed services covering the value of PHO services used by the VMO in treating their private patients. This agreed payment may vary from facility to facility depending on the extent of agreed services.
- VMO would be expected have a greater level of self sufficiency in meeting support and administrative needs. For example provide own secretarial / administrative support, purchase and manage repairs to furniture, computers, communication and medical equipment.
- Payment for public patient treatment would be a separate transaction based on a fee for service or sessional basis.
- Where a VMO seeks to have TMF indemnity the licence fee paid by the VMO is to incorporate an amount to reflect the cost of the liability coverage.

### Risk share

- PHO recovers cost of services provided by the PHO to the VMO under the arrangement
- Incentive for VMO to achieve at least a level of billings to cover their regular fixed costs in providing private out-patient service.

## **Indemnity Arrangements**

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VMOs participating in arrangements covered by this Guideline can either:

- (a) make their own insurance and professional indemnity arrangements, consistently with the arrangements already in place for Level 2-5 Staff Specialists; or
- (b) obtain liability coverage by the NSW Treasure Managed Fund (TMF) in respect of any health care claims arising from services to PRNI. TMF coverage is conditional on:
  - the VMO and the PHO signing the standard form licence agreement (at attachment 2), including the conditions of coverage in Schedule 2 (version 2) of that agreement; and
  - the licence fee paid by the VMO under the licence agreement must include a component to reflect the cost of TMF liability coverage (one dollar per private outpatient is suggested as an initial guide).

## **Overview of the National Healthcare Agreement in relation to specialist clinics**

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### **Obligations of PHOS under the National Healthcare Agreement**

The National Healthcare Agreement (the Healthcare Agreement) comes into effect on 1 July 2009. Through this Agreement the NSW Government has agreed to:

- provide health and emergency services through the public hospital system
- ensure that eligible persons are to be given the choice to receive, free of charge as public patients, health and emergency services of a kind or kinds that are currently, or were historically provided<sup>1</sup> by hospitals and that access to such services by public patients free of charge is to be on the basis of clinical need and within a clinically appropriate period; and

The Healthcare Agreement does not prohibit the establishment of private patient clinics at public hospitals. Instead, it sets out the NSW Government's obligations

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<sup>1</sup> This Agreement recognises that clinical practice and technology changes over time and that this will impact on modes of service and methods of delivery.

in relation to the conditions under which public and private services can be provided at public hospitals. Any arrangements must be consistent with the Healthcare Agreement. In summary the key clauses of the Healthcare Agreement that must be adhered to are:

- NSW must provide public patients with access to all services provided to private patients in public hospitals. This means that patients should be given the choice to receive non-admitted services as private or public patients. Patients must be fully informed of the financial and any other consequences of electing to be treated as a privately referred non-admitted patient.
- Where care is directly related to an episode of admitted patient care, it should be provided free of charge as a public hospital service where the patient chooses to be treated as a public patient, regardless of whether it is provided at the hospital or in private rooms.
- Services provided to public patients should not generate charges against the Commonwealth Medicare Benefits Schedule:
  - except where there is a third party payment arrangement with the hospital or the state/territory, emergency department patients cannot be referred to an outpatient department to receive services from a medical specialist exercising a right of private practice under the terms of employment or a contract with a hospital which provides public hospital services
  - referral pathways must not be controlled so as to deny access to free public hospital services; and
  - referral pathways must not be controlled so that a referral to a named specialist is a prerequisite for access to outpatient services.
- An eligible patient presenting at a public hospital outpatient department will be treated free of charge as a public patient unless the patient has been referred to a named medical specialist who is exercising a right of private practice and the patient chooses to be treated as a private patient.
- Where a patient chooses to be treated as a public patient, components of the public hospital service (such as pathology and diagnostic imaging) will be regarded as a part of the patient's treatment and will be provided free of charge.

## **Responsibilities of VMOs**

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Billing by VMOs providing care to private non admitted patients must comply with the relevant provisions of the Medicare Benefits Schedule (MBS) and the *Health Insurance Act 1973*.

