

FORM OF FEE-FOR-SERVICE CONTRACT

THIS CONTRACT made the            day of            19    , BETWEEN (*insert the name of the relevant District Health Service/other incorporated hospital, separate institution [or its governing body] or Area Health Service*) ("the Hospital"/"Area Health Service") of the First Part AND (*insert name of the medical practitioner*) ("the Visiting Medical Officer") of the Second Part.

**WHEREAS:**

- A. The (*insert name of appointing body*) has determined to appoint the Visiting Medical Officer to provide services at the hospital or hospitals specified in Schedule 1 hereto (the "specified hospital(s)") and the Visiting Medical Officer desires to provide such services, subject to the terms and conditions hereunder.
- B. The Visiting Medical Officer is to provide such services as an independent contractor and is to be remunerated on a fee-for-service basis at the established rates, as defined in the contract, relevant to the services provided by the Visiting Medical Officer under this contract.

**NOW IT IS HEREBY AGREED AS FOLLOWS:**

**1. TERM OF CONTRACT**

- 1.1 This contract is to be for the period from ..... to ..... 19 (being not more than five (5) years) unless this contract is properly terminated by either party in accordance with this contract.

\* Delete as appropriate.

- 1.2 The Visiting Medical Officer is, if otherwise qualified, eligible for but not entitled to re-appointment upon the expiry of this contract. In the event of re-appointment, a new service contract shall be made.
- 1.3 This contract shall not establish the relationship of employer and employee as between the respective parties thereto and the Visiting Medical Officer shall, in providing services under this contract, be and be regarded as an independent contractor.

## 2. PROFESSIONAL RESPONSIBILITIES

- 2.1 The Visiting Medical Officer shall provide medical services to public patients consistent with the clinical privileges granted to the officer under this contract.
- 2.2 The Visiting Medical Officer shall participate in the teaching and training of postgraduate medical officers as may reasonably be required by the Hospital\*/Area Health Service\*.
- 2.3 The Visiting Medical Officer shall participate in committees expressly established or authorised by the board of the Hospital\*/Area Health Service\* and to which the officer is appointed by such board, where reasonably required by the Hospital\*/Area Health Service\* for the proper and efficient functioning of the hospital concerned.
- 2.4 The Visiting Medical Officer shall participate in an on-call roster for the provision of medical services as may reasonably be required by the Hospital\*/Area Health Service\*, and when so rostered the officer shall be readily contactable at all times and be able and prepared to attend the hospital concerned within a reasonable period of time.

2.5 The Visiting Medical Officer:

2.5.1 shall be professionally responsible for the proper clinical management and treatment of public patients under the officer's care in the hospital concerned;

2.5.2 shall take reasonable steps to ensure that the clinical records related to the services provided by the officer, and those provided for patients under the officer's care, are maintained adequately and that such completed records include details of diagnosis, treatments and operations performed and a discharge summary completed in the manner determined by the hospital;

2.5.3 shall comply with all rules and by-laws in force from time to time at the Hospital\*/Area Health Service\*, not being inconsistent with any of the rights and obligations of the Visiting Medical Officer under this contract.

**3. CLINICAL PRIVILEGES**

3.1 Subject to subclause 3.2 the Visiting Medical Officer's clinical privileges are as specified in Schedule 1 of this contract.

3.2 The Hospital\*/Area Health Service\* may review and vary the clinical privileges of the Visiting Medical Officer at any time after advice from the appropriate credentials committee in respect of the specified hospital/s in accordance with any applicable Act or regulations, or by-laws in force at the specified hospital(s).

3.3 The medical services which the Visiting Medical Officer provides to patients at the specified hospital(s) shall be consistent with the clinical privileges determined by the Hospital\*/Area Health Service\* in respect of the Visiting Medical Officer from time to time.

#### 4. HOSPITAL FACILITIES

The Hospital\*/Area Health Service\*, where reasonably practicable shall provide:

- 4.1 all ancillary, medical, nursing and clerical assistance and facilities, instruments and equipment reasonably necessary for the proper performance of the services to be rendered by the Visiting Medical Officer under this contract; and
- 4.2 to the Visiting Medical Officer upon request and free of charge, sufficient suitable and serviceable outer uniforms and duty garments, which shall remain the property of the Hospital\*/Area Health Service\* and which shall be laundered at the expense of the Hospital\*/Area Health Service\*.

