

Australian Capital Territory

Health (Visiting Medical Officer Core Conditions) Determination 2010 (No 1)

Notifiable Instrument NI2010—312

made under the

Health Act 1993, s 102 (Core conditions)

1 Name of Instrument

This instrument is the *Health (Visiting Medical Officer Core Conditions) Determination 2010 (No 1)*.

2 Commencement

This instrument commences on the day after notification.

3 Determination

I determine that the core conditions set out in Attachment A will apply to VMO service contracts.

4 Revocation

NI2007-42 and NI2007-171 are revoked.

Simon Corbell MLA
Acting Minister for Health

17/6/2010

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Visiting Medical Officer – Core Conditions

1. Interpretation	1
2. Engagement	5
3. No Authority to Bind the Territory	6
4. Duration	6
5. Indemnity and Insurance	7
6. Contract Price and Payment.....	7
7. On-call	10
8. Call-back.....	10
9. Public Holidays	10
10. Records	11
11. Meetings	11
12. Registration	12
13. Attendance	12
14. Teaching.....	12
15. Performance and Quality Assurance.....	13
16. Absence.....	15
17. Termination.....	16
18. Suspension.....	17
19. Dispute Resolution	18
20. Territory Facilities and Equipment.....	19
21. Public Patients.....	20
22. Contract Material	20
23. Territory Material and VMO’s Material.....	20
24. Non-Disclosure of Contract Information	20
25. Conflict of Interest.....	21
25.1 The VMO:	21
26. No Assignment or Subcontracting.....	22
27. Entire Agreement, Variation and No Waiver.....	22
28. Notices.....	22
29. Severability	22
30. Applicable Law	23
31. Special Conditions.....	23
32. Survival of Clauses.....	23
33. Safe Hours.....	23
34. Research	23
35. Contractor’s personnel	23
SCHEDULE 1 – CONTRACT DETAILS.....	26
SCHEDULE 2 – SERVICES.....	34
SCHEDULE 3 – SPECIAL CONDITIONS	38
SCHEDULE 4 – CONDITIONS OF LIABILITY COVER	39

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1. Interpretation

1.1 Definitions

The following definitions apply in a service contract, unless the context otherwise requires:

Advanced Trainee Registrar	means a Registrar who has completed at least one year of specialist training in an accredited College training position in the specialty or a registrar who is in a non-accredited position and has at least one year's experience at registrar level in the specialty.
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, in response to a request from a VMO, a salaried medical officer, or otherwise as provided for by health facility policy, in circumstances where the VMO reasonably considers his or her attendance to be clinically necessary.
Chief Executive	means, except in Schedule 4, and as the context requires: (1) the Chief Executive, ACT Health; or (2) the Chief Executive Officer of Calvary Health Care ACT.
Clinical Privileges	has the same meaning as in section 54 of the <i>Health Act 1993 (ACT)</i> .
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 to a service contract, the representatives whose names 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 below.
Contract Price	means the amounts specified in, or calculated in accordance with, Item 3 Schedule 1 .

Core Conditions	has the same meaning as in section 100 of the <i>Health Act 1993</i> (ACT)
Delegate	means a person for the time being occupying a position to which the Chief Executive has delegated a power under this Determination
Dental Board	means <ul style="list-style-type: none"> (1) before 1 July 2010, the A.C.T. Dental Board; and (2) after 1 July 2010, the Dental Board of Australia.
Dental Practitioner	means a person registered or deemed to be registered as a dental practitioner: <ul style="list-style-type: none"> (1) before 1 July 2010, under the <i>Health Professionals Act 2004</i> (A.C.T.); and (2) after 1 July 2010, under the <i>Health Practitioner Regulation National Law (ACT) Act 2009</i>.
Dental Specialist	means a person registered or deemed to be registered as a dental specialist: <ul style="list-style-type: none"> (1) before 1 July 2010, under the <i>Health Professionals Act 2004</i> (A.C.T.); and (2) after 1 July 2010, under the <i>Health Practitioner Regulation National Law (ACT) Act 2009</i>.
Fee for Service Contract	means a service contract where the Contract Price for the whole or a major part of the health services provided by the VMO is calculated on the basis of specified fees for specified health services
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 Care Agreement	means the Australian Health Care Agreement between the Commonwealth of Australia and the Territory regarding the provision of public hospital services and other health services in the Territory.
Health Facility	has the same meaning as in section 6 the <i>Health Act 1993</i> (ACT).
Health Services	has the same meaning as in section 5 the <i>Health Act 1993</i> (ACT).