It is the responsibility of individual VMOs to ensure that their billing practices comply with all relevant Australian Government requirements. VMOs should consult the current version of the MBS and any other supporting information issued by Medicare Australia.

The information provided here does not replace this obligation. In broad terms, appropriate billing against the MBS is based on the following key elements:

1. Medicare benefits are only payable for clinically relevant services which are listed in the MBS.
2. Medical practitioners must meet eligibility criteria to be able to provide medical services that will attract Medicare benefits.
3. Eligible medical practitioners must have a valid provider number for the location where the services are to be provided.
4. Services must meet the valid referral criteria. It is noted that there are exceptions to the usual referral requirements for a referral generated during an episode of hospital treatment, in respect of a privately insured service provided or arranged by that hospital, where the hospital records provide evidence of a referral including the referring practitioner's signature.
5. The specific billing procedure requirements of Medicare Australia should be met. It is noted that where services are direct billed (commonly referred to as bulk billed), the medical practitioner accepts the relevant Medicare benefit as full payment for the service and additional charges (irrespective of the purpose or title of the charge) cannot be raised against the patient.
6. The appropriate Medicare benefit level should be claimed.

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# LICENCE

**[INSERT NAME OF PUBLIC HEALTH ORGANISATION]**  
(PHO)

**AND**

**THE PERSON OR ENTITY DESCRIBED IN ITEM 2 (*Licensee*)**

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**THIS LICENCE** is made on the date shown in Item 1 between:

**[Insert name of public health organisation]**, ABN [insert], a body corporate pursuant to the Health Services Act 1997, of [insert address] (the “PHO”), and

**THE PERSON OR ENTITY SHOWN IN ITEM 2**, of the address shown in Item 3 (the “Licensee”)

## **INTRODUCTION**

- A. The PHO controls the facility described in Item 5 (the “Facility”) and has agreed to allow the Licensee to occupy that part of it shown in Item 6 (the “Licensed Area”).
- B. This Licence sets out the terms and conditions under which the Licensee may use the Licensed Area.

## **IT IS AGREED**

### **1. Grant of Licence**

The PHO grants the Licensee a non-exclusive licence to have access to and to use the Licensed Area from the date shown in Item 7 (“Commencement Date”) on the terms and conditions set out in this Licence, for the period of time (“Term”) shown in Item 8, unless terminated earlier in accordance with this Licence.

### **2. Restrictions on Use**

The Licensee must use the Licensed Area on the days of the week and at the times shown in Item 9, and not otherwise, and must only use the Licensed Area for the permitted use shown in Item 10 (the “Permitted Use”), and then only for patients of the Licensee (or of the Licensee’s principal where the Licensee is a practice company).

### **3. PHO to Provide Certain Services**

The PHO must provide to the Licensee the services shown in Item 11 (the “Usual Services”).

### **4. PHO may Provide Additional Services**

The PHO must also provide to the Licensee, in addition to the Usual Services, those additional services, if any, that are marked with a cross in Item 12 (“Optional Additional Services”).

### **5. Reports**

*Licensee does own billing*

- (a) Where the PHO does not generate the Licensee’s billings, the Licensee must furnish reports (“Reports”) each month to the PHO in accordance with this clause 5, setting out the amount of the gross billings (whether to Medicare, health benefit funds, patients or otherwise) generated by the Licensee (or of the Licensee’s principal where the Licensee is a practice company) pursuant to this Licence (“Gross Billings”).
- (b) The reporting period for Reports under clause 5 (a) is each calendar month of the Term, and a Report must be provided by the Licensee

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to the PHO by the end of the calendar month following the relevant reporting period (for example, the Report for the month of March in any given year must be provided to the PHO by 30 April of that year).

*PHO does billing on behalf of Licensee*

- (c) Where the Gross Billings are known to the PHO because the PHO generates the Licensee's billings, the PHO will itself furnish Reports to the Licensee.
- (d) The reporting period for Reports under clause 5 (c) is each calendar month of the Term, and a Report must be provided by the PHO to the Licensee within 14 days of the end of each reporting period (for example, the Report for the month of March in any given year must be provided to the Licensee by 14 April of that year), and be accompanied by an invoice for the Licence Fee for that period.