#### 5. SERVICES PLAN

- 5.1 The services, other than emergency after-hours medical services, which the Visiting Medical Officer is to provide under this contract, and a services plan for the provision of such services shall be as agreed between the officer and the Hospital\*/Area Health Service\*, and shall be specified in Schedule 2 of the contract on an annual basis or on the basis of a lesser specified period if the contract terminates sooner or if it is otherwise agreed; provided that the Hospital\*/Area Health Service\* shall only allocate work to the Visiting Medical Officer which can reasonably be performed in accordance with the services plan.
- 5.2 In establishing the annual services plan or the services plan on the basis of another specified period, under subclauses 5.1, 5.5 or 5.6 regard shall be had to:

- 5.2.1 the services to public patients recorded as having been provided by the Visiting Medical Officer during the previous twelve months, or if the officer has been appointed for less than twelve months the preceding period of appointment;
- 5.2.2 the clinical service needs and available resources of the Hospital\*/Area Health Service\*;
- 5.2.3 the views of the Visiting Medical Officer;
- 5.2.4 the nature of the Visiting Medical Officer's appointment;
- 5.2.5 the experience, knowledge and ability of the Visiting Medical Officer;
- 5.2.6 any periods of leave which the Visiting Medical Officer proposes or is required to take during the ensuing twelve months or relevant lesser period;
- 5.2.7 any other relevant fact or circumstance.

#### Remuneration

- 5.3 5.3.1 The Visiting Medical Officer shall be remunerated in accordance with the established rates, to the limit of the budget specified as part of the services plan in Schedule 2 of this contract, for the services, other than emergency after-hours medical services, actually provided under this contract.
- 5.3.2 The Visiting Medical Officer shall be remunerated, in accordance with the established rates, for emergency after-hours medical services actually provided to public patients under this contract.

5.3.3 The Visiting Medical Officer shall be paid upon submission of a record and account to the Hospital\*/Area Health Service\* in accordance with clause 7.

#### Variation

5.4 The services plan specified in this contract may be varied at any time, by an agreement in writing between the Visiting Medical Officer and the Hospital\*/Area Health Service\* concerned.

#### Annual Review

5.5 Not later than six weeks prior to each anniversary date of the contract, the Hospital\*/Area Health Service\* and the Visiting Medical Officer shall consult in a review of the services plan to be specified in the contract in respect of the next following year or of such lesser period until the termination of the contract. If agreement is reached for a variation to the services plan then the agreement shall be reduced to writing and the contract shall be varied accordingly with effect as from the first day of the year or of such lesser period, as the case may be, to which the review related. Provided that this subclause shall not apply if the contract was made for a period of one year or less.

5.6 If agreement is not reached as a result of the review of the services plan as contemplated in subclause 5.5 of this clause, then the Hospital\*/Area Health Service\* may decide the services plan under the contract for the next following year, or for such lesser period until the next anniversary date or termination of the contract, whichever occurs first. Where the Hospital\*/Area Health Service\* decides the services plan pursuant to this subclause it shall notify the officer in writing of its decision and the contract shall be deemed to be varied so as to include the terms of that decision unless the Visiting Medical Officer notifies a dispute under subclause 5.8.

- 5.7 If by the anniversary date of the contract the services plan for the next following year, or relevant lesser period, has not been established either by agreement under subclause 5.5 or decision under subclause 5.6, the Visiting Medical Officer shall continue to provide services and be remunerated on a fee-for-service basis in accordance with the established rates until agreement as to the services plan is reached or a decision is made under subclause 5.6.

### Dispute

- 5.8 5.8.1 Where the Visiting Medical Officer is dissatisfied with a decision made in accordance with subclause 5.6 of this clause the Visiting Medical Officer shall give notice in writing to the Hospital\*/Area Health Service\* of a dispute within seven days of the receipt of written notification of such decision, such dispute to be dealt with in accordance with clause 10.
- 5.8.2 Where such dispute is notified by the Visiting Medical Officer in accordance with paragraph 5.8.1 of this subclause, then pending resolution of the dispute, the Visiting Medical Officer shall continue to provide services and be remunerated under the contract on a fee-for-service basis in accordance with the established rates, provided that if the dispute has not been resolved within three months of notification of such dispute then paragraph 5.8.3 of this subclause shall apply.
- 5.8.3 If, within three months of notification of such dispute, the dispute has not been resolved and is not the subject of mediation or arbitration under Stage 4 or Stage 5 respectively, of clause 10, then the decision of the Hospital\*/Area Health Service\* referred to in paragraph 5.8.1 of this subclause shall apply and the contract shall be deemed to be varied so as to include the terms of that decision.

