RURAL VMO/HMO CONTRACT OF LIABILITY COVERAGE <u>(INCLUDING PRIVATE INPATIENT INDEMNITY COVER)</u>

THIS CONTRACT is made on the day of 2006,
BETWEEN *(insert the name of public health organisation)* ("the PHO") **AND** *(insert name of the medical practitioner)* ("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 to the terms and conditions of the service contract. **A copy of the written 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

** Delete whichever is inapplicable

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 Manger may give such notice where:

6.1.1 the VMO**/HMO** has an incident and/or health care claims experience which the Fund Manger considers warrants termination of the contract; or

** Delete whichever is inapplicable

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

** Delete whichever is inapplicable

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);

** Delete whichever is inapplicable

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:

** Delete whichever is inapplicable

(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 :) ....

....
Witness

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

....
Witness

** 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.

** Delete whichever is inapplicable