Medical Board	means <ul style="list-style-type: none"> (1) before 1 July 2010, the A.C.T. Medical Board; and (2) after 1 July 2010, the Medical Board of Australia.
Medical Practitioner	means a person registered or deemed to be registered as a medical practitioner: <ul style="list-style-type: none"> (1) before 1 July 2010, under the <i>Health Professionals Act 2004 (A.C.T.)</i>; and (2) after 1 July 2010, under the <i>Health Practitioner Regulation National Law (ACT) Act 2009</i>.
Medicare Benefits Schedule, or MBS	means the Medicare Benefits Schedule issued by the Commonwealth Department of Health and Ageing
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.
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.
Practice Corporation	has the same meaning as in section 100 of the <i>Health Act 1993 (A.C.T.)</i>
Private Patient	has the same meaning as in the Health Care Agreement.
Public Patient	has the same meaning as in the Health Care Agreement.
Service Contract	has the same meaning as in section 100 of the <i>Health Act 1993 (A.C.T.)</i>
Services	means the services described in Schedule 2 .
Sessional Contract	means a service contract where the VMO is engaged to work on an hourly or sessional basis, and the Contract Price for the whole or a major part of the health services provided by the VMO is calculated by reference to an hourly fee and the number of hours the VMO works

Special Condition	if any, mean a special condition agreed by the parties to a service contract and set out in Schedule 3 .
Specified Personnel	means any person named in Item 4 Schedule 1 , or any other employee or agent of the VMO, who is approved by the Territory from time to time for the purpose of clause 34.2 .
Territory:	means: <ul style="list-style-type: none"> (1) when used in a geographical sense, the Australian Capital Territory; and (2) when used in any other sense, the body politic established by section 7 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> (Cwlth).
Territory Material	means any material provided by the Territory to the VMO for the purposes of a service contract including, but not limited to, documents, equipment, information and data stored by any means.
Unit	means a designated clinical unit of which the VMO is a member.
VMO	has the same meaning as in section 100 of the <i>Health Act 1993 (A.C.T.)</i>

1.2 General

In a service contract, unless the context otherwise requires:

- (1) 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;
- (2) words importing a gender include the others; words in the singular number include the plural and vice versa;
- (3) “include” is not to be construed as a word of limitation;
- (4) an obligation imposed by a service contract on more than one person binds them jointly and severally;
- (5) clause headings are for convenient reference only and have no effect on the interpretation of the provisions to which they refer; and
- (6) unless the contrary intention appears, a word or phrase in a service contract has the same meaning as in the Health Act 1993 (ACT).

2. Engagement

- 2.1 The Territory is responsible for arranging the delivery of medical and dental services to Public Patients within the Territory.
- 2.2 The Territory engages the VMO to perform the Services on the terms set out in a service contract.
- 2.3 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 or dental care and treatment he or she administers in respect of patients admitted under his or her care.
- 2.4 The VMO is responsible for the maintenance of his or her professional standards in accordance with the Clinical Privileges granted by the Territory.
- 2.5 The VMO must comply with all reasonable administrative (non-clinical) directions given by the Territory in relation to the Services.
- 2.6 Categories of VMO
- (1) A visiting medical officer may be engaged as:
- (a) A general practitioner;
 - (b) A surgeon;
 - (c) An anaesthetist;
 - (d) A physician;
 - (e) A general radiologist; or
 - (f) A BreastScreen radiologist.
- (2) A visiting dental officer may be engaged as:
- (a) A general dentist; or
 - (b) A dental specialist
- 2.8 Treatment of Private Patients
- (1) During the period of a service contract and within the limits of available resources, the Territory may make available for use of the VMO, facilities for the care of his or her Private Patients, and encourages the VMO to participate in Territory programs aimed at increasing the use of private insurance by patients being admitted to Territory facilities.
- (2) The VMO acknowledges that the Territory is required to make Health Facilities available for the purposes of providing health services to Private Patients.
- (3) The VMO will cooperate with the Territory to assist the efficient operation of the Territory's admission and referral processes.
- (4) Nothing in this **clause 2.8** places an obligation on the VMO to accept a patient as a Private Patient or constrains the VMO in determining any fee for his or her treatment of a Private Patient.