## 6. UNPAID LEAVE OF ABSENCE

- 6.1 The Visiting Medical Officer shall be entitled to unpaid leave of absence during any period the officer is unable to render services due to illness, provided that the officer shall notify the Hospital\*/Area Health Service of such incapacity as soon as is reasonably practicable.
- 6.2 Other periods of unpaid leave of absence may be granted to the Visiting Medical Officer at times agreed between the officer and the Hospital\*/Area Health Service\*. Such agreement is not to be unreasonably withheld by the Hospital\*/Area Health Service\* which shall take into account the reasonable needs of the Visiting Medical Officer for professional development, continuing medical education and holidays.

## 7. RECORD OF SERVICES

- 7.1 Subject to subclause 7.2, the Visiting Medical Officer shall maintain a record, in a form prescribed and provided by the Hospital\*/Area Health Service\*, of services rendered by the officer under the contract. Such record shall indicate in respect of each of the services so rendered:
- (a) the date, full name and/or medical record number of the patient and nature of service;
  - (b) for emergency after-hours medical services, the name and/or classification of the person requesting the service, and appropriate entry by the Visiting Medical Officer in the medical record of the relevant attendance and/or treatment;
  - (c) particulars of teaching, training and committee work.



- 7.2 Where the Hospital\*/Area Health Service\* and the Visiting Medical Officer agree that sufficient information is otherwise available to the Hospital\*/Area Health Service\* from the medical records or the Visiting Medical Officer's personal records, then so long as such information continues to be available there is no requirement for the Visiting Medical Officer to provide the full name and/or medical record number of patients.
- 7.3 Where sufficient information to satisfy subclause 7.1 is not provided or where sufficient information ceases to be otherwise available from the medical records or the Visiting Medical Officer's personal records to satisfy subclause 7.2, then future payments to the officer for a specified period will require the provision by the officer of additional details, such details and period to be determined by the Hospital\*/Area Health Service\*.
- 7.4 The record referred to in subclause 7.1 of this clause shall be maintained for each calendar month during which services are provided by the officer, and it shall be submitted to the Hospital\*/Area Health Service\* no later than the fifteenth day of the next succeeding calendar month.
- 7.5 The record when so submitted pursuant to subclause 7.4 of this clause shall be accompanied by an account for payment. The Hospital\*/Area Health Service\* shall make payment to the Visiting Medical Officer in respect of the account within 30 days of its receipt.
- 7.6 The Hospital\*/Area Health Service\* in making payment of an account to the officer shall advise details of how the payment is made up as between the various services rendered.

**8. SUSPENSION OF CONTRACT**

- 8.1 Subject to Part 6B of the Public Hospitals Act 1929, the board of the Hospital\*/Area Health Service\* may suspend the appointment of the Visiting Medical Officer in accordance with any applicable by-laws where the board considers it necessary in the interests of the hospital to which the officer is appointed.
- 8.2 Where the Visiting Medical Officer is so suspended, the respective rights and obligations of the parties under the contract shall be suspended for the duration of that suspension.

**9. TERMINATION OF CONTRACT**

- 9.1 The contract shall be terminated:
- 9.1.1 upon the expiry of the period for which it was made or on such earlier date as may be agreed between the Visiting Medical Officer and the Hospital\*/Area Health Service\*;
- 9.1.2 by three months' notice in writing given by either the Visiting Medical Officer or the Hospital\*/Area Health Service\*;
- 9.1.3 by four weeks' notice in writing given by the Visiting Medical Officer if dissatisfied with a decision by the Hospital\*/Area Health Service\* as to the services plan pursuant to subclause 5.6 of this contract following an annual review, provided that the notice of termination is given within seven days of the officer receiving notification in writing of the decision;
- 9.1.4 if the Visiting Medical Officer ceases to be registered as a medical practitioner;

9.1.5 if the Visiting Medical Officer becomes permanently mentally or physically incapable of rendering services under the contract;

9.1.6 if the Visiting Medical Officer commits serious and wilful misconduct; or

9.1.7 if the Visiting Medical Officer's appointment is terminated by operation of any Act or regulation.

9.2 On the termination of the contract, any amount due and payable to the Visiting Medical Officer pursuant to the contract shall be paid at the time of such termination or as soon thereafter as reasonably practicable.

