

Australian Capital Territory

## **Health (Visiting Medical Officer Core Conditions) 2003 (No 1)**

**Notifiable Instrument NI2003— 493**

Made under the

*Health Act 1993, s 33C Core conditions*

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I determine that the core conditions for Visiting Medical Officers are as set out in Attachments 1 and 2 to this instrument.

Simon Corbell MLA  
Minister for Health

25 November 2003

Date \_\_\_\_\_ 2003

# SESSIONAL AGREEMENT (Draft)

BETWEEN

**AUSTRALIAN CAPITAL TERRITORY**

AND

**[INSERT FULL NAME OF VMO]**

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**VISITING MEDICAL OFFICER  
(INDIVIDUAL)**



## CONTENTS

1. Definitions and Interpretations .....	3
2. Engagement.....	5
3. No Authority to Bind the Territory .....	6
4. Duration.....	6
5. Indemnity and Insurance .....	6
6. Contract Price and Payment .....	6
7. On-call .....	8
8. Call-back .....	8
9. Public Holidays.....	8
10. Records .....	9
11. Meetings.....	9
12. Registration .....	10
13. Attendance.....	10
14. Teaching.....	10
15. Performance and Quality Assurance .....	11
16. Absence .....	12
17. Termination.....	13
18. Suspension .....	14
19. Dispute Resolution.....	16
20. Territory Facilities and Equipment .....	17
21. Public Patients.....	17
22. Contract Material .....	17
23. Territory Material and VMO's Material.....	17
24. Non-Disclosure of Contract Information .....	18
25. Conflict of Interest.....	19
26. No Assignment or Subcontracting .....	19
27. Entire Agreement, Variation and No Waiver .....	19
28. Notices .....	19

<b>29. Severability .....</b>	<b>20</b>
<b>30. Applicable Law .....</b>	<b>20</b>
<b>31. Special Conditions .....</b>	<b>20</b>
<b>32. Survival of Clauses .....</b>	<b>20</b>
<b>33 Safe Hours .....</b>	<b>20</b>
<b>34 Research .....</b>	<b>20</b>
<b>SCHEDULE 1.....</b>	<b>22</b>
<b>SCHEDULE 2.....</b>	<b>25</b>
<b>SCHEDULE 4.....</b>	<b>27</b>
<b>Reporting.....</b>	<b>3</b>

THIS AGREEMENT is made on

2003

**BETWEEN:**

**AUSTRALIAN CAPITAL TERRITORY**, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) represented by ACT Health (“Territory”)

**AND:**

**[INSERT FULL NAME OF VMO, INCLUDING ABN]** of **[INSERT ADDRESS (OF REGISTERED OFFICE IF FOR A COMPANY)]** (“VMO”).

## **BACKGROUND**

The Territory wishes to engage the VMO to provide the Services and the VMO has agreed to do so on the terms and conditions of the Agreement.

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**IT IS AGREED** by the parties as follows:

### **1. Definitions and Interpretations**

1.1 In this Agreement, unless the context otherwise requires:

“**Call-back**” means an attendance by the VMO at a health facility:

- (1) when on-call; or
- (2) when the VMO would not otherwise have attended the health facility; and
- (3) in response to a request from a specialist or junior medical officer in circumstances where the VMO reasonably considers his or her attendance to be clinically necessary;

“**Clinical Privileges**” has the same meaning as in the *Health Act 1993* (ACT);

“**Contract Material**” means all material created, written or otherwise brought into existence as part of, or for the purpose of performing the Services including, but not limited to, all reports (whether in draft or final form), documents, equipment, information and data stored by any means;

“**Contract Officers**” means, in relation to each party, the representatives whose names, addresses and contact details are specified in Item 1 Schedule 1, or as notified in writing from time to time by one party to the other;

“**Conditions of Liability Cover**” means the terms and conditions specified in Schedule 4;

**“Contract Price”** means the amounts specified in, or calculated in accordance with, Item 3 Schedule 1;

**“General Practitioner”** means a medical practitioner who is a Fellow of the Royal Australian College of General Practitioners, or one who works in the community in Family Medicine;

**“health facility”** means an institution at which health services are provided by the Territory;

**“Medical Practitioner”** means a person registered for the time being under the *Medical Practitioner’s Act 1930* (ACT);

**“Medicare Agreement”** means the Australian Health Care Agreement (Commonwealth) between the Commonwealth of Australia and the Territory regarding the provision of public hospital services and other health services in the Territory;

**“on-call”** means rostered by the Territory to be available to attend patients;

**“other VMOs”** means another VMO or other VMOs who has or have an extant service contract with the Territory;

**“private patient”** has the same meaning as in the Medicare Agreement;

**“public patient”** has the same meaning as in the Medicare Agreement;

**“Personal Information”** means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

**“Services”** means the services described in Schedule 2;

**“Special Conditions”**, if any, mean the conditions agreed by the parties and set out in Schedule 3;

**“Specialist”** means a Medical Practitioner who is a specialist as defined in the *Health Insurance Act 1973* (Cwlth);

**“Territory”** means:

- (1) when used in geographical sense, the Australian Capital Territory; and
- (2) when used in any other sense, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth);

**“Territory Material”** means any material provided by the Territory to the VMO for the purposes of this Agreement including, but not limited to, documents, equipment, information and data stored by any means; and

**“Unit”** means a designated clinical unit of which the VMO is a member.

1.2 In this Agreement, unless the context otherwise requires:

- (1) words importing a gender include the others; words in the singular number include the plural and vice versa; and references to legislation or to provisions in legislation include references to amendments or re-enactments of them and to all regulations and instruments issued under the legislation; and
- (2) clause headings are for convenient reference only and have no effect on the interpretation of the provisions to which they refer.

1.3 An obligation imposed by this Agreement upon more than one person binds them jointly and severally.

1.4 Unless the contrary intention appears, a word or phrase in this Agreement has the same meaning as in the *Health Act 1993* (ACT).

## **2. Engagement**

2.1 The Territory engages the VMO to perform the Services on the terms set out in this Agreement.

2.2 The VMO is engaged to provide the Services to patients within the scope of his or her Clinical Privileges. The VMO is responsible for the medical care and treatment he or she administers in respect of patients admitted under his or her care.

2.3 The VMO is responsible for the maintenance of his or her professional standards in accordance with the Clinical Privileges granted by the Territory.

2.4 The VMO will comply with all reasonable administrative (non-clinical) directions given by the Territory in relation to the Services.

2.5 The Territory is responsible for arranging the delivery of medical services to public patients within the Territory. The Territory must provide facilities and equipment and timely access to them, so that the VMO can maintain a standard of best practice as appropriate.

2.6 The VMO will be engaged as either:

- (1) a General Practitioner; or
- (2) a Specialist.

2.7 The VMO may apply to the Territory's credentialing committee to change his or her classification referred to in clause 2.6 and any application will be determined within a reasonable time and according to the applicable criteria for each classification.

2.8 During the period of this Contract and within the limits of available resources the Territory may make available for use of the VMO, facilities for the care of his/her private patients.

- 2.9 If the Services include managerial responsibilities the VMO will be paid the allowance set out in Item 3 Schedule 1.

### **3. No Authority to Bind the Territory**

3.1 The VMO will not represent himself or herself, and will ensure that no other person acting on his or her behalf represent themselves, as having the capacity to legally bind the Territory for any purpose.

3.2 Nothing in this Agreement constitutes the VMO, or any person on his or her behalf, as having the capacity to legally bind the Territory for any purpose.

### **4. Duration**

This Agreement is for the period specified in Item 2 Schedule 1 unless extended by written agreement of the parties or terminated under the provisions of this Agreement.

### **5. Indemnity and Insurance**

5.1 Unless the VMO elects otherwise, the Territory will indemnify the VMO in accordance with the Conditions of Liability Cover specified in Schedule 4. If the VMO elects not to accept the indemnity provided by the Territory the VMO must effect and maintain all insurance coverage required to be effected by the VMO by law and a professional indemnity insurance policy covering the VMO for the Services for a sum not less than \$15,000,000 and deliver to the Territory annually or as requested a certificate of currency or other proof that the policy is current.

5.2 If treating private patients in a health facility the VMO must effect and keep current a professional indemnity insurance policy covering the VMO for the treatment of private patients for a sum not less than \$15,000,000 and deliver to the Territory annually or as requested a certificate of currency or other proof that the policy is current.

### **6. Contract Price and Payment**

6.1 The Territory will pay the VMO the Contract Price within 14 days following its receipt of a correctly rendered invoice.

6.2 An invoice is correctly rendered if:

- (1) a goods and services tax (“GST”) is payable by virtue of the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth) (“GST Act”) in respect of the provision of the Services, the VMO has rendered to the Territory a tax invoice (as required by the GST Act);
- (2) the amount claimed in the invoice is due for payment, is correctly calculated and is in respect of Services which have been performed in accordance with the Agreement and recorded in accordance with clause 10.1;
- (3) the invoice sets out details of the Services provided, is accompanied by the report specified in clause 6.3 and sets out or is accompanied by any other details or reports required by this Agreement; and

- (4) the invoice is rendered as specified in Item 3 Schedule 1 and addressed to the Territory's Contract Officer or such other officer notified by the Territory to the VMO to receive invoices for payment.
- 6.3 The VMO will maintain a record of the Services for each calendar month during which the Services are provided in a form specified by the Territory. The record will specify in respect of the Services:
  - (1) the date, full name and/or unit record number of the patient treated by the VMO and the nature of the Services;
  - (2) times of commencement and conclusion of patient care sessions;
  - (3) particulars of the VMO's on-call periods;
  - (4) hours of attendance at approved meetings for which payment has been agreed;
  - (5) hours of contribution to approved quality assurance, research or teaching for which payment has been agreed;
  - (6) for call-backs, the name and/or designation of the person requesting the call-back, and appropriate entry by the VMO in the medical record of the relevant attendance and/or treatment; and
  - (7) particulars of the VMO's leaves of absence.
- 6.4 If insufficient information to satisfy the requirements of this clause 6 is provided, the Territory may request and the VMO will provide additional information within the time period specified by the Territory.
- 6.5 If a rostered session is cancelled by the Territory on less than 28 days notice to the VMO then the VMO will be paid for that session if the VMO establishes to the Territory's reasonable satisfaction that the VMO was unable to treat other patients for that session at any public or private health facility. The Territory will not cancel more than 25% of the VMO's sessions in any 14 week period. Christmas and Easter closures of up to six weeks do not count toward the 25% figure. The Territory will not cancel more than 10% of the VMO's annual workload for non-budgetary reasons without the agreement of the VMO and will cancel none of the VMOs workload for budgetary reasons without the agreement of the VMO.
- 6.6 If a session is cancelled by the Territory, the VMO is not required to continue to be available for that session.
- 6.7 The VMO will not be paid for approved leave or any other absences other than as agreed under clause 18.3.
- 6.8 If, after payment, an invoice is found to have been incorrectly rendered, any underpayment or overpayment will be recoverable by or from the VMO, as the case may be and, without limiting recourse to other available remedies, may be offset against any amount subsequently due by the Territory to the VMO. The VMO will be advised in advance of any adjustments required and the reasons for them.

6.9 The VMO is responsible for any GST liability and reporting under the GST Act.

## **7. On-call**

7.1 The VMO will be paid the amount specified in Item 3 Schedule 1 for each 24-hour period or part thereof that the VMO is rostered to be on-call.

7.2 The on-call allowance will not be paid for periods that the VMO is on leave of absence or otherwise unavailable.

7.3 If the VMO is rostered to be on-call at more than one health facility at the same time, the VMO will only be paid an on-call allowance in relation to that health facility to which the VMO has the greatest on-call commitment. If the on-call commitments are equal the VMO will be paid an on-call allowance from only one health facility.

## **8. Call-back**

8.1 For each call-back the VMO will be paid in accordance with the following:

(1)

(2) for call-backs commencing between 8.00am and 6.00pm Monday to Friday inclusive - at the VMO's ordinary hourly rate of pay as specified in Item 3 Schedule 1 plus a loading of XX percent;

(2) for call-backs commencing outside 8.00am to 6.00pm Monday to Friday inclusive - at the VMO's ordinary hourly rate of pay as specified in Item 3 Schedule 1 plus a loading of XX percent;

(3) for call-backs commencing on public holidays – at the VMO's ordinary rate of pay as specified in Item 3 Schedule 1 plus a loading of XX per cent;

(4) the duration of a call-back will include the actual travelling time from the place of contact and return, up to a maximum of 15 minutes travel each way;

(5) the minimum payment for each call-back, including travelling time, will be X hours at the VMO's ordinary hourly rate of pay plus the appropriate loading; and

(6) for the purposes of paragraphs (1), (2) and (3) a call-back commences when the VMO leaves his or her place of contact to attend the call-back.