- 2.9 A Visiting Medical Officer required by the Chief Executive or delegate to undertake additional responsibilities specifically associated with the management of a clinical unit, department or service (as set out from time to time in the “Statement of Duties – Clinical Unit Heads”) shall will be paid the allowance set out in **Item 3(9) of Schedule 1**. Management responsibilities include the performance of a clinical leadership role in the domains of administration, clinical, research and training, with direct responsibility for a clinical unit, department or service, for example:
- (1) Cost centre management including budget preparation and management of allocated budget;
 - (2) Line management responsibilities and supervision of staff;
 - (3) Participation in planning and policy development;
 - (4) Responsibility for the coordination of research, training or teaching programs;
 - (5) Membership and participation in senior management teams; and
 - (6) Quality improvement coordination.
- 2.10. The VMO and the Chief Executive or delegate will consult and agree upon the number of hours required for the performance of the additional responsibilities. The hourly rate of management allowance is the relevant sessional hourly rate for the VMO’s specialty.
- 2.11 The agreement of the parties will be effected by a variation to Schedule 2 of a service contract that will include:
- (1) The clinical unit, department or service to which the additional responsibilities relate.
 - (2) The number of hours per week required for the performance of the additional duties.
 - (3) The agreed manner of recording attendance in relation to the performance of the role.
- 2.12 The VMOs performance in their role as clinical unit head and the number of hours per week the VMO is engaged in this role will be reviewed annually in conjunction with the Annual Review provided for at clause 15.3 of a service contract.

3. No Authority to Bind the Territory

- 3.1 Nothing in a service contract constitutes the VMO, or its employees, agents or subcontractors as employees, partners or agents of the Territory or creates any employment, partnership or agency for any purpose.
- 3.2 The VMO must not represent itself, and must ensure its employees, agents and subcontractors do not represent themselves, as being employees, partners or agents of the Territory.

4. Duration

- 4.1 A service contract is for the period specified in **Item 2 Schedule 1** unless extended by written agreement of the parties or terminated under the provisions of a service contract.

5. Indemnity and Insurance

- 5.1 Unless specified in **Item 4 Schedule 1**, the Territory must 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 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.
- 5.3 Where:
- (a) The Territory indemnifies the VMO pursuant to Schedule 4; and
 - (b) The Territory subsequently determines that:
 - (i) the indemnity does not apply or
 - (ii) withdraws the indemnity in accordance with its rights under schedule 4 for whatever reason;

the Territory will not seek to recover any of the costs incurred in relation to the provision of the indemnity from the VMO.

6. Contract Price and Payment

- 6.1 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. 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 a service contract 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 a service contract; and
 - (4) the invoice is rendered as specified in **clause 6.1** 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, including the nature of the services provided, and the date or dates on which services were provided;
 - (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 or dental record of the relevant attendance and/or treatment; and
 - (7) particulars of the VMO's leave 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 6 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 not cancel any part of the VMO's workload for budgetary reasons without the agreement of the VMO.
- 6.6 The VMO must be notified of any cancelled sessions by letter, facsimile or email (to an email address provided by the VMO) as specified in Item 1 of Schedule 1
- 6.7 When a rostered operating session is cancelled and later reinstated during a low activity period, the anaesthetist who had usually serviced that session is to be given the option of anaesthetising the patients in that session, subject to the following:
- (1) Reinstated sessions would be paid at the usual unloaded rates for the session. A reinstated session would not constitute a recall to duty.
 - (2) Where the cancellation would have resulted or does result in the payment of a cancelled session fee, the total payment for the reinstated session would include the amount of the cancelled session fee.

- (3) If the VMO is not available for the reinstated session, then The Territory is entitled to immediately allocate the work to another anaesthetist.

A “reinstated session” means a cancelled session that is reinstated on the same date at the same time.

- 6.8 If a session is cancelled by the Territory, the VMO is not required to continue to be available for that session.
- 6.9 The VMO will not be paid for approved leave or any other absences.
- 6.10 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.
- 6.11 The VMO is responsible for any GST liability and reporting under the GST Act.
- 6.12 The Territory will make superannuation contributions on behalf of the VMO in accordance with the *Superannuation Guarantee Charge Act 1992* (C’wealth) and the *Superannuation Guarantee (Administration) Act 1992* (C’wealth).