## 10. DISPUTE RESOLUTION PROCEDURE

10.1 The objective of each stage of this procedure is to achieve a result which is fair and equitable in the circumstances. It is expected that both the Visiting Medical Officer and the Hospital\*/Area Health Service\* will be prepared at all times to take part in bona fide negotiations to agree on such a result in any dispute between them without the necessity of taking it to arbitration under subclause 10.7.

### Stage 1 - Consultation

10.2 In the event of a dispute arising, the Visiting Medical Officer or the Hospital\*/Area Health Service\* may give notice in writing to the other party identifying the matter or matters the subject of dispute.

10.3 As soon as practicable after the giving of notice under subclause 10.2 the parties shall meet to discuss the dispute and attempt to resolve it by a mutually agreed method.

Stage 2 - Local Hospital Level

10.4 If the dispute is not resolved within 14 days after the giving of the notice under subclause 10.2 or such further time as the parties may agree in writing the local hospital administration shall at the earliest practicable time and in any event within a further 14 days convene a meeting of the following participants:

10.4.1 the Visiting Medical Officer;

10.4.2 the clinical head responsible for the Department or Unit in which the officer performs duties or the nominee of the clinical head;

10.4.3 the executive officer for the local hospital at which the officer performs duties or the nominee of the executive officer;

10.4.4 at the option of the Visiting Medical Officer, a representative of the Australian Medical Association (New South Wales Branch) or an independent person of the officer's choice, not being a qualified barrister or solicitor; and

10.4.5 such other persons as may be agreed by the parties to the dispute.

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

Stage 3 - Hospital/Area Health Service Level

10.5 If the dispute is not resolved within 14 days after the convening of the meeting under subclause 10.4 or such further time as the parties may agree in writing, the Hospital\*/Area Health Service\* shall at the earliest practicable time and in any event within a further 14 days convene a meeting of the following participants:

10.5.1 the Visiting Medical Officer;

10.5.2 an appropriate clinical head nominated by the relevant Chief Executive Officer (however called) of the Hospital\*/Area Health Service\*;

10.5.3 an executive of the Hospital\*/Area Health Service\* nominated by the relevant Chief Executive Officer (however called) of the Hospital\*/Area Health Service\*;

10.5.4 at the option of the Visiting Medical Officer, a representative of the Australian Medical Association (New South Wales Branch) or an independent person of the officer's choice, not being a qualified barrister or solicitor; and

10.5.5 such other persons as may be agreed by the parties to the dispute.

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

Stage 4 - Mediation

10.6 10.6.1 If the dispute is not resolved within 14 days after the convening of the meeting under subclause 10.5 or such other time as the parties may agree in writing, then the parties shall appoint a mediator to assist in the resolution of the dispute unless both parties agree to immediately refer the matter to arbitration under the matter to arbitration under subclause 10.7. The mediator shall be a person agreed upon by the Visiting Medical Officer and the Hospital\*/Area Health Service\*, and in the absence of agreement within 7 days, a person nominated by the President or other most senior office bearer of the Council of the Law Society of New South Wales or its successor. The parties agree to co-operate with the mediator in the procedural steps necessary to constitute the mediation and to participate in bona fide discussions with the assistance of the mediator in seeking to agree on a resolution of the dispute.

10.6.2 The fees of the mediator and the administrative costs of the mediation shall be shared equally between the Visiting Medical Officer and the Hospital\*/Area Health Service\*.

Stage 5 - Arbitration

10.7 If the dispute is not resolved within 14 days after the appointment of the mediator or such other time as the parties may agree in writing, then the officer or the Hospital\*/Area Health Service\* may serve a further notice in writing on the other referring the dispute to arbitration. Such dispute shall thereupon be and is hereby referred to arbitration by a single arbitrator to be agreed upon by the Visiting Medical Officer and the Hospital\*/Area Health Service\* or, in the absence of agreement, to be appointed by the President or other most senior office bearer of the Council of the Law Society of New South Wales or its successor.