8.2 If the VMO finds it necessary to cancel a morning session due to fatigue resulting from being recalled to duty in a public hospital for a total of four hours or more between the hours of 10pm and 8am while on call, the Territory will pay the VMO for a four hour session at the hourly rate applicable to the VMO's specialty group.

## **9. Public Holidays**

If the VMO is required by the Territory to provide Services on a public holiday, other than when he or she is on-call or on a call-back, and the VMO agrees to provide the

services the VMO will be paid at the ordinary hourly rate of pay as specified in Item 3 Schedule 1 plus a loading of XX percent.

## 10. **Records**

- 10.1 The VMO will complete on the relevant Territory patient records a record of all Services provided by the VMO to each patient, within 24 hours after the Services were provided, except in exceptional circumstances when longer than 24 hours may be required. Those records will:
- (1) be appropriate to the circumstances;
  - (2) conform to the standards of the Australian Council of Health Care Standards;
  - (3) include all data necessary to enable the Territory to appropriately code each episode following the patient's discharge; and
  - (4) include morbidity and complications information relevant to the particular episode.
- 10.2 Other than in exceptional circumstances, the VMO will within two working days of the patient's discharge, ensure that there is adequate information in the patient's record to allow an appropriate discharge summary to be completed.
- 10.3 All clinical records including all patient notes, medical records, correspondence, X-Ray and other diagnostic materials whether written or otherwise are owned by the Territory.
- 10.4 The VMO acknowledges that clinical records are confidential and that the VMO will not disclose them or any information contained in them to any party without the written consent of the Territory except as otherwise provided by the *Health Records (Privacy and Access) Act 1998* (ACT).
- 10.5 Unless prohibited by law from doing so and having obtained the patient's consent the Territory will advise the VMO if patient records are accessed or copied by the patient, or someone acting on behalf of the patient, or by any entity other than the Territory or its authorised agent.

## 11. **Meetings**

- 11.1 The VMO will participate in quality improvement and other meetings as reasonably directed by the Territory.
- 11.2 The VMO will be paid for attending a meeting where the General Manager or Chief Executive has approved that meeting in advance as a meeting for which attendance will be paid and the VMO's attendance has been recorded in the minutes of the meeting.
- 11.3 Meetings will not be eligible for approval as paid meetings unless they are formal meetings initiated by the Territory, they are minuted and the matters under consideration relate directly to the provision of public services. Unless agreed in

advance by the General Manager or Chief Executive meetings not held on Territory funded premises will not be approved as paid meetings..

## 12. **Registration**

The VMO will provide written proof to the Territory annually and whenever directed to do so that the VMO is registered as a Medical Practitioner.

## 13. **Attendance**

13.1 The VMO will:

- (1) participate in an on-call roster as determined by the Territory following consultation with the relevant group of specialists and after consultation with the ACT Branch of the AMA and the relevant professional colleges in relation to the principles of safe working hours; and
- (2) otherwise provide the Services at the times or for the periods reasonably determined by the Territory following agreement with the VMO.

13.2 Other than as provided for in clause 2.3, the VMO's hours of attendance may be varied by written agreement between the parties. For the purposes of this clause, attendance will be recorded to the nearest quarter of an hour and will exclude time spent attending private patients.

13.3 If the VMO is rostered on-call, he or she will be readily contactable at all times and be able and prepared to attend the hospital or facility concerned within a response time appropriate to the clinical circumstances, and usually within 30 minutes.

## 14. **Teaching**

14.1 The VMO will participate in the teaching and training of postgraduate medical officers. Payment for formal teaching as agreed in advance between the VMO and the General Manager or Chief Executive will be paid. Payment will be made at the base sessional rate irrespective of the scheduled time for the teaching session and only the actual time spent teaching will be paid. Teaching that occurs during ward rounds or during normal sessions is included in the Contract Price and does not attract any additional payment.

14.2 The VMO will:

- (1) consult with the Dean of the ACT Medical School (ANU) and the Associate Dean of the Canberra Clinical School of Medicine to agree his or her undergraduate teaching duties; and
- (2) undertake those undergraduate teaching duties as agreed .

14.3 Payment for formal teaching as agreed in advance between the VMO and the Dean will be paid at the sessional rate, but teaching that occurs during ward rounds or during normal sessions is included in the Contract Price.

## 15. Performance and Quality Assurance

- 15.1 The VMO will provide every medical service required under this Agreement within the range of his or her approved Clinical Privileges, qualifications and experience and the standards accepted by the clinical college(s) responsible for the discipline in which the VMO practises.
- 15.2 Without limiting clause 15.1, the VMO will:
- (1) comply with the policies and procedures of the relevant health facility as amended from time to time, to the extent that they are consistent with this Agreement, in relation to:
    - (a) commencement times of theatre sessions;
    - (b) occupational health and safety;
    - (c) risk management;
    - (d) pre-, intra- and post-operative care;
    - (e) assigning clinical priority to patients;
    - (f) intensive care unit bookings;
    - (g) obtaining informed consent of patients; and
    - (h) creating or amending theatre lists.
  - (2) comply with the quality assurance, quality improvement and peer review policies, procedures and requirements of:
    - (a) the relevant health facility; and
    - (b) the clinical college(s) responsible for the discipline in which the VMO practises;
  - (3) attend scheduled clinical meetings as directed by the Territory, with payment being made for attendance at meetings approved for such payments;
  - (4) assist in the development of appropriate patient management protocols to ensure and enhance quality patient care and the efficient use of the Territory's resources with payment being made for an agreed number of hours;
  - (5) assist in the development of multi-disciplinary discharge planning and monitoring of patient throughput and length of stay, with payment being made for an agreed number of hours;
  - (6) arrange for the provision of medical services on a day to day basis, including review and monitoring of work practices, the utilisation of diagnostic services,

the efficient use of time in the delivery of clinical services and the arrangement of agreed times for the conduct of organised ward rounds;

- (7) ensure completion of patient records and provide in a timely manner medical information to meet the reasonable needs of the relevant health facility;
- (8) facilitate communications between medical, nursing, allied health and other persons employed or engaged by the Territory;
- (9) contribute to efficient and cost effective management of surgical lists, operating sessions and patient throughput, including allocation of operating theatre sessions and on-time commencement and completion of scheduled operating theatre sessions;
- (10) not provide a medical service without first obtaining the informed consent of the patient;
- (11) comply with the ethical standards set out in the ACT Medical Board Code of Conduct as may be amended from time to time;
- (12) where appropriate, complete pre-operative and pre-procedural investigations at least 1 working day before the admission of each patient;
- (13) provide to the Territory relevant clinical information prior to admission, and where patients attend the Preadmission Clinic, before that attendance; and
- (14) actively assist the Territory to ensure that the average length of stay of admitted patients over any particular period does not exceed the national average length of stay for similar conditions, and agree to work toward national best practice.

## 16. **Absence**

16.1 The VMO may take:

- (1) leave on public holidays except where rostered to attend a health facility;
- (2) twelve weeks leave of absence each year or as otherwise agreed in writing by the parties;
- (3) leave only after giving 28 days, or a lesser period if agreed, notice in writing to the Territory of his or her intention to take leave;
- (4) study and conference leave up to a maximum of 2 calendar weeks per year at times agreed between the parties. This leave may be accumulated from year to year to a maximum of four weeks; and
- (5) additional periods of leave as agreed in writing by the Territory.

- 16.2 If the VMO is unable to provide the Services because of illness or injury, or family circumstance the VMO will promptly notify the Territory of his or her unavailability and its likely duration.
- 16.3 Sessions cancelled at the instigation of the Territory will not form part of the period of absence referred to in clause 16.1(2).
- 16.4 The VMO may recommend a locum tenens to provide the Services while the VMO is on approved leave provided that:
- (1) there is no other visiting medical officer who can undertake the Services;
  - (2) the locum tenens applies for engagement and clinical privileges with the Territory and has the appropriate qualifications and experience to provide Services;
  - (3) the engagement and clinical privileges are approved by the Territory; and
  - (4) the engagement of the locum tenens does not constitute job sharing of the Territory position between the VMO and the locum tenens.

## **17. Termination**

- 17.1 The VMO may terminate this Agreement by giving 3 months' notice, or a lesser period if agreed, in writing of his or her intention to terminate.
- 17.2 The Territory may terminate this Agreement if:
- (1) the VMO commences full or part-time employment with the Territory;
  - (2) the VMO fails to participate in an on-call roster as required under this Agreement;
  - (3) the VMO's Clinical Privileges are revoked, noting that such an action may be appealed to the AAT;
  - (4) the VMO fails to meet the standards reasonably required by the Territory in respect of the VMO's continuing education (if applicable);
  - (5) the VMO suffers an event which renders him or her permanently incapable of performing the Services;
  - (6) the VMO ceases to hold current unconditional registration as required by section 9 of the *Medical Practitioners Act 1930* (ACT), such as would prevent the VMO from providing services;
  - (7) the clinical college responsible for the discipline in which the VMO practises decides that the VMO should not provide the Services;
  - (8) the VMO is found by the ACT Medical Board to have engaged in professional misconduct of a serious nature as referred to in section 36 of the *Medical*

*Practitioners Act 1930 (ACT)* or if any limitation, condition or restriction on the practice of the VMO is imposed pursuant to that Act;

- (9) the VMO is or has been found to be negligent in the performance of the Services;
- (10) the VMO is found by the ACT Medical Board not to have conducted himself or herself in accordance with the ACT Medical Board Code of Conduct, as amended from time to time;
- (11) the VMO seriously or persistently fails to comply with the relevant health facility's policies and procedures as specified in clause 15.2;
- (12) the VMO fails to comply with a reasonable lawful direction of the Territory; or
- (13) the VMO commits any serious or persistent breach of any of the provisions of this Agreement.

17.3 If the Territory terminates this Agreement under clause 17.2 the Territory will give the VMO written notice of the termination and the grounds for the termination. On receipt of the notice the VMO will:

- (1) stop work as directed by the notice; and
- (2) return to the Territory as directed in the notice any medical record held by the VMO in relation to any patient at a health facility.

17.4 Nothing in clause 17.2 will limit:

- (1) any right or remedy the VMO might have if this Agreement is wrongfully terminated by the Territory;
- (2) any other right or remedy of the Territory in respect of any breach of this Agreement; and
- (3) the application of clause 19.

17.5 If this Agreement is terminated any amount due and payable to the VMO under this Agreement will be paid at the time of termination or as soon as reasonably practicable after that time.

## 18. **Suspension**

18.1 The Territory may suspend the engagement of the VMO if the Territory has reasonable grounds to believe that:

- (1) the VMO may not have conducted himself or herself in accordance with the ACT Medical Board Code of Conduct, as amended from time to time;
- (2) the VMO may not have conducted himself or herself in accordance with the relevant health facility's policies and procedures as specified in clause 15.2;

- (3) the VMO may have carried out a procedure not approved by the Territory;
  - (4) the VMO may not be competent to practise medicine under section 4 of the *Medical Practitioners Act 1930* (ACT);
  - (5) the VMO may be suffering from an impairment affecting his or her ability to practise medicine under section 5 of the *Medical Practitioners Act 1930* (ACT);
  - (6) one or more of the grounds for termination set out in clause 17.2 has occurred;
  - (7) the VMO may have failed to provide all practicable assistance to a committee appointed under section 7 of the *Health Act 1993* (ACT) in response to a request by that committee; or
  - (8) the VMO may have obtained, requested or accepted “booking fees”, “attendance fees” or like payments or any other payments, considerations, benefit or advantage from any public patient in relation to the Services; or
  - (9) the VMO, without the permission of the Territory, may have persuaded or attempted to persuade or procure a patient to change his or her admission status.
- 18.2 If the Territory intends to suspend the VMO under clause 18.1, the Territory will give the VMO:
- (1) written notice of its decision to suspend the VMO;
  - (2) the reasons for and period of the suspension; and
  - (3) if applicable, notice of any action or condition which upon completion or satisfaction by the VMO, the suspension will be lifted; and
- 18.3 On receipt of the notice of suspension, the VMO will stop providing the Services. From the time of the Territory giving notice of suspension to a VMO, the Territory shall pay to the VMO each week his or her average weekly earnings for the previous 12 months, excluding weeks not worked, until the dispute is resolved under clause 19 of this Agreement, provided the VMO activates clause 19. The Territory will pay for Services provided by the VMO prior to receipt by the VMO of the notice of suspension. These payments will be made by the Territory within the period specified in clause 6.1 following receipt of an invoice rendered in accordance with clause 6.2.
- 18.4 Within 14 days, a VMO subject to suspension under clause 18.1 may give the Territory 7 days notice requesting that he or she wishes the matter to be dealt with according to the dispute resolution procedures set out in clause 19. The Territory may not unreasonably refuse that request.
- 18.5 If the period of the VMO’s suspension equals the balance of the term of this Agreement and the grounds are made out, the Territory may terminate this Agreement by notifying the VMO in writing.