6.13 Superannuation contributions in respect of the Specified Personnel of VMO Practice Corporations

- (1) The Territory shall, at the request of the VMO and in accordance with this clause, make contributions on behalf of the VMO practice corporation to a superannuation account in a superannuation fund of which one of the Specified Personnel is a member.
- (2) Before the Territory makes a contribution under this clause:
- (a) The VMO practice corporation must provide the Territory with satisfactory evidence of the nature, extent and value of services provided by the Specified Personnel, in terms that would satisfy the requirements of subclauses 6.2 and 6.3 above; and
 - (b) The Specified Personnel must consent to the contributions being made; and
 - (c) The Specified Personnel must nominate a superannuation account in a superannuation fund which:
 - (i) complies with the regulatory provisions defined in the *Superannuation Industry (Supervision) Act 1993* (C’wealth); and
 - (ii) under its trust deed, is able to accept contributions made under this clause.
- (3) Contributions to the superannuation accounts of Specified Personnel will be calculated as though the Specified Personnel had been engaged as VMOs to provide the services in their own right.

- 6.14 The VMO will be paid for services provided to 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 in the case of an emergency if the patient is unable to make an election to be a Private Patient prior to the services being provided.

7. On-call

- 7.1 The Territory will pay the VMO the amount specified in **Item 3(3) Schedule 1** or **Item 3(4) 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.
- 7.4 Cancellation by VMO
- (1) The VMO will, as far as reasonably practicable, provide the Territory with at least 28 days' notice if he or she will not be available for a rostered On-call session.
 - (2) If the VMO is unable to be rostered On-call because of illness or injury, or family circumstance, the VMO will promptly notify the Territory of his or her unavailability and its likely duration.

8. Call-back

- 8.1 The Territory will pay the VMO the Call-back amount specified in **Item 3(1) Schedule 1** or **Item 3(6) Schedule 1**
- 8.2 Sessions cancelled after overnight call-back**
- (1) If the VMO finds it necessary to cancel a morning session owing to fatigue resulting from being recalled to duty in a Health Facility for a total of four hours or more between the hours of 10pm and 8am, or if the recall extends beyond 2.00am, the VMO will not be required to carry out any scheduled session the next morning.
 - (2) The Territory will pay the VMO for a 4 hour session at the hourly rate applicable to the VMO's specialty group, provided that the VMO does not treat other patients for that session at any public or private health facility.

9. Public Holidays

The Territory will pay the VMO in accordance with **Item 3(1) Schedule 1** or **Item 3(6) Schedule 1** for any Services provided on a public holiday.

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 2 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 and dental 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 Territory will pay the VMO for attending a meeting where the Chief Executive or delegate 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 health services. Unless agreed in advance by the Chief Executive or delegate 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 or a Dental 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 Australian Medical Association (ACT), the ACT Visiting Medical Officers Association, 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 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 Health Facility concerned within a response time appropriate to the clinical circumstances, and usually within 30 minutes.

13.4 A VMO may request an ongoing reduction in their participation in the on-call roster. The Chief Executive or delegate may agree to an ongoing reduction in the VMO's participation in the on-call roster, subject to operational requirements and the VMO's agreement to reduce the number of operating and/or procedural sessions and outpatient clinics. Special consideration will be given to clinicians over the age of 60 years. The VMO and the Territory will give effect to their agreement by varying Schedule 2 to a service contract. The intent of this provision is to achieve a more reasonable and equitable distribution of elective sessions.

13.5 The Territory will work with relevant craft groups towards establishing arrangements whereby a VMO's on-call liability at any Health Facility shall be, as far as practicable, proportionate to the number of the VMO's elective lists, unless otherwise agreed.

14. Teaching

14.1 The VMO will participate in the teaching and training of postgraduate medical and dental officers. Payment for formal teaching as agreed in advance between the VMO and the Chief Executive or delegate 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 made. 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 In the case that the Territory receives a request from the ANU Medical School (or other medical or dental undergraduate training institution) for the VMO to perform undergraduate teaching duties then, subject to this clause, the VMO will undertake undergraduate teaching duties as agreed. Before a VMO commences undergraduate teaching duties:
- (1) The relevant General Manager or Executive Director must approve the request; and
 - (2) The VMO, the training institution and the relevant General Manager or Executive Director will consult, and agree upon what the VMO's undergraduate teaching duties will be.
- 14.3 Payment for formal teaching as agreed in advance between the VMO and the Territory under clause 14.2 will be made 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 and dental service required under a service contract 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 a service contract, 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 or dental 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, dental, 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 or dental service without first obtaining the informed consent of the patient;
- (11) comply with the ethical standards established by the Medical Board or Dental Board 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.

