

**LEVEL 2 – 5/SCHEME D STAFF SPECIALIST CONTRACT OF LIABILITY
COVERAGE FOR PRIVATE PAEDIATRIC PATIENTS**

THIS CONTRACT is made on the _____ **day of** _____ **2005,**
BETWEEN *(insert the name of public health organisation)* ("the PHO") **AND** *(insert name of the staff specialist).*

WHEREAS:

- A. The Staff Specialist is an employee of the PHO who has elected a level 2 – 5 private practice arrangement, or who participates in a Scheme D staff specialist arrangement, within the meaning of clause 2 of the Salaried Senior Medical Practitioners Determination.
- B. The PHO agrees to indemnify the Staff Specialist for certain health care claims arising in the course of the Staff Specialist's private practice in such public hospitals or health services.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. Term of Contract

- 1.1 Unless sooner terminated in accordance with this contract, the term of this contract is concurrent with the Staff Specialist's employment contract.

2. Liability Coverage

- 2.1 Subject to clause 2.2 and clause 4, the PHO will indemnify the Staff Specialist for civil liability arising from any health care claim in respect of occurrences during the coverage period relating to the provision, by the Staff Specialist, of health care to private paediatric patients in public hospitals or through other health services under the control of, or conducted by, the PHO, provided:

- (i) in the case of a Level 2-5 Staff Specialist, at the time of the occurrence the Staff Specialist is exercising a right of private practice under a private practice arrangement with the PHO, as permitted under the terms of employment with the PHO and in accordance with any relevant determination of the Health Administration Corporation and Department of Health policy in respect of such private practice arrangements;
- (ii) in the case of a Scheme D Staff Specialist, at the time of the occurrence the Staff Specialist is conducting his or her private practice as a visiting practitioner appointed by the PHO and in accordance with the requirements of any relevant determination of the Health Administration Corporation and Department of Health policy in respect of Scheme D staff specialist arrangements.

- 2.2 The indemnity under clause 2.1 does not apply to the following:

- 2.2.1 any health care claim arising out of conduct on the part of the Staff Specialist that constitutes a criminal offence or any other serious and wilful misconduct;
- 2.2.2 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 Staff Specialist, other than where the product is supplied to the Staff Specialist by the PHO; or

- 2.2.3 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 Staff Specialist by the PHO.

3. Staff Specialist's Responsibilities

Prompt notification of certain incidents

- 3.1 The Staff Specialist 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 Staff Specialist 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 A to this contract.**

Quality assurance, quality improvement and risk management

- 3.2 The Staff Specialist 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 Staff Specialist 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 Staff Specialist 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 Staff Specialist 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 patient classification and billing

- 3.4 The Staff Specialist must participate in the simplified billing system, if any, used by the PHO for services to private patients.

- 3.5 The Staff Specialist is to take all reasonable steps to ensure that his or her patients are properly identified as compensable patients, entitled veterans or ineligible patients, as applicable.

4. Reporting, management and conduct of claims

- 4.1 The Staff Specialist must report in writing to the PHO any claim against the Staff Specialist 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 Staff Specialist 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 Staff Specialist 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 Staff Specialist 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 Staff Specialist or the medical indemnity provider of the Staff Specialist 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 Staff Specialist show cause why termination should not occur. This "show cause" letter must outline the reasons for the proposed termination, and provide the Staff Specialist with a period of 30 days from the date of receipt of the letter within which to respond; and
- 5.1.2 advise the Staff Specialist 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 Staff Specialist by the Fund Manager. Subject to clause 5 the Fund Manager may give such notice where:
- 6.1.1 the Staff Specialist has an incident and/or health care claims experience which the Fund Manager considers warrants termination of the contract; or
- 6.1.2 the Staff Specialist 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 Staff Specialist repeatedly fails to comply with clause 3.2, 3.4 or 3.5 or fails to comply with a request under clause 3.3.
- 6.3 The Staff Specialist 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 Staff Specialist as to the process for requesting a review of the decision to terminate.
- 6.5 Where the Staff Specialist 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 Staff Specialist requests a review in accordance with clause 7, the expiration of 30 days following receipt by the Staff Specialist of written advice of the outcome of a review undertaken in accordance with clause 7.

7. Review

- 7.1 The Staff Specialist 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 Salaried Medical Officers Federation.

- 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 Staff Specialist 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 Staff Specialist 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;

Department of Health means the NSW Department of Health;

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 Administration Corporation means the corporation sole constituted by section 9 of the Health Administration Act 1982;

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 Staff Specialist 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;

Paediatric patient means

- (i) a patient aged 15 years or under; or
 - (ii) a patient who is admitted as an inpatient or who is treated as a privately referred non inpatient by a Staff Specialist exercising rights of private practice at to one of the following public hospitals:
 - (a) The Royal Alexandria Hospital for Children (The Children's Hospital at Westmead)**
 - (b) Sydney Children's Hospital, Randwick **
 - (c) John Hunter Children's Hospital, Newcastle **
- or;
- (iii) any patient who receives health care from a Staff Specialist who has been appointed as a paediatrician by a PHO in accordance with clause 2 (d) of the Staff Specialists (State) Award, provided the health care is part of a course of treatment initiated when the patient is aged 15 years or under.

private patient means a patient who is not a public patient. Unless the contrary intention is expressed in this contract, "private patient" 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 Staff Specialist is required, by the PHO, to treat as a public patient in a public hospital or public health service in the course of the Staff Specialist's employment;

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 Staff Specialist is

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 Staff Specialist.
- (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 Staff Specialist 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 Staff Specialist 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 Staff Specialist'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 Staff Specialist 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 Staff Specialist in exercise of the PHO's rights under this contract.