## 19. Dispute Resolution

19.1 If difference or dispute arises in this Agreement (“Dispute”), the parties will follow these procedures.

- (1) Until the Dispute is resolved, the parties will continue to observe all terms of this Agreement and in particular the VMO will continue to provide the Services. No party will be prejudiced as to the final settlement by the continuance of work in accordance with this procedure.
- (2) The Dispute will first be discussed as informally and promptly as possible, between the VMO and a person appointed by the Territory for this purpose who will be a person responsible for clinical management. The VMO may have a witness present at this meeting.
- (3) If the Dispute is not then resolved it will be referred to a more senior officer of the Territory who is responsible for clinical management for discussion with the VMO who may request a representative to be present.
- (4) If the Dispute has not been resolved pursuant to clause 19.1(3) within 28 days of the notice of the Dispute, then the parties will undertake a mediation process. The mediator will be an independent mediator agreed by the parties or, failing agreement, nominated by the chairperson of the Institute of Arbitrators and Mediators Australia, ACT Chapter. The cost of the mediator will be borne by the Territory, providing that the Territory can end the mediation process if it becomes unduly long. Each party will otherwise bear their own costs.
- (5) If an agreement cannot be reached pursuant to clause 19.1(4), then the Dispute will be referred to a mutually agreed arbitrator independent of both the VMO and the Territory (selected by both parties or, in the absence of agreement, nominated by the chairperson of the Institute of Arbitrators and Mediators Australia, ACT Chapter) who is appropriately skilled and knowledgeable in the relevant area. The referral and arbitration will be carried out in accordance with the provisions of the *Commercial Arbitration Act 1986* (ACT) and the determination of the arbitrator will be final and binding on the parties. The cost of the arbitrator will be borne by the Territory. Each party will otherwise bear their own costs.

19.2 At every stage in the attempted resolution of a Dispute:

- (1) the VMO will be given adequate opportunity to address the individual or individuals representing the Territory and to present other information;
- (2) the VMO will be entitled to ask for and receive reasons for the decision, opinion, view, act or omission (as the case may be) of the individual or individuals representing the Territory; and
- (3) each of the parties may be represented by an agent, except during the procedure referred to in clause 19.1(2).

19.3 The parties will cooperate to ensure that these procedures are carried out expeditiously.

19.4 Nothing in this clause 19 will prejudice the rights of either party to institute proceedings to enforce the Agreement or to seek injunctive or urgent declaratory relief in respect of any Dispute.

## **20. Territory Facilities and Equipment**

20.1 The Territory will use its best endeavours to provide the VMO with all consumable and durable materials, equipment and the staff resources the Territory considers reasonably necessary for the proper performance by the VMO of his or her obligations under this Agreement.

20.2 The VMO will, when using the health facilities or other Territory premises comply with all security and workplace regulations in effect at those facilities or premises or otherwise as notified by the Territory.

## **21. Public Patients**

The VMO will not:

- (1) obtain, request or accept “booking fees”, “attendance fees” or like payments or any other payments, considerations, benefit or advantage from any public patient in relation to the Services; and
- (2) without the permission of the Territory, persuade or attempt to persuade or procure a patient to change his or her admission status.

## **22. Contract Material**

22.1 Title to, and ownership of any intellectual property rights (including copyright) in all Contract Material will vest upon its creation in the Territory.

22.2 The VMO will ensure that:

- (1) the Contract Material is used only for the purpose of this Agreement;
- (2) the use of any Contract Material will not infringe the intellectual property rights of any third party; and
- (3) no fees, royalties or other payments are payable in respect of any third party rights as a result of the Territory’s (or any permitted user’s) use of any Contract Material.

22.3 For the purpose of clause 22.2, use (including used) includes supply, reproduce, publish, perform, communicate, adapt and copy.

22.4 On the expiration or earlier termination of this Agreement, the VMO will deliver to the Territory all Contract Material.

## **23. Territory Material and VMO’s Material**

23.1 Territory Material will remain the property of the Territory and the VMO will use that

material only for the purpose of providing the Services and otherwise in accordance with any conditions notified to it by the Territory.

23.2 The VMO will be responsible for the safe keeping and maintenance of Territory Material and, on the expiration or earlier termination of this Agreement, the VMO will return to the Territory all Territory Material.

23.3 Material owned by the VMO and used for the purpose of providing the Services remains the property of the VMO and the VMO grants to the Territory a perpetual, royalty free licence to use the VMO's material to the extent necessary for the Territory to use or communicate the Contract Material.

## **24. Non-Disclosure of Contract Information**

24.1 For the purposes of this Agreement "Contract Information" means the kind of information that:

(1) is or relates to documents, submissions, consultations, policies, strategies, practices and procedures of the Territory which are by their nature confidential;

(2) is notified (whether in writing or not) by the Territory to the VMO as being confidential; or

(3) is Personal Information,

but does not include information which:

(4) is or becomes public knowledge other than by breach of this Agreement;

(5) has been independently developed or acquired by the VMO;

(6) has been notified in writing by the Territory to the VMO as being not confidential;  
or

(7) being "Contract Information" that the VMO may share with other VMOs

24.2 The VMO will take all reasonable measures to ensure that Contract Information accessed or held by the VMO in connection with this Agreement is protected against loss, and against unauthorised access, use, modification, disclosure or other misuse in accordance with reasonable procedures for that purpose, and that only authorised personnel have access to the Contract Information.

24.3 The VMO will:

(1) use Contract Information held in connection with the Agreement only for the purposes of fulfilling its obligations under this Agreement;

(2) comply with privacy principles set out in the *Privacy Act 1988* (Cwlth) and *Health Records (Privacy and Access) Act 1998* (ACT), as if they were terms of this Agreement;

- (3) not transfer Contract Information held in connection with this Agreement outside the Territory, or allow any person outside the Territory to have access to it, without the prior approval of the Territory; and
- (4) without limiting clause 24.2, indemnify the Territory against any successful claim or proceeding made against the Territory resulting from the VMO's breach of its obligations under this clause 24.

24.4 The Territory will indemnify the VMO against any successful claim or proceeding against the VMO resulting from the Territory's breach of its obligations under clause 24.

## **25. Conflict of Interest**

25.1 The VMO warrants that, at the date of entering into this Agreement, no conflict of interest exists or is likely to arise in the performance of the Services and of its other obligations under this Agreement.

25.2 If, during the term of the Agreement, a conflict or risk of conflict of interest arises, the VMO will notify the Territory immediately in writing of that conflict or risk and will comply with any requirement of the Territory to eliminate or otherwise deal with that conflict or risk of conflict.

25.3 Nothing in this Agreement will affect the VMO's right to private practice outside a health facility.

## **26. No Assignment or Subcontracting**

Subject to clause 16.4, the VMO will not subcontract the performance of the Services or assign the whole or the part of this Agreement without the prior written consent of the Territory.

## **27. Entire Agreement, Variation and No Waiver**

27.1 This Agreement comprises the entire agreement between the parties and supersedes any prior representations, negotiations, writings, memoranda and agreements.

27.2 This Agreement may be varied only by the written agreement of the parties.

27.3 Failure or omission by the Territory at any time to enforce or require strict or timely compliance with any provision of this Agreement will not affect or impair that provision in any way or the rights of the Territory to avail itself of the remedies it may have in respect of any such provision.

## **28. Notices**

Any notice, or other communication required or otherwise to be given or sent to the Territory or to the VMO under this Agreement will be in writing and will be deemed to have been given:

- (1) if delivered by hand, upon delivery;
- (2) if sent by prepaid mail, upon the expiration of two days after the date on which it was so sent;
- (3) if sent by facsimile, upon the sender's facsimile machine recording that the facsimile has been successfully and properly transmitted to the recipient's address;
- (4) if sent by electronic mail, upon the sender's computer recording that the message has been successfully transmitted to the recipient's electronic mail address,

to the persons and addresses or facsimile numbers set out in Item 1 Schedule 1 or such other person, address or facsimile number as may be notified by a party to the other from time to time.

## **29. Severability**

Any provision of this Agreement which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability without invalidating the remaining provisions of this Agreement.

## **30. Applicable Law**

- 30.1 This Agreement is governed by and construed in accordance with the law for the time being in force in the Territory and the parties submit to the jurisdiction of the courts of the Territory.
- 30.2 The VMO will ensure that the Services performed under this Agreement comply with the laws from time to time in force in the Territory.

## **31. Special Conditions**

In the event of any inconsistency between any Special Condition and any other provision of this Agreement then, to the extent of any inconsistency, the Special Condition will prevail.

## **32. Survival of Clauses**

Clauses 5.1, 24.3 and 24.4 will survive the expiration or earlier termination of this Agreement.

## **33 Safe Hours**

The Territory will arrange safe working hours and conditions and complete after-hours medical, nursing and ancillary staff rosters.

## **34 Research**

34.1 The Territory will pay the VMO at the sessional rate for hours spent in formal research that has been undertaken with the prior written agreement of the General Manager or Chief Executive.

34.2 The VMO will seek funding for his or her time in any research proposal submitted to the Territory or to an external body or agency.

## SCHEDULE 1

### Item 1. Contract Officers:

*For the Territory:*            [INSERT NAME OF CONTRACT OFFICER]  
    [INSERT ADDRESS]

Facsimile:

*For the VMO:*                 [INSERT NAME OF CONTRACT OFFICER]  
    [INSERT ADDRESS]

Facsimile:

### Item 2. Duration:

From [eg. THE DATE OF THIS AGREEMENT] until [INSERT END DATE].

### Item 3. Contract Price:

- (1) The VMO will be paid at the rate of \$<insert amount here> per hour
- (2) The VMO will be paid at the rate of \$225 for each 24 hour period or part thereof that the VMO is rostered on call.
- (3) The VMO will be paid an additional hardship allowance for each 24 hour period on call where the on-call roster qualifies for such an allowance. The total of the normal on call payment and the hardship on call allowance will be as follows:

Roster ratio	Average Cumulative Call Backs per 24hrs	Advanced Trainee Registrar Available	Total of on call payment and hardship allowance
1:5 or greater	< 3 hours	N/A	\$225
1:5 or greater	> 3hours	yes	\$230
1:5 or greater	> 3hours	no	\$240
1:4	< 3 hours	yes	\$230
1:4	< 3 hours	no	\$240
1:4	> 3hours	yes	\$240
1:4	> 3hours	no	\$245
1:3	< 3 hours	yes	\$250
1:3	< 3 hours	no	\$260
1:3	> 3hours	yes	\$260
1:3	> 3hours	no	\$265
1:2	< 3 hours	yes	\$270
1:2	< 3 hours	no	\$300
1:2	> 3hours	yes	\$300
1:2	> 3hours	no	\$320

- (4) The rate payable will be adjusted on 1 July for each year of this Agreement by the ACT CPI (All Groups) **or** by 2%, whichever is the higher.
- (5) If the VMO is appointed by the Territory to a position involving managerial responsibilities a managerial allowance of \$XX per hour, will be paid in addition to the normal hourly amount specified in Item 3 (1) of this Schedule for the number of management hours per month agreed between the VMO and the Territory.
- (6) (a) The payment structure detailed in this contract will not reduce the total amount paid to the VMO in any financial year when compared to the total amount that would have been paid to the VMO under the terms of the VMO's old contract in 2002/03 for the same level and volume of services.
- (b) The Territory will therefore pay to the VMO a Transitional Allowance in regard to each financial year of this Agreement. This Allowance will be equal to any deficit between the total amount payable under this new Agreement and the total payment the VMO would have received for the same level and volume of services if payment were made at their 2002/03 contract rates. This Transitional Allowance will apply to annual service levels up to the sum of the average level of services provided annually by the VMO at Calvary Hospital in 2000/01, 2002/02 and 2002/03 and the service level provided at The Canberra Hospital in 2002/03 (the "baseline level").
- (c) The Transition Allowance will be calculated on the basis that the VMO's old payment rate for any given level of service remains constant at the 2002/03 rate until such time as ACT CPI increases applied to payments under this Agreement increase this Agreement's payments to a level such that no gap exists between the payments that the VMO would have received under their previous contract and the payments made under this Agreement. At this time the Transitional Allowance will cease to exist.
- (d) If the sum of the VMO's level of service at The Canberra Hospital and Calvary Hospital in any given year is less than the baseline level, the total payment that would have been made under their 2002/03 contract terms and conditions for the level of services actually provided will be calculated, as will the total amount payable under this Agreement for the level of services actually provided. If the payment due under this Agreement is lower than that due under the 2002/03 contract terms a Transitional Allowance equal to that difference will be paid.
- (e) If the sum of the VMO's level of service at The Canberra Hospital and Calvary Hospital in any given year is more than the baseline level, the total payment that would have been made under the VMO's 2002/03 contract terms and conditions for the baseline level will be calculated, as will the total amount payable under this Agreement for the baseline level. If the payment due under this Agreement is lower than that due under the 2002/03 contract terms a Transitional Allowance equal to that difference will be paid. Payment for those services provided by the VMO above the baseline level will be made on the basis of the terms and conditions of this Agreement and at the rate specified in Item 3 (1) of Schedule 1 to this Agreement.