*Other matters*

- (e) The reporting period for the first Report will however be the period from the Commencement Date to the end of the calendar month in which the Licence commenced, and for the last Report will be for the period ending on the day on which the Licence expires or terminates and commencing on the first day of the calendar month in which the Licence expires or terminates.
- (f) All Reports must be in such form and contain such detail as the PHO may from time to time require in writing.

## 6. **Licence Fee**

- (a) The Licensee must pay to the PHO a licence fee (the "Licence Fee") in respect of each reporting period and determined in accordance with Item 13, plus GST.

*Licensee does own billing*

- (b) Where the PHO does not generate the Licensee's billings, the Licensee must pay the Licence Fee within one calendar month of the end of each reporting period and at the same time the Licensee provides the Report for the same reporting period in accordance with clause 5.
- (c) If the Licensee fails to furnish its Report for a reporting period within the time require by clause 5 (b), or the Report contains a manifest error, the PHO may, at its absolute discretion and acting in good faith, estimate the amount of the Gross Billings for such period and notify such estimate to the Licensee in writing, and the Licensee must pay the Licence Fee based on such estimate within 7 days of notification by the PHO.
- (d) If the Licensee subsequently provides the PHO with information that demonstrates, to the reasonable satisfaction of the PHO, that the PHO's estimate of the amount of such Gross Billings was inaccurate, the Licence Fee must be recalculated based on the information provided by the Licensee, and any adjusting payment must be made as soon as practicable.

*PHO does billing on behalf of Licensee*

- (e) Where the PHO generates the Licensee's billings and issues an invoice to the Licensee in accordance with clause 5(d), the Licensee

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must pay the Licence Fee within 30 days of receipt of the invoice for each reporting period.

*Audits*

- (f) The PHO and the Licensee may conduct such audits of the other's records as are reasonable to verify any information contained in the other's Reports under clause 5 (a) or clause 5 (c), and if any Reports are found to be inaccurate the Licence Fee must be recalculated for the relevant reporting period/s, and an adjusting payment must be made as soon as practicable.
- (g) A party whose Report was shown to be in error (to its financial advantage) must pay the cost of the audit unless the error was trivial.

7. **Suitability of Licensed Area**

The Licensee, relying on the Licensee's own inspections and enquiries, is satisfied as to the suitability, commerciality, and condition of the Licensed Area.

8. **No Tenancy**

- (a) This Licence is personal to the Licensee.
- (b) Nothing in this Licence confers on the Licensee any rights as a tenant of the PHO, or creates the relationship of landlord and tenant between the parties.
- (c) The Licensee acknowledges that the PHO, persons authorised by the PHO and other licensees may also have access to and use the Licensed Area.

9. **Prohibitions on Licensee**

The Licensee must not:

- (a) sublicense or part with possession of any part of the Licensed Area, or assign this licence;
- (b) make any change or structural alteration or addition to the Licensed Area;
- (c) contravene any legislative requirement, notice or order affecting the Licensed Area;
- (d) cause any contamination, pollution or environmental damage to the Licensed Area; or
- (e) contravene any rules, regulations, policies, procedures, or codes of conduct of or binding on the PHO, affecting the Licensed Area or its use, that have been notified to the Licensee or are displayed at the Licensed Area.

10. **Licensee's Obligations**

The Licensee (or, where relevant, its principal if the Licensee is a practice company) must:

- (a) in providing the professional services shown in Item 10, maintain all necessary registrations, licences and accreditations, and apply the standards of best practice at all times (as reasonably determined, in the event of dispute, by the PHO);
- (b) keep the Licensed Area tidy and free from rubbish;