15.3 Annual Review

- (1) The VMO will meet with the Clinical Head (however described) of his or her Unit each year to:
 - (a) review the VMO's performance in relation to **clause 15** and **Schedule 2**;
 - (b) review any issues the VMO has in regard to the Territory's performance in support of the VMO's clinical practice; and

- (c) agree on the goals and targets for the next 12 month review period. If agreement is not reached, **clause 19** will apply.
 - (2) If the VMO occupies the position of Clinical Head of his or her Unit, the review process referred to in **clause 15.3(1)** will be undertaken with the relevant Health Facility's senior medical or dental officer (however described).
- 15.4 The Territory will be represented by the individuals designated in **clause 15.3(1)** and **clause 15.3(2)** or, if the designated individual is not available, by an individual of a higher rank within the Health Facility.
- 15.5 The Territory will make available at least one week prior to the review: an agenda, data for discussion and any other reference material to be used.

16. Absence

- 16.1 The VMO may take:
- (1) leave on public holidays except where rostered to attend a Health Facility;
 - (2) 12 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 weeks per year at times agreed between the parties. This leave may be accumulated from year to year to a maximum of 4 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 or absent for other approved reasons provided that:
- (1) there is no other VMO 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 the Services;
 - (3) the engagement and Clinical Privileges are approved by the Territory;
 - (4) the engagement of the locum tenens does not constitute long-term job sharing of the Territory position between the VMO and the locum tenens

- (5) there is a defined end date for the arrangement; and
- (6) there is no obligation on The Territory to accept the recommendation made by the VMO.

17. Termination

17.1 The VMO may terminate a service contract 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 a service contract 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 a service contract;
- (3) the VMO's Clinical Privileges are revoked, noting that such an action may be appealed to the ACT Administrative Appeals Tribunal;
- (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 under the *Health Professionals Act 2004* (ACT), such as would prevent the VMO from providing the 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 Medical Board or the Dental Board to have breached the required standard of practice or if any limitation, condition or restriction on the practice of the VMO is imposed;
- (9) the VMO is or has been found to be negligent in the performance of the Services;
- (10) the VMO is found by the Medical Board or the Dental Board not to have conducted himself or herself in accordance with the ethical standards established by the Medical Board or Dental Board 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 a service contract.

- 17.3 If the Territory terminates a service contract 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 or dental 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 a service contract is wrongfully terminated by the Territory;
 - (2) any other right or remedy of the Territory in respect of any breach of a service contract; and
 - (3) the application of clause 19.
- 17.5 If a service contract is terminated, the Territory will pay to the VMO any amount due and payable under the service contract 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 ethical standards established by the Medical Board or Dental Board 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 or meet the required standard of practice under the *Health Professionals Act 2004* (ACT);
 - (5) (Reserved)
 - (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 approved under section 35 of the *Health Act 1993* (ACT) in response to a request by that committee;
 - (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.
- 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 will 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 the service contract, provided the VMO activates the procedures set out in **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 the service contract and the grounds are made out, the Territory may terminate the service contract by notifying the VMO in writing.
- 18.6 If the Territory immediately suspends the VMO in the interests of patient safety, the Territory will advise the VMO that a duly constituted meeting of the Clinical Privileges Committee will be held within 36 hours to consider whether the immediate suspension was warranted. The grounds for the suspension are to be made available to the VMO at this time. **Clause 18.2 to clause 18.5** inclusive are to apply to immediate suspensions.

19. Dispute Resolution

- 19.1 If difference or dispute arises under a service contract ("Dispute"), the parties will follow these procedures.
- (1) Until the Dispute is resolved, the parties will continue to observe all terms of the service contract 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 service contract 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 will 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 a service contract.

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 the service contract;
- (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 a service contract, 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 a service contract, the VMO will return to the Territory all Territory Material.

23.3 Medical or dental reports, clinical notes 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 a service contract “Contract Information” means 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 the service contract;

(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 the service contract 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 a service contract only for the purposes of fulfilling its obligations under a service contract;

(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 a service contract;

(3) not transfer Contract Information held in connection with a service contract 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 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:

(1) warrants that, at the date of entering into a service contract, no conflict of interest exists or is likely to arise in the performance of the Services and of its other obligations under a service contract; and

(2) must, if a conflict, or risk of conflict, of interest arises during the Term:

- (a) notify the Territory immediately of that conflict or risk, and
- (b) comply with any requirement of the Territory to eliminate or otherwise deal with that conflict or risk.

25.2 Nothing in a service contract will affect the VMO's right to private practice outside a Health Facility.

26 No Assignment or Subcontracting

The VMO must not subcontract the performance of the Services or assign the whole or part of a service contract without the prior written consent of the Territory. If the Territory gives its consent, the Territory may impose any conditions.