(7) The Territory will, in the following circumstances, pay to the VMO a continuity bonus equal to 5% of the total amount paid to the VMO in the previous 12 months, providing always that the VMO has maintained continuous participation in their service roster:

(a) If negotiations regarding new VMO contracts were completed prior to 1 November 2003 and the VMO signs this Agreement within 28 days of receiving the Territory's offer of a new Agreement.

OR

(b) Where the VMO's prior contract with the Territory or Calvary Health Care ACT was due to expire on 28 November 2003, and negotiations with VMO negotiating agents regarding the new Agreement were not expected to be completed by that date, and the VMO agreed at least four weeks prior to 28 November 2003 to further extend their existing contract for a period of up to 12 months to allow finalisation of all negotiations and/or arbitration required to allow the Territory to make an official offer.

OR

(c) For contracts due for renewal on or after 31 December 2003 where the VMO has signed this Agreement within 28 days of receiving the Territory's offer of a new Agreement.

(8) Invoices will be rendered by the VMO to the Territory on a monthly basis. Each monthly invoice will be rendered to the Territory no later than the 28th day of the following month.

## **SCHEDULE 2**

### **Services**

Inpatient, outpatient and consultative medical services to registered patients, including the admission of patients under the VMO's care to health facilities. The VMO will provide the Services in accordance with agreed on-call rosters and sessions.

## **SCHEDULE 3**

### **Special Conditions**

Example: Calvary Health Care Objects, Philosophy and Rules will be inserted here in contracts for VMOs with visiting rights at Calvary Public Hospital or Clare Holland House.

**SCHEDULE 4**

**AUSTRALIAN CAPITAL TERRITORY**

**CONDITIONS OF LIABILITY  
COVER**

**FOR**

**VISITING MEDICAL OFFICERS**

**October 2003**

## **VISITING MEDICAL OFFICER CONDITIONS OF LIABILITY COVER**

### **1. Indemnity**

- 1.1 In accordance with clause 5.1 of this Agreement the Territory indemnifies the VMO on the terms set out in these conditions of liability cover (“Conditions”) and any Contract of Liability Coverage between the VMO and the Territory is terminated, subject to its terms and conditions, from the commencement of this Agreement.

### **2. Liability Coverage**

- 2.1 Subject to clause 2.4 and clause 4 of these Conditions, the Territory will indemnify the VMO (and if this Agreement is with the VMO practice company, the practice company) for civil liability arising from any Claim in respect of incidents during the Indemnity Period relating to the provision by the VMO under this Agreement of health care to public patients in a facility conducted by a Public Health Services Provider.
- 2.2 Subject to clause 2.4 and clause 4 of these Conditions, the Territory will indemnify the VMO (and if this Agreement is with the VMO practice company, the practice company) for civil liability arising from any Claim during the Indemnity Period in respect of incidents before the Indemnity Period relating to the provision by the VMO of health care to public patients in a facility conducted by a Public Health Service Provider that has not otherwise been reported under any policy of insurance or like arrangement.
- 2.3 The indemnities under clause 2.1 and 2.2 of these Conditions includes civil liability arising from the provision of medical advice by the VMO to a person as part of obtaining the person’s written 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 facility conducted by a Public Health Services Provider provided that:
- (1) the VMO subsequently provides that medical procedure or treatment to the person as a public patient in a facility conducted by a Public Health Service Provider; and
  - (2) the VMO substantially complies with the Territory’s policy on consent to medical treatment as specified from time to time by circular issued to Public Health Services Providers.
- 2.4 The indemnities under these Conditions include civil liability arising from any claim in respect of incidents during the Indemnity Period relating to the provision of an emergency service by the VMO as part of a public emergency response by the public health services provider. This indemnity does not apply to incidents after the patient elects to be treated as a private patient.

- 2.5 The indemnities under these Conditions include civil liability arising from a consultation in private consulting suites for which no fee is charged provided the consultation is clearly and directly linked to the original treatment of the patient as a public patient.
- 2.6 The indemnities under these Conditions do not apply to the following:
- (1) any Claim arising out of conduct on the part of the VMO that constitutes a criminal offence or any other serious and wilful misconduct;
  - (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, other than where the product is supplied to the VMO by the Territory; or
  - (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 by the Territory.

### **3. Visiting Medical Officer's Responsibilities**

#### *Prompt notification of certain incidents*

- 3.1 The VMO must promptly report in writing to the Territory any incident that could reasonably be expected to give rise to a Claim, as soon as the VMO becomes aware of such an incident. The report must be in the form of the Territory's Incident Report Form.

#### *Claims History*

- 3.2 The VMO must, within ten working days of receiving a written request from the Territory, provide to the Territory his or her record of public and private Claims history for a 6 year period or for as long as he or she has been practising, whether continuously or not, up to 6 years whichever period is the longer.

### **4. Reporting, management and conduct of Claims**

#### **Reporting**

- 4.1 In addition to the obligation under Clause 3.1, the VMO must promptly report as soon as practical and in writing to the Territory, any Claim against the VMO (or his or her practice company) for which the practitioner seeks indemnity under this Agreement.

### **Management and conduct**

- 4.2 The management and conduct of a Claim to be indemnified under this Agreement passes entirely to the Territory. The Territory is responsible for the incurring and payment of legal and other costs in managing and conducting the Claim. The Territory is entitled at any time to conduct, in the name of the VMO (or, where applicable, his or her practice company), the investigation, defence or settlement of any Claim.

### **Assistance to be given**

- 4.3 It is a condition precedent to the provision of indemnity under this Agreement in respect of a Claim that the VMO:
- (1) give the Territory and any legal representatives appointed by the Territory all information and assistance in relation to the Claim as they may reasonably require to determine liability, investigate, defend or settle the Claim;
  - (2) release to the Territory all documents that the Territory may require to determine the existence or extent of the Territory's obligations and assertion of its rights of contribution or subrogation as against any and all other persons, entities or organisations;
  - (3) by complying with this clause the VMO does not waive any client legal privilege.

- 4.4 If the VMO fails to comply with Clause 4.3 then the indemnity provided under this Agreement in relation to any one claim may be withdrawn by the Territory.

### **Subrogation**

- 4.5 The Territory is entitled to all of the VMO's rights of recovery, indemnity or contribution in respect of a Claim for which indemnity is, or is to be, provided under this Agreement and the VMO will do everything to secure and preserve such rights, including but not limited to the execution of documents necessary to allow the Territory to take legal action in the name of the VMO in exercise of the Territory's rights under this contract or any right that the VMO may otherwise possess in relation to the Claim.

### **Availability of information**

- 4.6 Where a Claim against the VMO or his or her practice company is not the subject of indemnity under this Agreement but the Territory holds information in respect of the incident giving rise to the Claim the Territory will, upon request, provide such information to the VMO, or the medical indemnity provider of the VMO or his or her practice company, provided it is lawful and reasonable to do so.

## 5. Review

5.1 The VMO may make a request in writing to the Chief Executive for review of a decision that indemnity is not to be provided, or will cease to be provided, in accordance with the terms and conditions of this Agreement,

within 30 days of receipt of written advice of a decision that indemnity is not, or is no longer, to be provided in accordance with the terms of this Agreement in respect of a Claim.

5.2 A review panel convened by the Chief Executive will consider the request for review.

5.3 A review panel is to consist of the following persons:

- (1) the person for the time being holding the position of Chief Health Officer of ACT Health (however called);
- (2) the person for the time being holding the position of Chief Financial Officer of ACT Health (however called);
- (3) a legal practitioner nominated by the Chief Solicitor for the Territory; and
- (4) a person nominated by the Australian Medical Association (ACT).

5.4 If, following review, the review panel determines that indemnity is, or will continue, to be provided in accordance with the terms and conditions of this Agreement in respect of the relevant Claim, the decision will be notified to the VMO and the Chief Executive. The Territory will immediately provide or continue to provide indemnity for a particular Claim and will advise the VMO of the outcome of the review.

5.5 If, following review, the review panel determines that indemnity in respect of a Claim is not, or is no longer, available in accordance with the terms and conditions of this contract, the Chief Executive will advise the VMO of the outcome of the review.

## 6. Continuing Rights

The rights and obligations conferred by clause 2 and clause 4 of these conditions will survive the expiration or termination of this Agreement.

## 7. Definitions for these Conditions

**ACT Insurance Authority (ACTIA)** is the self-insurance and risk management organisation established by the ACT Government to cover certain liabilities of the Territory and its agencies. A reference in this Agreement to ACTIA includes any

officer or employee of the ACT Government involved in the investigation, management or conduct of Claims indemnified under this Agreement;

**Chief Executive** means the person for the time being holding the office of Chief Executive of ACT Health (however called);

**Claim** means a health care claim or any incident that could reasonably be expected to give rise to a health care claim for damages or other compensation, whether by verbal or written demand or the commencement of legal proceedings, arising from any negligent error act or omission, or any injury or death caused wholly or partly by the fault or alleged fault of the VMO in providing or failing to provide health care.

A **Claim** also includes an inquiry, inquest or other hearing arising from a health care claim or which may give rise to a health care claim but does not include disciplinary, criminal or like proceedings.

**Excluded Patient** means a patient who is a compensable patient (i.e., workers compensation, third party etc), a Department of Veterans Affairs patient, an ineligible patient (subject to a requirement by the Public Health Services Provider to treat such a patient as a public patient) or an eligible patient who elects to be treated as a private patient.

*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 in relation to health care.

**Indemnity Period** means:

- (1) The period commencing on the termination or expiry of any policy of insurance or like arrangement indemnifying the VMO in respect of Claims arising from the performance of this Agreement after the commencement date of this Agreement and ending on the date of expiration or termination of this Agreement.
- (2) If no such indemnity is in effect, the period commencing on the commencement date of this Agreement and ending on the date of expiration or termination of this Agreement.

**ineligible patient** is any non-Australian resident whose country is not part of a reciprocal health care agreement.

**practice company** means a single doctor practice company that agrees to provide VMO services to a Public Health Service Provider;

**Public Health Services Provider** means:

- (1) the Territory;

- (2) an agency or authority of the Territory providing public health services;
- (3) any other person or entity engaged by the Territory or a Territory authority to provide public health services to public patients.