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- (c) allow the PHO or the PHO's authorised representative to enter and inspect the Licensed Area at all reasonable times;
  - (d) ensure that neither the Licensee nor persons on the Licensed Area with the Licensee's authority or permission does anything that annoys, offends, obstructs or interferes with the use of the Licensed Area or the Facility by the PHO or others;
  - (e) insure any property at the Licensed Area that is not supplied by the PHO for its full insurable value on a replacement and reinstatement basis;
  - (f) not do anything to prejudice its or the PHO's insurances, or increase the risk of fire;
  - (g) ensure that the Licensee, the Licensee's principal if the Licensee is a practice company, and the Licensee's employees and contractors comply with the requirements from time to time of the PHO in relation to criminal record checks and serious sex, violence and other offences including pursuant to the Commission for Children and Young People Act 1998 and the Health Services Act 1997 (including section 118); and
  - (h) ensure that the Licensee, the Licensee's principal if the Licensee is a practice company, and the Licensee's employees and contractors will comply with all applicable legislation, and any regulations, by laws, ordinances, or orders made under such legislation.

**11. Indemnity and insurance**

The provisions of Schedule 2 apply.

**12. Occupational Health and Safety**

- (a) Without limiting in any way the provisions of Clause 8 of this Licence, the Licensee acknowledges and agrees that for the purposes of the Occupational Health and Safety Act 2000 (NSW), the Licensee has the control of the Licensed Area and all plant and substances in the Licensed Area at such times as the Licensee has access to and use of the Licensed Area, and the Licensee releases and indemnifies the PHO from and against any obligation or liability under any occupational health and safety legislation as defined in such Act.
- (b) The Licensee must also comply with the directions and requirements from time to time of the PHO's Network General Manager or his or her delegate in relation to all Occupational Health and Safety matters.

**13. Termination for Convenience**

Either party may, at any time, terminate this Licence for convenience, by giving thirty (30) days' notice in writing to the other party, such termination being effective upon expiry of this thirty (30) day period.

**14. Termination for Breach**

The PHO may, by notice in writing to the Licensee, immediately terminate this Licence if the Licensee (or where relevant its principal if the Licensee is a practice company):

- (a) does not pay the Licence Fee within fourteen days of the time required under clause 6(b) or 6(e) of this Licence;

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- (b) commits a material breach of this Licence which, in the PHO's opinion, is not capable of being remedied;
  - (c) fails to remedy a material breach of this Licence which, in the PHO's opinion is capable of being remedied, within fourteen days of receiving notice in writing from the PHO requiring it to remedy that breach; or
  - (d) has liquidation or administration proceedings commenced against it (in the case of a practice company), or is declared bankrupt or has bankruptcy proceedings commenced against it (in the case of an individual).

**15. Losing VMP status**

If at any time during the Term the appointment of the Licensee (or its principal if the Licensee is a practice company) as a visiting medical practitioner with the PHO expires or is terminated, this Licence shall be immediately terminated from the time of such expiration or termination.

**16. Termination without prejudice**

Any termination of this Licence under clauses 13-15 is without prejudice to any accrued rights or remedies of either party.

**17. Consequences of PHO Requiring Licensed Area for Sale or Redevelopment**

- (a) If at any time the PHO or NSW Health requires the Licensed Area for sale, redevelopment or other requirements, the PHO may by giving not less than three calendar months' notice to the Licensee terminate this Licence without compensation to the Licensee.
- (b) If the PHO is able and willing to license alternative premises to the Licensee for the unexpired term of this Licence, and the Licensee seeks to enter into a licence in respect of such premises, the parties agree to take all necessary steps to enter a licence of such premises for a term equivalent to the unexpired term of this Licence and otherwise on the same (or any other agreed) terms and conditions as are contained in this Licence.

**18. Suspension**

- (a) If at any time during the Term the appointment of the Licensee (or its principal if the Licensee is a practice company) as a visiting medical practitioner with the PHO is suspended, the Licensee shall be suspended from the Permitted Use with immediate effect for the duration of the period of suspension of the Licensee's appointment as a visiting medical practitioner with the PHO.
- (b) If at any time during the Term the PHO reasonably forms the opinion that the Permitted Use involves an unacceptable risk to the health or life of any person, the PHO may by notice in writing suspend the Licensee from the Permitted Use with immediate effect for such period as the PHO considers appropriate.
- (c) No Licence Fee shall be payable by the Licensee during any period of suspension.