- 10.8 The arbitrator's fees shall be as negotiated on the appointment of the arbitrator and shall be shared equally between the Visiting Medical Officer and the Hospital\*/Area Health Service\*, unless otherwise ordered by the arbitrator.
- 10.9 The Visiting Medical Officer and the Hospital\*/Area Health Service\* shall each appoint an assessor to sit with the arbitrator in a consultative capacity, but the determination shall be made solely by the arbitrator.
- 10.10 The Visiting Medical Officer and the Hospital\*/Area Health Service\* shall have the right to appear before the arbitrator and may be represented by a barrister or by a solicitor or, with the leave of the arbitrator, by an agent.
- 10.11 At the request of the Visiting Medical Officer, the Australian Medical Association (NSW Branch) shall be entitled to appear and be represented in the arbitration.
- 10.12 At the request of the Hospital\*/Area Health Service\*, the NSW Department of Health shall be entitled to appear and be represented in the arbitration.
- 10.13 In the event of either the Australian Medical Association (NSW Branch) or the NSW Department of Health appearing in the arbitration pursuant to a request under subclause 10.11 or 10.12, the other organisation shall be entitled to appear and be represented as of right.
- 10.14 It is agreed between the parties that the arbitrator shall determine all questions arising for determination in the course of the arbitration by reference to considerations of general justice and fairness.
- 10.15 The determination of the arbitrator shall be final and binding upon the Visiting Medical Officer and the Hospital\*/Area Health Service\*.

#### Definitions

10.16 In this clause:

10.16.1 "dispute" means any dispute arising between the Visiting Medical Officer and the Hospital\*/Area Health Service\* at any time as to any matter or thing of whatsoever nature arising under the contract or in connection therewith, including but not limited to matters relating to clinical privileges, but excluding a matter relating to the non-reappointment, suspension or termination of appointment of the Visiting Medical Officer;

10.16.2 "local hospital" means a health facility conducted by the Hospital\*/Area Health Service\* at which the Visiting Medical Officer provides services under the contract.

## 11. NOTICES

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

## 12. DEFINITIONS

In this contract:

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

"area health service" means an area health service as defined in the Area Health Services Act 1986;



"board" means a board as defined in the Public Hospitals Act 1929 and, in relation to a hospital that is a separate institution, includes the governing body of the separate institution;

"clinical privileges" means the clinical privileges as defined in the Area Health Services (Visiting Practitioners) Regulations 1989 or the Public Hospitals Regulation 1991, as the case may be;

"emergency after-hours medical services" means services initiated by or on behalf of public patients whose medical conditions require immediate treatment and which take place on a public holiday, on a Sunday, before 8.00am or after 1.00pm on a Saturday, or at any time other than between 8.00am and 8.00pm on a weekday not being a public holiday;

"established rates" means the rates on a fee-for-service basis of remuneration, agreed between the NSW Department of Health and the AMA (NSW Branch) and specified in Departmental circulars from time to time, in respect of certain services provided by visiting medical officers under fee-for-service contracts;

"fee-for-service contract" means fee-for-service contract as defined in the Public Hospitals Act 1929;

"hospital" means a hospital as defined in the Public Hospitals Act 1929;

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

"officer" means the visiting medical officer;

"on-call" means rostered to be available to attend public patients pursuant to an on-call roster prepared by a hospital or an area health service, as the case may be in consultation with the relevant clinical department;

\* NSW Health and the AMA (NSW) have agreed that "emergency after hours medical services" are services initiated by or on behalf of patients whose medical conditions require immediate treatment and where these services take place in a weekend, a public holiday, or other than between 8am and 6pm on a weekday.

"patient" means a patient as defined in the Public Hospitals Act 1929;

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

"service contract" means a service contract as defined in the Public Hospitals Act 1929;

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

"services plan" means the plan and budget for services the visiting medical officer is to provide under the contract, which are specified in Schedule 2 of the contract;

"visiting medical officer" means a visiting medical officer as defined in the Public Hospitals Act 1929 who performs the said work under a fee-for-service contract, but excluding a pathologist and a radiologist; and

"visiting practitioner" means a visiting practitioner as defined in the Public Hospitals Act 1929.

**NOTE:** Other conditions of appointment

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

SIGNED for and on behalf of )  
 the Hospital\*/Area Health )  
 Service\* in the presence of ) .....

.....  
 Witness

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

.....  
 Witness

**SCHEDULE 1**

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<b>Name and Address of Hospital</b>	<b>Clinical privileges granted to the Visiting Medical Officer in respect of specified hospital</b>
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**SCHEDULE 2**Specified Hospital**(1) Services**

(here describe services to be provided by Visiting Medical Officer under Clause 5 of the contract)

**(2) Plan**

(here describe as appropriate or required plan for services to be provided by Visiting Medical Officers under Clause 5 of the contract)

**(3) Budget**

(here specify budget for services to be provided by Visiting Medical Officer under Clause 5 of the contract)