**public patient** means an eligible person who receives or elects to receive a public hospital or public health service free of charge. It also means, for the purposes of these Conditions only, an ineligible patient who the VMO is required, by the Territory, to treat as a public patient in a public hospital or public health service under this Agreement;

**record of 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's professional indemnity provider, including date of notification of each Claim, date and brief description of each relevant incident and the compensation sum or quantum is not known the range within which the 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 + ;

**Territory** includes the ACTIA.

**SIGNED** on the date first above written.

**SIGNED** for and on behalf of the )  
**AUSTRALIAN CAPITAL TERRITORY** )  
by )

\_\_\_\_\_  
PRINT FULL NAME )

in the presence of: )

.....  
Signature of Territory Delegate

.....  
Signature of Witness

.....  
Name of Witness

**SIGNED** for and on behalf of )  
**[NAME & ABN OF VMO]** by )

\_\_\_\_\_  
PRINT FULL NAME )

in the presence of: )

.....  
Signature of VMO

.....  
Signature of Witness

.....  
Name of Witness

Date \_\_\_\_\_ 2003

# FEE FOR SERVICE AGREEMENT (Draft)

BETWEEN

**AUSTRALIAN CAPITAL TERRITORY**

AND

**[INSERT FULL NAME OF VMO]**

---

**VISITING MEDICAL OFFICER  
(INDIVIDUAL)**



## CONTENTS

<b>1. Definitions and Interpretations .....</b>	<b>3</b>
<b>2. Engagement.....</b>	<b>5</b>
<b>3. No Authority to Bind the Territory .....</b>	<b>5</b>
<b>4. Duration.....</b>	<b>6</b>
<b>5. Indemnity and Insurance .....</b>	<b>6</b>
<b>6. Contract Price and Payment .....</b>	<b>6</b>
<b>7. On-call .....</b>	<b>7</b>
<b>8. Call-back .....</b>	<b>8</b>
<b>9. Public Holidays.....</b>	<b>8</b>
<b>10. Records .....</b>	<b>8</b>
<b>11 Meetings.....</b>	<b>9</b>
<b>12. Registration .....</b>	<b>9</b>
<b>13 Attendance.....</b>	<b>9</b>
<b>14 Teaching.....</b>	<b>9</b>
<b>15 Performance and Quality Assurance .....</b>	<b>10</b>
<b>16 Absence .....</b>	<b>11</b>
<b>17 Termination.....</b>	<b>12</b>
<b>18 Suspension .....</b>	<b>14</b>
<b>19 Dispute Resolution.....</b>	<b>15</b>
<b>20 Territory Facilities and Equipment .....</b>	<b>16</b>
<b>21 Public Patients.....</b>	<b>16</b>
<b>22 Contract Material .....</b>	<b>16</b>
<b>23 Territory Material and VMO’s Material.....</b>	<b>17</b>
<b>24 Non-Disclosure of Contract Information .....</b>	<b>17</b>
<b>25 Conflict of Interest.....</b>	<b>18</b>
<b>26 No Assignment or Subcontracting .....</b>	<b>18</b>
<b>27 Entire Agreement, Variation and No Waiver .....</b>	<b>19</b>
<b>28 Notices .....</b>	<b>19</b>

<b>29 Severability .....</b>	<b>19</b>
<b>30 Applicable Law .....</b>	<b>19</b>
<b>31 Special Conditions .....</b>	<b>19</b>
<b>32 Survival of Clauses .....</b>	<b>20</b>
<b>33 Safe Hours .....</b>	<b>20</b>
<b>34 Research .....</b>	<b>20</b>
<b>SCHEDULE 1.....</b>	<b>21</b>
<b>SCHEDULE 2.....</b>	<b>25</b>
<b>SCHEDULE 3.....</b>	<b>26</b>
<b>SCHEDULE 4.....</b>	<b>27</b>
<b>Reporting.....</b>	<b>29</b>

THIS AGREEMENT is made on

2003

**BETWEEN:**

**AUSTRALIAN CAPITAL TERRITORY**, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) represented by ACT Health (“Territory”)

**AND:**

**[INSERT FULL NAME OF VMO, INCLUDING ABN]** of **[INSERT ADDRESS (OF REGISTERED OFFICE IF FOR A COMPANY)]** (“VMO”).

## **BACKGROUND**

The Territory wishes to engage the VMO to provide the Services and the VMO has agreed to do so on the terms and conditions of the Agreement.

---

**IT IS AGREED** by the parties as follows:

## **4. Definitions and Interpretations**

4.1 In this Agreement, unless the context otherwise requires:

“**Call-back**” means an attendance by the VMO at a health facility:

- (1) when on-call; or
- (2) when the VMO would not otherwise have attended the health facility; and
- (3) in response to a request from a VMO, a salaried medical officer, or otherwise as provided for by hospital policy, in circumstances where the VMO reasonably considers his or her attendance to be clinically necessary;

“**Clinical Privileges**” has the same meaning as in the *Health Act 1993* (ACT);

“**Contract Material**” means all material created, written or otherwise brought into existence as part of, or for the purpose of performing the Services including, but not limited to, all reports (whether in draft or final form), documents, equipment, information and data stored by any means;

“**Contract Officers**” means, in relation to each party, the representatives whose names, addresses and contact details are specified in Item 1 Schedule 1, or as notified in writing from time to time by one party to the other;

“**Conditions of Liability Cover**” means the terms and conditions specified in Schedule 4;

**“Contract Price”** means the amounts specified in, or calculated in accordance with, Item 3 Schedule 1;

**“General Practitioner”** means a medical practitioner who is a Fellow of the Royal Australian College of General Practitioners, or one who works in the community in Family Medicine;

**“health facility”** means an institution at which health services are provided by the Territory;

**“Medical Practitioner”** means a person registered for the time being under the *Medical Practitioner’s Act 1930* (ACT);

**“Medicare Agreement”** means the Australian Health Care Agreement (Commonwealth) between the Commonwealth of Australia and the Territory regarding the provision of public hospital services and other health services in the Territory;

**“on-call”** means rostered by the Territory to be available to attend patients;

**“other VMOs”** means another VMO or other VMOs who has or have an extant service contract with the Territory;

**“private patient”** has the same meaning as in the Medicare Agreement;

**“public patient”** has the same meaning as in the Medicare Agreement;

**“Personal Information”** means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

**“Services”** means the services described in Schedule 2;

**“Special Conditions”**, if any, mean the conditions agreed by the parties and set out in Schedule 3;

**“Specialist”** means a Medical Practitioner who is a specialist as defined in the *Health Insurance Act 1973* (Cwlth);

**“Territory”** means:

(3) when used in geographical sense, the Australian Capital Territory; and

(4) when used in any other sense, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth);

**“Territory Material”** means any material provided by the Territory to the VMO for the purposes of this Agreement including, but not limited to, documents, equipment, information and data stored by any means; and

**“Unit”** means a designated clinical unit of which the VMO is a member.

4.2 In this Agreement, unless the context otherwise requires:

- (3) words importing a gender include the others; words in the singular number include the plural and vice versa; and references to legislation or to provisions in legislation include references to amendments or re-enactments of them and to all regulations and instruments issued under the legislation; and
- (4) clause headings are for convenient reference only and have no effect on the interpretation of the provisions to which they refer.

1.3 An obligation imposed by this Agreement upon more than one person binds them jointly and severally.

1.4 Unless the contrary intention appears, a word or phrase in this Agreement has the same meaning as in the *Health Act 1993* (ACT).

## **5. Engagement**

2.1 The Territory engages the VMO to perform the Services on the terms set out in this Agreement.

2.2 The VMO is engaged to provide the Services to patients within the scope of his or her Clinical Privileges. The VMO is responsible for the medical care and treatment he or she administers in respect of patients admitted under his or her care.

2.3 The VMO is responsible for the maintenance of his or her professional standards in accordance with the Clinical Privileges granted by the Territory.

2.4 The VMO will comply with all reasonable administrative (non-clinical) directions given by the Territory in relation to the Services.

2.5 The Territory is responsible for arranging the delivery of medical services to public patients within the Territory.

2.6 The VMO will be engaged as either:

- (1) a General Practitioner; or
- (2) a Specialist.

2.7 During the term of this Contract and within the limits of available resources the Territory may make available for the use of the VMO, facilities for the care of his/her private patients.

2.8 If the Services include managerial responsibilities the VMO will be paid the allowance set out in Item 3 Schedule 1.

## **6. No Authority to Bind the Territory**

3.3 The VMO will not represent himself or herself, and will ensure that no other person acting on his or her behalf represent themselves, as having the capacity to legally bind the Territory for any purpose.

3.4 Nothing in this Agreement constitutes the VMO, or any person on his or her behalf, as having the capacity to legally bind the Territory for any purpose.

## **5. Duration**

This Agreement is for the period specified in Item 2 Schedule 1 unless extended by written agreement of the parties or terminated under the provisions of this Agreement.

## **11. Indemnity and Insurance**

5.1 Unless specified in Item 4, Schedule 1, the Territory will indemnify the VMO in accordance with the Conditions of Liability Cover specified in Schedule 4.

5.2 If treating private patients in a health facility the VMO will effect and keep current a professional indemnity insurance policy covering the VMO for the treatment of private patients for a sum not less than \$15,000,000 and deliver to the Territory annually or as requested a certificate of currency or other proof that the policy is current.

## **12. Contract Price and Payment**

6.1 The Territory will pay the VMO the Contract Price within 14 days following its receipt of a correctly rendered invoice.

6.2 An invoice is correctly rendered if:

- (1) a goods and services tax (“GST”) is payable by virtue of the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth) (“GST Act”) in respect of the provision of the Services, the VMO has rendered to the Territory a tax invoice (as required by the GST Act);
- (2) the amount claimed in the invoice is due for payment, is correctly calculated and is in respect of Services which have been performed in accordance with the Agreement and recorded in accordance with clause 9.1;
- (3) the invoice sets out details of the Services provided, is accompanied by the report specified in clause 6.3 and sets out or is accompanied by any other details or reports required by this Agreement; and
- (4) the invoice is rendered as specified in Item 3 Schedule 1 and addressed to the Territory’s Contract Officer or such other officer notified by the Territory to the VMO to receive invoices for payment.

- 6.3 The VMO will maintain a record of the Services for each calendar month during which the Services are provided in a form specified by the Territory. The record will specify in respect of the Services:
- (1) the full name and/or unit record number of the patient treated by the VMO and the nature of the Services;
  - (2) the date and time the services were provided;
  - (3) hours of attendance at approved meetings for which payment has been agreed;
  - (4) hours of contribution to approved quality assurance, research or teaching for which payment has been agreed;
  - (5) particulars of the VMO's leaves of absence.
- 6.4 If insufficient information to satisfy the requirements of this clause 6 is provided, the Territory may request and the VMO will provide additional information within the time period specified by the Territory.
- 6.5 If a rostered session is cancelled by the Territory on less than 28 days notice to the VMO then the VMO will be paid at an hourly rate of \$XXX for that session if the VMO establishes to the Territory's reasonable satisfaction that the VMO was unable to treat other patients for that session at any public or private health facility. The Territory will not cancel more than 25% of the VMO's sessions in any 14-week period. Christmas and Easter closures of up to six weeks do not count toward the 25% figure. The Territory will not cancel more than 10% of the VMO's annual workload for non-budgetary reasons without the agreement of the VMO and will cancel none of the VMO's workload for budgetary reasons without the agreement of the VMO.
- 6.6 If a session is cancelled by the Territory, the VMO is not required to continue to be available for that session.
- 6.7 The VMO will not be paid for approved leave or any other absences other than as agreed under clause 18.3.
- 6.8 If, after payment, an invoice is found to have been incorrectly rendered, any underpayment or overpayment will be recoverable by or from the VMO, as the case may be and, without limiting recourse to other available remedies, may be offset against any amount subsequently due by the Territory to the VMO. The VMO will be advised in advance of any adjustments required and the reasons for them.
- 6.9 The VMO is responsible for any GST liability and reporting under the GST Act.
- 6.10 The Territory will make superannuation contributions on behalf of the VMO in accordance with the Superannuation Guarantee Charge Act 1992 (C'th) and the Superannuation Guarantee (Administration) Act 1992 (C'th).

## 13. On-call

- 7.1 The VMO will be paid the amount specified in Item 3 Schedule 1 for each 24-hour period or part thereof that the VMO is rostered to be on-call.
- 7.2 The on-call allowance will not be paid for periods that the VMO is on leave of absence or otherwise unavailable.
- 7.4 If the VMO is rostered to be on-call at more than one health facility at the same time, the VMO will only be paid an on-call allowance in relation to that health facility to which the VMO has the greatest on-call commitment. If the on-call commitments are equal the VMO will be paid an on-call allowance from only one health facility.

#### **14. Call-back**

- 8.1 If the VMO is called back when on call payment will be made in accordance with Item 3 Schedule 1.
- 8.2 If the VMO finds it necessary to cancel a morning session due to fatigue resulting from being recalled to duty in a public hospital for a total of four hours or more between the hours of 10pm and 8am while on call, the Territory will pay the VMO for a four hour session at the hourly rate applicable to the VMO's specialty group.

#### **15. Public Holidays**

The VMO will be paid in accordance with Item 3 Schedule 1 for any Services provided on a public holiday.