**19. Resolution of Disputes**

- (a) If a dispute or difference arises between the parties in respect of this Licence, and one party requires it to be resolved, then that party

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must promptly give to the other a written notice identifying adequately and giving details of the dispute or difference.

- (b) The parties must use reasonable endeavours to resolve the dispute or difference, and to agree on a mechanism for resolving it if they are unable to do so themselves.
- (c) If within 14 days of giving notice of the dispute or difference the dispute or difference has not been resolved, and the parties have not agreed on a mechanism for resolving it, or if despite agreeing on such mechanism the dispute or difference is still not resolved within 2 calendar months of the parties' agreeing on such mechanism, the parties agree that the dispute or difference may be resolved by PHO's Director of Clinical Services.
- (d) The PHO's Director of Clinical Services shall act as an expert and not as an arbitrator, and his or her decision shall be final, binding and conclusive as between the parties.
- (e) Nothing in this clause precludes either party from seeking urgent interlocutory relief.

**20. GST**

- (a) Words defined in the GST Law have the same meaning as clauses in this Licence about GST.
- (b) A recipient of a taxable supply under this Licence must pay to the supplier an amount equal to any GST for which the supplier is liable on any supply by the supplier under this Licence, without deduction or set off of any other amount, and must make that payment within 7 days of a written request by the supplier for payment of the GST.
- (c) Each party making a taxable supply under this Licence must issue a tax invoice to the other party for each taxable supply within a reasonable time after making the taxable supply.
- (d) If a party is liable to make a payment under an indemnity or is required to reimburse a party for a cost on which that other party must pay GST, the indemnity or reimbursement is for the cost plus all GST (except any GST for which that party can obtain an input tax credit).

**21. Notices**

The contact details and addresses of the parties for the purposes of giving any notice shall be as set out in Item 3 and Item 4, or otherwise as may from time to time be specified in writing between the parties.

**22. Whole Agreement**

This Licence comprises the whole agreement between the parties as to the subject matter hereof and can only be varied by a written agreement between the parties.

**23. Relationship between the parties**

The Licensee acknowledges and agrees that neither the Licensee nor any of the Licensee's officers, employees, agents and/or sub-contractors:

- (a) are or will be officers, employees, agents and/or partners or joint venturers of the PHO; and

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- (b) will represent that they are officers, employees, agents and/or partners or joint venturers of the PHO.

24. **Applicable law**

This Licence is governed by, and construed in accordance with, the laws of the State of New South Wales, and the parties submit to the jurisdiction of the courts of that State.

25. **Definitions**

The following definitions apply in this document.

**GST** means:

- (a) the same as in the GST Law;
- (b) any other goods and services tax, or any tax applying to this transaction in a similar way; and
- (c) any additional tax, penalty tax, fine, interest or other charge under a law for such a tax.

**GST Law** means the same as "GST law" means in *A New Tax System (Goods and Services Tax) Act 1999*.

**practice company** means a practice company as defined in the Health Services Act 1997.

26. **Interpretation**

Headings have been inserted for convenience only and do not affect the interpretation of this Licence, and in this Licence unless the context otherwise requires,

- (a) a reference to an Item is to an Item in Schedule 1;
- (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, such as by saying it includes something else, the example does not limit the scope of that thing; and
- (f) a reference to a position held in an organisation includes a reference to an equivalent or approximately equivalent position in that organisation, however described.

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**SCHEDULE 1**

- Item 1**                      **Date of signing Licence:**
- Item 2**                      **Licensee**  
Name:                              [insert name of VMP or his or her  
practice company and its  
ABN/ACN/ARBN]:
- Item 3**                      **Licensee's address and contact details:**
- Item 4**                      **PHO's address and contact details:**
- Item 5**                      **Name of Facility:**
- Item 6**                      **Licensed Area:**
- Item 7:**                      **Commencement Date of Licence:**
- Item 8**                      **Term:**
- Item 9**                      **Days of week and times :**
- Item 10**                      **Permitted Use:**