27. Entire Agreement, Variation and No Waiver

27.1 A service contract comprises the entire agreement between the parties and supersedes any prior representations, negotiations, writings, memoranda and agreements.

27.2 A service contract may be varied only by the written agreement of the parties prior to the expiration of the service contract.

27.3 Failure or omission by the Territory at any time to enforce or require strict or timely compliance with any provision of a service contract 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, including any other communication, required to be given or sent to either party under a service contract must be in writing and given to the relevant Contract Officer. A notice will be deemed to have been given:

- (1) if delivered by hand, on delivery;
- (2) if sent by prepaid mail, on the expiration of two business days after the date on which it was sent;
- (3) if sent by facsimile, upon successful and proper transmission to the recipient's address; or
- (4) if sent by electronic mail, on the other party's acknowledgment of receipt by any means.

29. Severability

Any provision of a service contract that is illegal, void or unenforceable will not form part of a service contract to the extent of that illegality, voidness or unenforceability. The remaining provisions of a service contract will not be invalidated by an illegal, void or unenforceable provision.

30. Applicable Law

- 30.1 A service contract 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 non-exclusive jurisdiction of the courts of the Territory.
- 30.2 The VMO will ensure that the Services performed under a service contract 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 a service contract then, to the extent of any inconsistency, the Special Conditions will prevail.

32. Survival of Clauses

Clauses 5.1, 24.3 and 24.4 will survive the expiration or earlier termination of a service contract.

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 Chief Executive or delegate.
- 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.

35 Contractor's personnel

35.1 Suitability of personnel

The VMO must:

- (1) ensure the Services are performed by persons who are fit and suitable to perform the Services; and
- (2) comply with all reasonable requirements notified by the Territory regarding the suitability and fitness of persons engaged by the Contractor for the performance of the Services.

35.2 Specified Personnel

The VMO must:

- (1) ensure that the Services are performed by Specified Personnel (if any); and
- (2) if Specified Personnel are unable to perform any of the Services, provide replacement personnel acceptable to the Territory at no additional charge

and at the earliest opportunity.

35.3 Security

The VMO must, if using the Territory's premises or facilities to perform the Services, comply with all security and office regulations in effect at those premises or regarding those facilities, as notified or directed by the Territory.

35.4 Employee and industrial relations obligations

The VMO must, if required by the Territory, provide verification of the VMO's compliance with its employee and industrial relations obligations for the purpose of the Procurement Act.

SCHEDULE 1 – CONTRACT DETAILS

- Item 1. Contract Officers** **For the Territory:**
See clauses 1.1 and 28
- [Insert name of Contract Officer]
[Insert contact details –
Address
Facsimile
Email address]
- For the Contractor:**
- [Insert name of Contract Officer]
[Insert contact details –
Address
Facsimile
Email address]
- Item 2. Term** From [eg. the date of the service contract]
See clause 4 until [insert end date].

Item 3. Contract Price
See clause 6

(1) Where the VMO is engaged under a Fee for Service Contract:

“Base Fee for Service Rate” means 110.85% of the fee specified in the November 2009 MBS adjusted annually by the indexation method set out in **Item 3(5)** below.

“November 2009 MBS” means the Medicare Benefits Schedule issued by the Commonwealth Department of Health and Ageing effective from 1 November 2009.

(a) Arrangement 1

- (i) For routine work performed within the hours of 8am to 6pm Monday to Friday – 95% of the Base Fee for Service Rate
- (ii) For work performed outside the hours of 8am to 6pm Monday to Friday (other than a Sunday or a public holiday) – 125% of the Base Fee for Service Rate
- (iii) For work performed on a Sunday – 135% of the Base Fee for Service Rate.
- (iv) For work performed on a public holiday – 160% of the Base Fee for Service Rate.

(b) Arrangement 2

- (i) For routine work performed within the hours of 8am to 6pm Monday to Friday – 100% of the Base Fee for Service Rate
- (ii) For work performed outside the hours of 8am to 6pm Monday to Friday (other than a Sunday or a public holiday) – 110% of the Base Fee for Service Rate
- (iii) For work performed on a Sunday – 135% of the Base Fee for Service Rate.
- (iv) For work performed on a public holiday – 160% of the Base Fee for Service Rate.