#### **16. Records**

- 10.1 The VMO will complete on the relevant Territory patient records a record of all Services provided by the VMO to each patient, within 24 hours after the Services were provided, except in exceptional circumstances when longer than 24 hours may be required. Those records will:
- (1) be appropriate to the circumstances;
  - (2) conform to the standards of the Australian Council of Health Care Standards;
  - (3) include all data necessary to enable the Territory to appropriately code each episode following the patient's discharge; and
  - (4) include morbidity and complications information relevant to the particular episode.
- 10.2 Other than in exceptional circumstances, the VMO will within two working days of the patient's discharge, ensure that there is adequate information in the patient's record to allow an appropriate discharge summary to be completed. .
- 10.3 All clinical records including all patient notes, medical records, correspondence, X-Ray and other diagnostic materials whether written or otherwise are owned by the Territory.

- 10.4 The VMO acknowledges that clinical records are confidential and that the VMO will not disclose them or any information contained in them to any party without the written consent of the Territory except as otherwise provided by the *Health Records (Privacy and Access) Act 1998* (ACT).
- 10.5 Unless prohibited by law from doing so and having obtained the patient's consent the Territory will advise the VMO if patient records are accessed or copied by the patient, or someone acting on behalf of the patient, or by any entity other than the hospital.

## **11. Meetings**

- 11.1 The VMO will participate in quality improvement and other meetings as reasonably directed by the Territory.
- 11.2 The VMO will be paid for attending a meeting where the General Manager or Chief Executive has approved that meeting in advance as a meeting for which attendance will be paid and the VMO's attendance has been recorded in the minutes of the meeting.
- 11.3 Meetings will not be eligible for approval as paid meetings unless they are formal meetings initiated by the Territory, they are minuted and the matters under consideration relate directly to the provision of public services. Unless agreed in advance by the General Manager or Chief Executive meetings not held on Territory funded premises will not be approved as paid meetings.

## **12. Registration**

The VMO will provide written proof to the Territory annually and whenever directed to do so that the VMO is registered as a Medical Practitioner.

## **13. Attendance**

- 13.1 The VMO will:
- (1) participate in an on-call roster as determined by the Territory following consultation with the relevant group of specialists and after consultation with the ACT AMA and the relevant colleges in relation to the principles of safe working hours; and
  - (2) otherwise provide the Services at the times or for the periods reasonably determined by the Territory following agreement with the VMO.
- 13.2 The VMO's hours of attendance may be varied by written agreement between the parties. For the purposes of this clause, attendance will be recorded to the nearest quarter of an hour and will exclude time spent attending private patients.
- 13.4 If the VMO is rostered on-call, he or she will be readily contactable at all times and be able and prepared to attend the hospital or facility concerned within a response time appropriate to the clinical circumstances, and usually within 30 minutes.

## **14. Teaching**

- 14.1 The VMO will participate in the teaching and training of postgraduate medical officers. Payment for formal teaching as agreed in advance between the VMO and the General Manager or Chief Executive will be paid. Payment will be made at the base sessional rate irrespective of the scheduled time for the teaching session and only the actual time spent teaching will be paid. Teaching that occurs during ward rounds or during normal sessions is included in the Contract Price and does not attract any additional payment.
- 14.2 The VMO will:
- (1) upon request of the Dean of the ACT Medical School (ANU) or the Associate Dean of the Canberra Clinical School of Medicine consult with one or both of them to agree his or her undergraduate teaching duties; and
  - (2) undertake those undergraduate teaching duties as agreed.
- 14.3 Payment for formal teaching as agreed in advance between the VMO and the Dean will be paid at the sessional rate, but teaching that occurs during ward rounds or during normal sessions is included in the Contract Price.

## **15. Performance and Quality Assurance**

- 15.1 The VMO will provide every medical service required under this Agreement within the range of his or her approved Clinical Privileges, qualifications and experience and the standards accepted by the clinical college(s) responsible for the discipline in which the VMO practises.
- 15.2 Without limiting clause 15.1, the VMO will:
- (1) comply with the policies and procedures of the relevant health facility as amended from time to time, to the extent that they are consistent with this Agreement, in relation to:
    - (a) commencement times of theatre sessions;
    - (b) occupational health and safety;
    - (c) risk management;
    - (d) pre-, intra- and post-operative care;
    - (e) assigning clinical priority to patients;
    - (f) intensive care unit bookings;
    - (g) obtaining informed consent of patients; and
    - (h) creating or amending theatre lists.
  - (2) comply with the quality assurance, quality improvement and peer review policies, procedures and requirements of:

- (a) the relevant health facility; and
  - (b) the clinical college(s) responsible for the discipline in which the VMO practises;
- (3) attend scheduled clinical meetings as directed by the Territory, with payment being made for attendance at meetings approved for such payments;
  - (4) assist in the development of appropriate patient management protocols to ensure and enhance quality patient care and the efficient use of the Territory's resources, with payment being made for an agreed number of hours;
  - (5) assist in the development of multi-disciplinary discharge planning and monitoring of patient throughput and length of stay, with payment being made for an agreed number of hours;
  - (6) arrange for the provision of medical services on a day to day basis, including review and monitoring of work practices, the utilisation of diagnostic services, the efficient use of time in the delivery of clinical services and the arrangement of agreed times for the conduct of organised ward rounds;
  - (7) ensure completion of patient records and provide in a timely manner medical information to meet the reasonable needs of the relevant health facility;
  - (8) facilitate communications between medical, nursing, allied health and other persons employed or engaged by the Territory;
  - (9) contribute to efficient and cost effective management of surgical lists, operating sessions and patient throughput, including allocation of operating theatre sessions and on-time commencement and completion of scheduled operating theatre sessions;
  - (10) not provide a medical service without first obtaining the informed consent of the patient;
  - (11) comply with the ethical standards set out in the ACT Medical Board Code of Conduct as may be amended from time to time;
  - (12) where appropriate, complete pre-operative and pre-procedural investigations at least 1 working day before the admission of each patient;
  - (13) provide to the Territory relevant clinical information prior to admission, and where patients attend the Preadmission Clinic, before that attendance; and
  - (14) actively assist the Territory to ensure that the average length of stay of admitted patients over any particular period does not exceed the national average length of stay for similar conditions, and agree to work toward national best practice.

## **16. Absence**

16.1 The VMO may take:

- (1) leave on public holidays except where rostered to attend a health facility;
- (2) twelve weeks leave of absence each year or as otherwise agreed in writing by the parties;
- (3) leave only after giving 28 days notice, or a lesser period if agreed, in writing to the Territory of his or her intention to take leave;
- (4) study and conference leave up to a maximum of 2 weeks per year at times agreed between the parties. This leave may be accumulated from year to year to a maximum of four weeks; and
- (5) additional periods of leave as agreed in writing by the Territory.

16.2 If the VMO is unable to provide the Services because of illness or injury, or family circumstance the VMO will promptly notify the Territory of his or her unavailability and its likely duration.

16.3 Sessions cancelled at the instigation of the Territory will not form part of the period of absence referred to in clause 16.1(2).

16.4 The VMO may recommend a locum tenens to provide the Services while the VMO is on approved leave provided that:

- (1) there is no other visiting medical officer who can undertake the Services;
- (2) the locum tenens applies for engagement and clinical privileges with the Territory and has the appropriate qualifications and experience to provide Services;
- (3) the engagement and clinical privileges are approved by the Territory; and
- (4) the engagement of the locum tenens does not constitute job sharing of the Territory position between the VMO and the locum tenens.

## **17. Termination**

17.1 The VMO may terminate this Agreement by giving 6 months' notice, or a lesser period if agreed, in writing of his or her intention to terminate.

17.2 The Territory may terminate this Agreement if:

- (1) the VMO commences full or part-time employment with the Territory;
- (2) the VMO fails to participate in an on-call roster as required under this Agreement;
- (3) the VMO's Clinical Privileges are revoked, noting that such an action may be appealed to the AAT;

- (4) the VMO fails to meet the standards reasonably required by the Territory in respect of the VMO's continuing education (if applicable);
- (5) the VMO suffers an event which renders him or her permanently incapable of performing the Services;
- (6) the VMO ceases to hold current unconditional registration as required by section 9 of the *Medical Practitioners Act 1930* (ACT), such as would prevent the VMO from providing services;
- (7) the clinical college responsible for the discipline in which the VMO practises decides that the VMO should not provide the Services;
- (8) the VMO is found by the ACT Medical Board to have engaged in professional misconduct of a serious nature as referred to in section 36 of the *Medical Practitioners Act 1930* (ACT) or if any limitation, condition or restriction on the practice of the VMO is imposed pursuant to that Act;
- (9) the VMO is or has been found to be negligent in the performance of the Services;
- (10) the VMO is found by the ACT Medical Board not to have conducted himself or herself in accordance with the ACT Medical Board Code of Conduct, as amended from time to time;
- (11) the VMO seriously or persistently fails to comply with the relevant health facility's policies and procedures as specified in clause 15.2;
- (12) the VMO fails to comply with a reasonable lawful direction of the Territory; or
- (13) the VMO commits any serious or persistent breach of any of the provisions of this Agreement.

17.3 If the Territory terminates this Agreement under clause 17.2 the Territory will give the VMO written notice of the termination and the grounds for the termination. On receipt of the notice the VMO will:

- (1) stop work as directed by the notice; and
- (2) return to the Territory as directed in the notice any medical record held by the VMO in relation to any patient at a health facility.

17.4 Nothing in clause 17.2 will limit:

- (1) any right or remedy the VMO might have if this Agreement is wrongfully terminated by the Territory;
- (2) any other right or remedy of the Territory in respect of any breach of this Agreement; and
- (3) ~~the application of clause 19.~~

17.5 If this Agreement is terminated any amount due and payable to the VMO under this Agreement will be paid at the time of termination or as soon as reasonably practicable after that time.

## **18. Suspension**

18.1 The Territory may suspend the engagement of the VMO if the Territory has reasonable grounds to believe that:

- (1) the VMO may not have conducted himself or herself in accordance with the ACT Medical Board Code of Conduct, as amended from time to time;
- (2) the VMO may not have conducted himself or herself in accordance with the relevant health facility's policies and procedures as specified in clause 15.2;
- (3) the VMO may have carried out a procedure not approved by the Territory;
- (4) the VMO may not be competent to practise medicine under section 4 of the *Medical Practitioners Act 1930* (ACT);
- (5) the VMO may be suffering from an impairment affecting his or her ability to practise medicine under section 5 of the *Medical Practitioners Act 1930* (ACT);
- (6) one or more of the grounds for termination set out in clause 17.2 has occurred;
- (7) the VMO may have failed to provide all practicable assistance to a committee appointed under section 7 of the *Health Act 1993* (ACT) in response to a request by that committee; or
- (8) the VMO may have obtained, requested or accepted "booking fees", "attendance fees" or like payments or any other payments, considerations, benefit or advantage from any public patient in relation to the Services; or
- (9) the VMO, without the permission of the Territory, may have persuaded or attempted to persuade or procure a patient to change his or her admission status.

18.2 If the Territory intends to suspend the VMO under clause 18.1, the Territory will give the VMO:

- (1) written notice of its decision to suspend the VMO;
- (2) the reasons for and period of the suspension; and
- (3) if applicable, notice of any action or condition which upon completion or satisfaction by the VMO, the suspension will be lifted; and

18.3 On receipt of the notice of suspension, the VMO will stop providing the Services. From the time of the Territory giving notice of suspension to a VMO, the Territory shall pay to the VMO each week his or her average weekly earnings for the previous 12 months, excluding weeks not worked, until the dispute is resolved under clause 19 of this Agreement, provided the VMO activates clause 19. The Territory will pay for

Services provided by the VMO prior to receipt by the VMO of the notice of suspension. These payments will be made by the Territory within the period specified in clause 6.1 following receipt of an invoice rendered in accordance with clause 6.2.

- 18.4 Within 14 days, a VMO subject to suspension under clause 18.1 may give the Territory 7 days notice requesting that he or she wishes the matter to be dealt with according to the dispute resolution procedures set out in clause 19. The Territory may not unreasonably refuse that request.
- 18.5 If the period of the VMO's suspension equals the balance of the term of this Agreement and the grounds are made out, the Territory may terminate this Agreement by notifying the VMO in writing.