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**Item 11**

**Usual services:**

**(note these are included in the Licence Fee unless otherwise specified)  
(delete any that do not apply)**

**Power, light, fuel, telephone, facsimile  
Cleaning and maintenance**

**Item 12**

**Optional additional services:**

**(cross boxes that apply and insert details as appropriate)  
(note that those that apply are included in the Licence Fee unless otherwise specified)**

- Reception/waiting area**
- Toilets (specify if on or off site)**
- Clinical support staff (specify)**
- Clerical support staff (specify)**
- Medical record system**
- Booking facilities**
- Consumables (specify)**
- Equipment (specify)**
- Billing facilities (in the name of the Licensee)**
- Other (specify)**

**Item 13**

**Licence Fee \*\***

**(\*\* Important Notes:**

1. Under NSW Health policy the amount of the Licence Fee must be calculated either on: a) a volume basis (hours or patients), or b) some other basis so as to enable the PHO to recover the cost to the area health service of the services provided by the PHO under the Licence.
2. Where the VMO opts to be indemnified by TMF, the Licence Fee must include an amount to reflect the TMF coverage.)

**Specify the basis upon which the Licence Fee is to be calculated:**

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**Item 14**

**Level of insurance cover required:**

**Public liability:**

**Professional indemnity:**

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**SCHEDULE 2 \*\* – Insurance and indemnity [version 1  
– VMP’s own indemnity coverage applies]**

**1. Insurance**

The Licensee must:

- (a) effect (in the name of the Licensee and noting the interest of the PHO) with an insurer approved by the PHO (such approval not to be unreasonably withheld), and maintain during the Term, liability insurance (public liability and professional indemnity) for amounts no less than the amounts shown in Item 14, or such other amounts as are reasonable and are from time to time notified by the PHO to the Licensee, and such other insurances as are reasonably required by the PHO;
- (b) effect workers compensation insurance as required by law; and
- (c) provide the PHO with evidence of the terms and currency of the insurances referred to in the preceding sub-clauses as and when required by the PHO.

**2. Indemnity**

The Licensee and, if the Licensee is a practice company, the principal of the practice company, must, except to the extent caused or contributed to by the negligence of the PHO, continually indemnify the PHO against any:

- (a) claim, action, damage, loss, liability, cost or expense which the PHO incurs or is liable for in connection with the use or occupation of the Licensed Area by the Licensee (or others with the Licensee’s authority or permission);
- (b) default by the Licensee under this Licence; and
- (c) damage, loss, injury or death caused or contributed to by the Licensee (or those who have the authority or permission of the Licensee to use or access the Licensed Area).

**3. Continuing rights**

The rights and obligations conferred by clause 2 of this Schedule survive the expiration or termination of this Licence.

(\*\* Include the version of Schedule 2 which is applicable)

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**SCHEDULE 2 \*\* – Insurance and indemnity [version 2 –  
VMP opts to be covered by TMF]**

**1. Liability Coverage**

- 1.1 Subject to clauses 1.2 and 3 of Schedule 2, the PHO will indemnify the Licensee (and the Licensee's principal where the Licensee is a practice company) for civil liability arising from any health care claim in respect of occurrences during the Term relating to the provision by the Licensee (or the Licensee's principal where the Licensee is a practice company) of health care to patients of the Licensee (or of the Licensee's principal where the Licensee is a practice company), where the health care is provided in the Licensed Area and during the course of the Permitted Use.
- 1.2 The indemnity under clause 1.1 does not apply to the following:
- (a) any health care claim arising out of conduct on the part of the Licensee (or of the Licensee's principal where the Licensee is a practice company) that constitutes a criminal offence or any other serious and wilful misconduct;
  - (b) 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 Licensee (or the Licensee's principal where the Licensee is a practice company), other than where the product is supplied to the Licensee by the PHO as part of the Optional Additional Services; or
  - (c) 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 Licensee by the PHO as part of the Optional Additional Services.