Item 3. Contract Price
Continued

(2) Where the VMO is engaged on a Sessional Contract:

Column 1 Category of VMO	Column 2 Hourly Rate
Visiting Medical Officers	
General practitioner with FRACGP or VR Surgeon	207.14
Anaesthetist	247.66
Physician	247.66
General radiologist	239.84
BreastScreen radiologist	239.84
	266.31
	308.52
	1st or 2nd Screen Readings & Meetings 3rd Screen Readings & Assessment Clinics
Visiting Dental Officers	
General dentist	185.55
Dental specialist	247.66

(3) On-Call Allowance

The VMO will be paid at the rate of \$275.44 for each 24 hour period or part thereof that the VMO is rostered on call.

(4) Hardship Allowances

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 [as defined]	Total of on call payment and hardship allowance
1:5 or greater	< 3 hours	Not Applicable	275.44
1:5 or greater	> 3hours	YES	281.58
1:5 or greater	> 3hours	NO	293.81
1:4	< 3 hours	YES	281.58
1:4	< 3 hours	NO	293.81
1:4	> 3hours	YES	293.81
1:4	> 3hours	NO	299.93
1:3	< 3 hours	YES	306.06
1:3	< 3 hours	NO	318.30
1:3	> 3hours	YES	318.30
1:3	> 3hours	NO	324.42
1:2	< 3 hours	YES	330.55
1:2	< 3 hours	NO	367.27
1:2	> 3hours	YES	367.27
1:2	> 3hours	NO	391.76

Item 3. Contract Price
Continued

(5) Indexation Method

The rates payable under Item 3(1), Item 3(2), Item 3(3) and Item 3(4) above will be adjusted by 4.0% on 1 July 2010 and on 1 July in each subsequent year.

(6) Call-back Payments – VMOs engaged on Sessional Contracts

For each Call-back the Territory must pay the VMO in accordance with the following provisions:

- (a) for surgical Call-backs commencing between 8.00am and the scheduled end of the afternoon operating room lists (currently 4pm at The Canberra Hospital and 5pm at Calvary Hospital) Monday to Friday inclusive - at the VMO's ordinary hourly rate of pay as specified in Item 3 Schedule 1 plus a loading of 15% percent;
- (b) for non-surgical 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 15% percent;
- (c) for surgical Call-backs commencing outside 8.00am and the scheduled end of the afternoon operating room lists Monday to Friday inclusive - at the VMO's ordinary hourly rate of pay as specified in Item 3 Schedule 1 plus a loading of 25% percent;
- (d) for non-surgical 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 25% percent;
- (e) for Call-backs commencing on Sundays – at the VMO's ordinary rate of pay as specified in Item 3(2) Schedule 1 plus a loading of 35% per cent;
- (f) for Call-backs commencing on public holidays – at the VMO's ordinary rate of pay as specified in Item 3(2) Schedule 1 plus a loading of 60% per cent;

For the purposes of paragraphs (a) to (f) above a Call-back commences when the VMO leaves his or her place of contact to attend the Call-back.

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.

Item 3. Contract Price
Continued

(6) Call-back Payments – VMOs engaged on Sessional Contracts
Continued

The minimum payment for each Call-back, including travelling time, will be 2 hours at the VMO's ordinary hourly rate of pay plus the appropriate loading.

(7) Continuous Duty Payment

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).

(8) Additional Recall Payment – Anaesthetists – Weekends and Public Holidays

If the VMO is an anaesthetist, the Call-back loadings paid under **Item 3(1)** or **Item 3(6)** above will increase by a further 10% after eight hours of continuous attendance at the Health Facility if the Call-back commenced on a week-end or public holiday.

(9) Quality Improvement, Clinical Meetings, Teaching and Research

For approved quality improvement and other meetings (**clause 11**), scheduled clinical meetings as directed (**clause 15.2(3)**), agreed undergraduate and postgraduate teaching (**clause 14**), and approved formal research (**clause 34**), the VMO will be paid at the appropriate hourly rate for the category of VMO, as specified in **Item 3(2) Schedule 1** above.

(10) Managerial Allowance

For approved managerial duties in accordance with **clause 2.10** the VMO will be paid a Managerial Allowance, at the appropriate hourly rate for the category of VMO, as specified in **Item 3(2)** above.

(11) Annual Review

For preparation and attendance at the Annual Review meeting referred to in **clause 15.3**, the Territory will pay the VMO an annual allowance equivalent to 2 hours at the appropriate hourly rate for the category of VMO, as specified in **Item 3(2)** above.