## **19. Dispute Resolution**

- 19.1 If difference or dispute arises in this Agreement ("Dispute"), the parties will follow these procedures.
- (1) Until the Dispute is resolved, the parties will continue to observe all terms of this Agreement and in particular the VMO will continue to provide the Services. No party will be prejudiced as to the final settlement by the continuance of work in accordance with this procedure.
  - (2) The Dispute will first be discussed as informally and promptly as possible, between the VMO and a person appointed by the Territory for this purpose who will be a person responsible for clinical management. The VMO may have a witness present at this meeting, who may be a representative of the VMO's negotiating agent.
  - (3) If the Dispute is not then resolved it will be referred to a more senior officer of the Territory who is responsible for clinical management for discussion with the VMO who may request a representative to be present.
  - (4) If the Dispute has not been resolved pursuant to clause 19.1(3) within 28 days of the notice of the Dispute, then the parties will undertake a mediation process. The mediator will be an independent mediator agreed by the parties or, failing agreement, nominated by the chairperson of the Institute of Arbitrators and Mediators Australia, ACT Chapter. The cost of the mediator will be borne by the Territory, providing that the Territory can end the mediation process if it becomes unduly long. Each party will otherwise bear their own costs.
  - (5) If an agreement cannot be reached pursuant to clause 19.1(4), then the Dispute will be referred to a mutually agreed arbitrator independent of both the VMO and the Territory (selected by both parties or, in the absence of agreement, nominated by the chairperson of the Institute of Arbitrators and Mediators Australia, ACT Chapter) who is appropriately skilled and knowledgeable in the relevant area. The referral and arbitration will be carried out in accordance with the provisions of the *Commercial Arbitration Act 1986* (ACT) and the determination of the arbitrator will be final and binding on the parties. The cost of the arbitrator will be borne by the Territory. Each party will otherwise bear their own costs.

- 19.2 At every stage in the attempted resolution of a Dispute:
- (1) the VMO will be given adequate opportunity to address the individual or individuals representing the Territory and to present other information;
  - (2) the VMO will be entitled to ask for and receive reasons for the decision, opinion, view, act or omission (as the case may be) of the individual or individuals representing the Territory; and
  - (3) each of the parties may be represented by an agent at any stage.
- 19.3 The parties will cooperate to ensure that these procedures are carried out expeditiously.
- 19.4 Nothing in this clause 19 will prejudice the rights of either party to institute proceedings to enforce the Agreement or to seek injunctive or urgent declaratory relief in respect of any Dispute.

## **20. Territory Facilities and Equipment**

- 20.1 The Territory must provide facilities and equipment and timely access to them, so that the VMO can maintain a standard of best practice as appropriate.
- 20.2 Without limiting clause 20.1 the Territory must provide facilities, administrative support, consumable and durable materials, staff resources and equipment and timely access to them as are, in the Territory's reasonable opinion, necessary to enable the VMO to properly perform his or her obligations under this Agreement.
- 20.3 The VMO will, when using the health facilities or other Territory premises comply with all security and workplace regulations in effect at those facilities or premises or otherwise as notified by the Territory.

## **21. Public Patients**

The VMO will not:

- (1) obtain, request or accept "booking fees", "attendance fees" or like payments or any other payments, considerations, benefit or advantage from any public patient in relation to the Services; and
- (2) without the permission of the Territory, persuade or attempt to persuade or procure a patient to change his or her admission status.

## **22. Contract Material**

- 22.1 Title to, and ownership of any intellectual property rights (including copyright) in all Contract Material will vest upon its creation in the Territory.
- 22.2 The VMO will ensure that:
- (1) the Contract Material is used only for the purpose of this Agreement;

- (2) the use of any Contract Material will not infringe the intellectual property rights of any third party; and
  - (3) no fees, royalties or other payments are payable in respect of any third party rights as a result of the Territory's (or any permitted user's) use of any Contract Material.
- 22.3 For the purpose of clause 22.2, use (including used) includes supply, reproduce, publish, perform, communicate, adapt and copy.
- 22.4 On the expiration or earlier termination of this Agreement, the VMO will deliver to the Territory all Contract Material.

### **23. Territory Material and VMO's Material**

- 23.1 Territory Material will remain the property of the Territory and the VMO will use that material only for the purpose of providing the Services and otherwise in accordance with any conditions notified to it by the Territory.
- 23.2 The VMO will be responsible for the safe keeping and maintenance of Territory Material and, on the expiration or earlier termination of this Agreement, the VMO will return to the Territory all Territory Material.
- 23.3 Medical reports, clinical notes, teaching material and the like owned by the VMO and used for the purpose of providing the Services remains the property of the VMO and the VMO grants to the Territory a perpetual, royalty free licence to use the VMO's material to the extent necessary for the Territory to use or communicate the Contract Material.

### **24. Non-Disclosure of Contract Information**

- 24.1 For the purposes of this Agreement "Contract Information" means the kind of information that:
- (8) is or relates to documents, submissions, consultations, policies, strategies, practices and procedures of the Territory which are by their nature confidential;
  - (9) is notified (whether in writing or not) by the Territory to the VMO as being confidential; or
  - (10) is Personal Information,
- but does not include information which:
- (11) is or becomes public knowledge other than by breach of this Agreement;
  - (12) has been independently developed or acquired by the VMO;
  - (13) has been notified in writing by the Territory to the VMO as being not confidential; or

- (14) being “Contract Information” that the VMO may share with other VMOs
- 24.2 The VMO will take all reasonable measures to ensure that Contract Information accessed or held by the VMO in connection with this Agreement is protected against loss, and against unauthorised access, use, modification, disclosure or other misuse in accordance with reasonable procedures for that purpose, and that only authorised personnel have access to the Contract Information.
- 24.3 The VMO will:
- (5) use Contract Information held in connection with the Agreement only for the purposes of fulfilling its obligations under this Agreement;
  - (6) comply with privacy principles set out in the *Privacy Act 1988* (Cwlth) and *Health Records (Privacy and Access) Act 1998* (ACT), as if they were terms of this Agreement;
  - (7) not transfer Contract Information held in connection with this Agreement outside the Territory, or allow any person outside the Territory to have access to it, without the prior approval of the Territory; and
  - (8) without limiting clause 24.2, indemnify the Territory against any successful claim or proceeding made against the Territory resulting from the VMO’s breach of their obligations under this clause 24 except to the extent that any waiver, acquiescence, act or omission of the Territory caused or contributed to that breach, claim or proceeding.
- 24.4 The Territory will indemnify the VMO against any successful claim or proceeding against the VMO resulting from the Territory’s breach of its obligations under clause 24.

## **25. Conflict of Interest**

- 25.1 The VMO warrants that, at the date of entering into this Agreement, no conflict of interest exists or is likely to arise in the performance of the Services and of its other obligations under this Agreement.
- 25.2 If, during the term of the Agreement, a conflict or risk of conflict of interest arises, the VMO will notify the Territory immediately in writing of that conflict or risk and will comply with any requirement of the Territory to eliminate or otherwise deal with that conflict or risk of conflict.
- 25.3 Nothing in this Agreement will affect the VMO’s right to private practice outside a health facility.

## **26. No Assignment or Subcontracting**

Subject to clause 16.4, the VMO will not subcontract the performance of the Services or assign the whole or the part of this Agreement without the prior written consent of the Territory.

## **27 Entire Agreement, Variation and No Waiver**

- 27.1 This Agreement comprises the entire agreement between the parties and supersedes any prior representations, negotiations, writings, memoranda and agreements.
- 27.2 This Agreement may be varied only by the written agreement of the parties.
- 27.3 Failure or omission by the Territory at any time to enforce or require strict or timely compliance with any provision of this Agreement will not affect or impair that provision in any way or the rights of the Territory to avail itself of the remedies it may have in respect of any such provision.

## **28 Notices**

Any notice, or other communication required or otherwise to be given or sent to the Territory or to the VMO under this Agreement will be in writing and will be deemed to have been given:

- (4) if delivered by hand, upon delivery;
- (5) if sent by prepaid, certified or registered mail, upon the expiration of seven days after the date on which it was so sent;
- (6) if sent by facsimile, upon successful and proper transmission to the recipient's address;

to the persons and addresses or facsimile numbers set out in Item 1 Schedule 1 or such other person, address or facsimile number as may be notified by a party to the other from time to time.

## **29 Severability**

Any provision of this Agreement which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability without invalidating the remaining provisions of this Agreement.

## **30 Applicable Law**

- 30.1 This Agreement is governed by and construed in accordance with the law for the time being in force in the Territory and the parties submit to the jurisdiction of the courts of the Territory.
- 30.2 The VMO will ensure that the Services performed under this Agreement comply with the laws from time to time in force in the Territory.

## **31 Special Conditions**

In the event of any inconsistency between any Special Condition and any other provision of this Agreement then, to the extent of any inconsistency, the Special Condition will prevail.

## **32 Survival of Clauses**

Clauses 5.1, 24.3 and 24.4 will survive the expiration or earlier termination of this Agreement.

## **33 Safe Hours**

The Territory shall arrange safe working hours and conditions and complete after-hours medical, nursing and ancillary staff rosters.

## **34 Research**

34.1 The Territory will pay the VMO at the sessional rate for hours spent in formal research that has been undertaken with the prior written agreement of the General Manager or Chief Executive.

34.2 The VMO will seek funding for his or her time in any research proposal submitted to the Territory or to an external body or agency.

## SCHEDULE 1

### Item 1. Contract Officers:

*For the Territory:* [INSERT NAME OF CONTRACT OFFICER]  
[INSERT ADDRESS]

Facsimile:

*For the VMO:* [INSERT NAME OF CONTRACT OFFICER]  
[INSERT ADDRESS]

Facsimile:

### Item 2. Duration:

From [eg. THE DATE OF THIS AGREEMENT] until [INSERT END DATE].

### Item 3. Contract Price:

- (1) In consideration of the VMO providing comprehensive services in the specialty of < XXXX >, the Territory will pay the VMO XX% of the current Commonwealth Medicare Benefits Schedule (CMBS) for routine (8:00am – 6:00pm Monday to Friday) work, and XXX% of the CMBS for work outside those hours, except on Sundays when payment will be made at XXX% of the CMBS and Public Holidays when payment will be made at XXX% of the CMBS.
- (2) The VMO will be paid at the rate of \$225 for each 24 hour period or part thereof that the VMO is rostered on call.
- (3) The VMO will be paid an additional hardship allowance for each 24 hour period on call where the on-call roster qualifies for such an allowance. The total of the normal on call payment and the hardship on call allowance will be as follows:

Roster ratio	Average Cumulative Call Backs per 24hrs	Advanced Trainee Registrar Available	Total of on call payment and hardship allowance
1:5 or greater	< 3 hours	N/A	\$225
1:5 or greater	> 3hours	yes	\$230
1:5 or greater	> 3hours	no	\$240
1:4	< 3 hours	yes	\$230
1:4	< 3 hours	no	\$240
1:4	> 3hours	yes	\$240
1:4	> 3hours	no	\$245
1:3	< 3 hours	yes	\$250
1:3	< 3 hours	no	\$260
1:3	> 3hours	yes	\$260
1:3	> 3hours	no	\$265
1:2	< 3 hours	yes	\$270
1:2	< 3 hours	no	\$300
1:2	> 3hours	yes	\$300
1:2	> 3hours	no	\$320

- (4) If the VMO is appointed by the Territory to a position involving managerial responsibilities the VMO will be paid for a number of management hours per month, as agreed between the VMO and the Territory, at a rate equal to the normal sessional hourly rate payable for the VMO's specialty group plus a managerial allowance of \$XX per hour.
- (5) (a) The payment structure detailed in this contract will not reduce the total amount paid to the VMO in any financial year when compared to the total amount that would have been paid to the VMO under the terms of the VMO's old contract in 2002/03 for the same level and volume of services.
- (b) The Territory will therefore pay to the VMO a Transitional Allowance in regard to each financial year of this Agreement. This Allowance will be equal to any deficit between the total amount payable under this new Agreement and the total payment the VMO would have received for the same level and volume of services if payment were made at their 2002/03 contract rates. This Transitional Allowance will apply to annual service levels up to the sum of the average level of services provided annually by the VMO at Calvary Hospital in 2000/01, 2002/02 and 2002/03 and the service level provided at The Canberra Hospital in 2002/03 (the "baseline level").
- (c) The Transition Allowance will be calculated on the basis that the VMO's old payment rate for any given level of service remains constant at the 2002/03 rate until such time as ACT CPI increases applied to payments under this Agreement increase this Agreement's payments to a level such that no gap exists between the payments that the VMO would have received under their previous contract and the payments made under this Agreement. At this time the Transitional Allowance will cease to exist.

(d) If the sum of the VMO's level of service at The Canberra Hospital and Calvary Hospital in any given year is less than the baseline level, the total payment that would have been made under their 2002/03 contract terms and conditions for the level of services actually provided will be calculated, as will the total amount payable under this Agreement for the level of services actually provided. If the payment due under this Agreement is lower than that due under the 2002/03 contract terms a Transitional Allowance equal to that difference will be paid.