**2. Licensee's responsibilities**

- 2.1 The Licensee must promptly report in writing to the PHO any incident which could reasonably be expected to trigger the indemnity under this Schedule in the future, as soon as the Licensee (or the Licensee's principal where the Licensee is a practice company) 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 Licence is Annexure 1 to this Licence.
- 2.2 The Licensee must, within ten working days of receiving a written request from the PHO, provide to the PHO his, her or, where the Licensee is a practice company, the Licensee's principal's, record of health care claims history for the past 6 year period.

(\*\* Include the version of Schedule 2 which is applicable)

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### **3. Reporting, management and conduct of claims**

- 3.1 The Licensee must report in writing to the PHO any claim against the Licensee (or the Licensee's principal where the Licensee is a practice company) for which the practitioner seeks indemnity under clause 1 of this Schedule as soon as practicable.
- 3.2 The management and conduct of a health care claim indemnified under this Licence passes entirely to the PHO and the NSW Treasury Managed Fund. The PHO and 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 Licensee (or the Licensee's principal where the Licensee is a practice company), the investigation, defence or settlement of any such claim.
- 3.3 The indemnity provided under clause 1 of this Schedule is conditional upon the rights of subrogation and the co-operation of the Licensee (and, where applicable, the Licensee's principal where the Licensee is a practice company) in the management and conduct of the claim as set out in clauses 4 and 5 of this Schedule.

### **4. Conditions related to the management and conduct of claims**

- 4.1 It is a condition precedent to the provision of indemnity under clause 1 of this Schedule in respect of a claim that the Licensee:
- (a) 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;
  - (b) 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 or all other persons, entities or organisations; and
  - (c) waive in favour of the PHO and the NSW Treasury Managed Fund any client legal privilege that may arise between the Licensee (or the Licensee's principal where the Licensee is a practice company) and 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.
- 4.2 The continued provision of indemnity under clause 1 of this Schedule in respect of a claim is conditional upon the Licensee continuing to comply with the requirements clauses 4.1 (a), (b) and (c) of this Schedule during the period that the claim is being managed and conducted by the PHO or the NSW Treasury Managed Fund.

### **5. Subrogation**

The PHO is entitled to all of the rights of recovery of the Licensee (or the Licensee's principal where the Licensee is a practice company) in respect of

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a claim for which indemnity is, or is to be, provided under clause 1 of this Schedule and the Licensee 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 Licensee (or the Licensee's principal where the Licensee is a practice company) in exercise of the PHO's rights under this Schedule.

## 6. Termination

- 6.1 The Licence may be terminated by the Fund Manager by written notice given to the Licensee. The Fund Manager may give such notice where:
- (a) the Licensee (or the Licensee's principal where the Licensee is a practice company) has an accident and/or health care claims experience which the Fund Manager considers warrants termination of the indemnity provided under this Schedule; or
  - (b) the Licensee breaches clause 2.1 of this Schedule.
- 6.2 In addition to the grounds of termination in clause 14 of this Licence, the PHO may terminate this Licence by the giving of written notice in the event that the Licensee fails to comply with a request under clause 2.2 of this Schedule.

## 7. Continuing rights

The rights and obligations conferred by clauses 1, 2.1, 3, 4 and 5 of this Schedule survive the expiration or termination of this contract.

## 8. Definitions

The following definitions apply in this Schedule:

**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 Licensee (or the Licensee's principal where the Licensee is a practice company) 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 Schedule 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 agency of the Fund Manager involved in the investigation, management or conduct of health care claims indemnified under this 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,

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notified to any professional indemnity provider of the Licensee (or the Licensee's principal where the Licensee is a practice company), 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 +

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**EXECUTED** as an agreement.

**EXECUTED** for and on behalf of [**name of public health organisation**], by the person whose name appears opposite, but not so as to incur any personal liability, in the presence of the person whose name appears below:

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Signature

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Signature of witness

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Name and title of signatory

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Name and title of witness

**\*\* SIGNED** by the Licensee in the presence of:

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Signature of individual Licensee

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Signature of witness

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Name and address of witness

**\*\* EXECUTED** by  
**PTY LIMITED** in accordance with Section  
127 of the Corporations Act 2001 by:

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Signature of director

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Signature of director/secretary

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Name

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Name

**\*\* Delete whichever is inapplicable**