(e) If the sum of the VMO's level of service at The Canberra Hospital and Calvary Hospital in any given year is more than the baseline level, the total payment that would have been made under the VMO's 2002/03 contract terms and conditions for the baseline level will be calculated, as will the total amount payable under this Agreement for the baseline level. If the payment due under this Agreement is lower than that due under the 2002/03 contract terms a Transitional Allowance equal to that difference will be paid. Payment for those services provided by the VMO above the baseline level will be made on the basis of the terms and conditions of this Agreement and at the rate specified in Item 3 (1) of Schedule 1 to this Agreement.

(6) The Territory will, in the following circumstances, pay to the VMO a continuity bonus equal to 5% of the total amount paid to the VMO in the previous 12 months, providing always that the VMO has maintained continuous participation in their service roster:

(a) If negotiations regarding new VMO contracts were completed prior to 1 November 2003 and the VMO signs this Agreement within 28 days of receiving the Territory's offer of a new contract.

OR

(b) Where the VMO's contract or contract extension with the Territory was due to expire on 28 November 2003, and negotiations with VMO negotiating agents regarding the new Agreement were not expected to be completed by that date, and the VMO agreed at least four weeks prior to 28 November 2003 to further extend their existing contract for a period of up to 12 months to allow finalisation of all negotiations and/or arbitration required to allow the Territory to make an official offer.

OR

(c) For contracts due for renewal on or after 31 December 2003 where the VMO has signed this Agreement within 28 days of receiving the Territory's offer of a new contract.

(7) Invoices will be rendered by the VMO to the Territory on a monthly basis. Each monthly invoice will be rendered to the Territory no later than the 28th day of the following month.

(8) Where applicable the VMO will be paid the appropriate after hours loading for any part of the afternoon OR session that extends past the scheduled finishing

time then applying (currently 4pm at The Canberra Hospital and 5pm at Calvary Hospital).

- Item 4 Clause 5.1 does not apply and the VMO must effect and maintain all insurance coverage required to be effected by the VMO by law and a professional indemnity insurance policy covering the VMO for the Services for a sum not less than \$15,000,000 and deliver to the Territory annually or as requested a certificate of currency or other proof that the policy is current. (delete if not applicable)

## **SCHEDULE 2**

### **Services**

Inpatient, outpatient and consultative medical services to registered patients, including the admission of patients under the VMO's care to health facilities. The VMO will provide the Services in accordance with agreed on-call rosters and sessions.

## **SCHEDULE 3**

### **Special Conditions**

Example: Calvary Health Care Objects, Philosophy and Rules will be inserted here in contracts for VMOs with visiting rights at Calvary Public Hospital or Clare Holland House.

**SCHEDULE 4**

**AUSTRALIAN CAPITAL TERRITORY**

**CONDITIONS OF LIABILITY  
COVER**

**FOR**

**VISITING MEDICAL OFFICERS**

**October 2003**

## **VISITING MEDICAL OFFICER CONDITIONS OF LIABILITY COVER**

### **1. Indemnity**

- 1.1 In accordance with clause 5.1 of this Agreement the Territory indemnifies the VMO on the terms set out in these conditions of liability cover (“Conditions”) and any Contract of Liability Coverage between the VMO and the Territory is terminated, subject to its terms and conditions, from the commencement of this Agreement.

### **2. Liability Coverage**

- 2.7 Subject to clause 2.4 and clause 4 of these Conditions, the Territory will indemnify the VMO (and if this Agreement is with the VMO practice company, the practice company) for civil liability arising from any Claim in respect of incidents during the Indemnity Period relating to the provision by the VMO under this Agreement of health care to public patients in a facility conducted by a Public Health Services Provider.
- 2.8 Subject to clause 2.4 and clause 4 of these Conditions, the Territory will indemnify the VMO (and if this Agreement is with the VMO practice company, the practice company) for civil liability arising from any Claim during the Indemnity Period in respect of incidents before the Indemnity Period relating to the provision by the VMO of health care to public patients in a facility conducted by a Public Health Service Provider that has not otherwise been reported under any policy of insurance or like arrangement.
- 2.9 The indemnities under clause 2.1 and 2.2 of these Conditions includes civil liability arising from the provision of medical advice by the VMO to a person as part of obtaining the person’s written 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 facility conducted by a Public Health Services Provider provided that:
- (1) the VMO subsequently provides that medical procedure or treatment to the person as a public patient in a facility conducted by a Public Health Service Provider; and
  - (2) the VMO substantially complies with the Territory’s policy on consent to medical treatment as specified from time to time by circular issued to Public Health Services Providers.
- 2.10 The indemnities under these Conditions include civil liability arising from any claim in respect of incidents during the Indemnity Period relating to the provision of an emergency service by the VMO as part of a public emergency response by the public health services provider. This indemnity does not apply to incidents after the patient elects to be treated as a private patient.

- 2.11 The indemnities under these Conditions include civil liability arising from a consultation in private consulting suites for which no fee is charged provided the consultation is clearly and directly linked to the original treatment of the patient as a public patient.
- 2.12 The indemnities under these Conditions do not apply to the following:
- (1) any Claim arising out of conduct on the part of the VMO that constitutes a criminal offence or any other serious and wilful misconduct;
  - (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, other than where the product is supplied to the VMO by the Territory; or
  - (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 by the Territory.

### **3. Visiting Medical Officer's Responsibilities**

#### *Prompt notification of certain incidents*

- 3.1 The VMO must promptly report in writing to the Territory any incident that could reasonably be expected to give rise to a Claim, as soon as the VMO becomes aware of such an incident. The report must be in the form of the Territory's Incident Report Form.

#### *Claims History*

- 3.2 The VMO must, within ten working days of receiving a written request from the Territory, provide to the Territory his or her record of public and private Claims history for a 6 year period or for as long as he or she has been practising, whether continuously or not, up to 6 years whichever period is the longer.

### **4. Reporting, management and conduct of Claims**

#### **Reporting**

- 4.1 In addition to the obligation under Clause 3.1, the VMO must promptly report as soon as practical and in writing to the Territory, any Claim against the VMO (or his or her practice company) for which the practitioner seeks indemnity under this Agreement.

#### **Management and conduct**

- 4.2 The management and conduct of a Claim to be indemnified under this Agreement passes entirely to the Territory. The Territory is responsible for the incurring and payment of legal and other costs in managing and conducting the Claim. The Territory is entitled at any time to conduct, in the name of the VMO (or, where applicable, his or her practice company), the investigation, defence or settlement of any Claim.

**Assistance to be given**

- 4.3 It is a condition precedent to the provision of indemnity under this Agreement in respect of a Claim that the VMO:

- (1) give the Territory and any legal representatives appointed by the Territory all information and assistance in relation to the Claim as they may reasonably require to determine liability, investigate, defend or settle the Claim;
- (2) release to the Territory all documents that the Territory may require to determine the existence or extent of the Territory's obligations and assertion of its rights of contribution or subrogation as against any and all other persons, entities or organisations;
- (3) by complying with this clause the VMO does not waive any client legal privilege.

- 4.4 If the VMO fails to comply with Clause 4.3 then the indemnity provided under this Agreement in relation to any one claim may be withdrawn by the Territory.

**Subrogation**

- 4.6 The Territory is entitled to all of the VMO's rights of recovery, indemnity or contribution in respect of a Claim for which indemnity is, or is to be, provided under this Agreement and the VMO will do everything to secure and preserve such rights, including but not limited to the execution of documents necessary to allow the Territory to take legal action in the name of the VMO in exercise of the Territory's rights under this contract or any right that the VMO may otherwise possess in relation to the Claim.

**Availability of information**

- 4.6 Where a Claim against the VMO or his or her practice company is not the subject of indemnity under this Agreement but the Territory holds information in respect of the incident giving rise to the Claim the Territory will, upon request, provide such information to the VMO, or the medical indemnity provider of the VMO or his or her practice company, provided it is lawful and reasonable to do so.

## 5. Review

5.1 The VMO may make a request in writing to the Chief Executive for review of a decision that indemnity is not to be provided, or will cease to be provided, in accordance with the terms and conditions of this Agreement,

within 30 days of receipt of written advice of a decision that indemnity is not, or is no longer, to be provided in accordance with the terms of this Agreement in respect of a Claim.

5.2 A review panel convened by the Chief Executive will consider the request for review.

5.3 A review panel is to consist of the following persons:

- (1) the person for the time being holding the position of Chief Health Officer of ACT Health (however called);
- (2) the person for the time being holding the position of Chief Financial Officer of ACT Health (however called);
- (3) a legal practitioner nominated by the Chief Solicitor for the Territory; and
- (4) a person nominated by the Australian Medical Association (ACT).

5.4 If, following review, the review panel determines that indemnity is, or will continue, to be provided in accordance with the terms and conditions of this Agreement in respect of the relevant Claim, the decision will be notified to the VMO and the Chief Executive. The Territory will immediately provide or continue to provide indemnity for a particular Claim and will advise the VMO of the outcome of the review.

5.5 If, following review, the review panel determines that indemnity in respect of a Claim is not, or is no longer, available in accordance with the terms and conditions of this contract, the Chief Executive will advise the VMO of the outcome of the review.

## 6. Continuing Rights

The rights and obligations conferred by clause 2 and clause 4 of these conditions will survive the expiration or termination of this Agreement.

## 7. Definitions for these Conditions

**ACT Insurance Authority (ACTIA)** is the self-insurance and risk management organisation established by the ACT Government to cover certain liabilities of the Territory and its agencies. A reference in this Agreement to ACTIA includes any officer or employee of the ACT Government involved in the investigation, management or conduct of Claims indemnified under this Agreement;

**Chief Executive** means the person for the time being holding the office of Chief Executive of ACT Health (however called);

**Claim** means a health care claim or any incident that could reasonably be expected to give rise to a health care claim for damages or other compensation, whether by verbal or written demand or the commencement of legal proceedings, arising from any negligent error act or omission, or any injury or death caused wholly or partly by the fault or alleged fault of the VMO in providing or failing to provide health care.

A **Claim** also includes an inquiry, inquest or other hearing arising from a health care claim or which may give rise to a health care claim but does not include disciplinary, criminal or like proceedings.

**Excluded Patient** means a patient who is a compensable patient (i.e., workers compensation, third party etc), a Department of Veterans Affairs patient, an ineligible patient (subject to a requirement by the Public Health Services Provider to treat such a patient as a public patient) or an eligible patient who elects to be treated as a private patient.

*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 in relation to health care.

**Indemnity Period** means:

- (1) The period commencing on the termination or expiry of any policy of insurance or like arrangement indemnifying the VMO in respect of Claims arising from the performance of this Agreement after the commencement date of this Agreement and ending on the date of expiration or termination of this Agreement.
- (3) If no such indemnity is in effect, the period commencing on the commencement date of this Agreement and ending on the date of expiration or termination of this Agreement.

**ineligible patient** is any non-Australian resident whose country is not part of a reciprocal health care agreement.

**practice company** means a single doctor practice company that agrees to provide VMO services to a Public Health Service Provider;

**Public Health Services Provider** means:

- (1) the Territory;
- (2) an agency or authority of the Territory providing public health services;

- (3) any other person or entity engaged by the Territory or a Territory authority to provide public health services to public patients.

**public patient** means an eligible person who receives or elects to receive a public hospital or public health service free of charge. It also means, for the purposes of these Conditions only, an ineligible patient who the VMO is required, by the Territory, to treat as a public patient in a public hospital or public health service under this Agreement;

**record of 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's professional indemnity provider, including date of notification of each Claim, date and brief description of each relevant incident and the compensation sum or quantum is not known the range within which the Claim fell, or is estimated to fall, as follows:

- (vii) < \$50,000
- (viii) \$50,000 - <\$100,000
- (ix) \$100,000 - <\$250,000
- (x) \$250,000 - <\$500,000
- (xi) \$500,000 - <\$1 million
- (xii) \$1 million + ;

**Territory** includes the ACTIA.

**SIGNED** on the date first above written.

**SIGNED** for and on behalf of the )  
**AUSTRALIAN CAPITAL TERRITORY** )  
by )

\_\_\_\_\_  
PRINT FULL NAME )

in the presence of: )

.....  
Signature of Territory Delegate

.....  
Signature of Witness

.....  
Name of Witness

**SIGNED** for and on behalf of )  
**[NAME & ABN OF VMO]** by )

\_\_\_\_\_  
PRINT FULL NAME )

in the presence of: )

.....  
Signature of VMO

.....  
Signature of Witness

.....  
Name of Witness