(12) Cancelled Sessions

For Cancelled Sessions in accordance with **clause 6**, the VMO will be paid at the appropriate hourly rate for the category of VMO, as specified in **Item 3(2)** above.

Item 3. Contract Price
Continued

(13) Sessions Cancelled after Overnight Call-Back

Where a VMO cancels a morning session in accordance with clause 8.2, the Territory will pay the VMO for a 4 hour session at the appropriate hourly rate for the category of VMO, as specified in **Item 3(2)** above.

(14) Continuity Bonus

(a) For every three years of continuous service under a service contract, the Territory must pay the VMO a continuity bonus of 5% of the total amount paid to the VMO in the 12 months immediately prior to the third anniversary of the last payment of the bonus.

(b) For the purpose of paragraph (a), any period of continuous service:

- (i) less than 3 years; and
- (ii) immediately preceding the date of the current service contract,

under a contract for the provision of health care to Public Patients at a Health Facility, will be taken into account.

(c) A payment will only be made under **Item 3(15)(a)** if the VMO continuously participated in his or her service roster prior to the signing of the current service contract.

Item 3. Contract Price
Continued

(15) Transitional Allowance

Where the VMO:

- (1) was engaged under a contract for the provision of health care for the same level and volume as the Services, to Public Patients at a Health Facility (“service contract”) commencing on or before 29 November 2003 (“old contract”);
- (2) has provided continuous service under a service contract since that date; and
- (3) immediately prior to the date of this Agreement, was engaged under a service contract.

The VMO will be paid a Transitional Allowance as follows:

- (a) The VMO will be paid no less in any financial year of this Agreement than was paid to the VMO under the terms of the VMO’s contract commencing on or before 29 November 2003 (“old contract”).
- (b) The Territory will pay to the VMO a Transitional Allowance for each financial year of this Agreement. This Allowance will be equal to any deficit between the total amount payable under this Agreement and the payment the VMO would have received for the same level and volume of Services if payment were made under the old contract. The Transitional Allowance will be paid only for annual service levels up to the sum of the highest annual service level provided by the VMO at Calvary Hospital in 2000/01, 2002/02 or 2002/03 and the service level provided at The Canberra Hospital in 2002/03 (“baseline level”).
- (c) The Transitional 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 payments under this Agreement 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.

Item 3. Contract Price
Continued

(15) Transitional Allowance
Continued

- (d) If the VMO's actual level of service at The Canberra and Calvary Hospitals in any financial year of this Agreement is less than the baseline level the Transitional Allowance will be calculated by reference to the proportion of the payment that would have been paid under the old contract for that same level of actual Services.
- (e) If the VMO's actual level of service at The Canberra and Calvary Hospitals in any financial year is more than the baseline level, the VMO will be paid for those Services in excess of the baseline level in accordance with **Item 3(1)** or **Item 3(2) Schedule 1** to this Agreement, as the case requires.

Item 4 Insurance
See clause 5

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 the above text and insert "(RESERVED)" if not applicable)

Item 5 Specified Personnel
See clause 35.2

Not applicable.

[Or, insert names if relevant.]

SCHEDULE 2 – SERVICES

Inpatient, outpatient and consultative medical or dental 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.

Operating and/or procedural sessions:

[specify number] per [specify period]

Outpatient clinics:

[specify number] per [specify period]

On-call:

A minimum of [specify minimum roster] and a maximum of [specify maximum roster]

Ward rounds:

As reasonably required for appropriate management of the VMO's patient caseload [and/or specific other requirements]

Meetings:

[specify meetings] and, by agreement, other meetings as required from time to time.

Teaching/research:

In addition to normal post-graduate teaching activity undertaken during ward rounds and normal sessions, as described in **clause 14**, the VMO will provide the following teaching and/or research services:

[specify description and time commitment]

Approved managerial duties:

[Insert here the clinical unit, department or service to which the additional responsibilities relate; the number of hours per week required for the performance of the additional duties; and the agreed manner of recording attendance in relation to the performance of the role.]

The Services listed above are to be agreed annually and may be varied from time to time.

Setting and Varying Workloads

A VMO Service Contract may include a provision regarding the setting and varying of workloads appropriate to the nature of the service contract and its duration, and any previous continuous service of the VMO, as follows:

(1) Procedural FFS or Sessional service contracts of up to 3 years duration.

(a) Setting of workload.

Step 1 The Territory will calculate the average number of operating room (OR) lists or sessions worked annually by the VMO during the previous 3 years, if relevant.

Step 2 The Territory will give consideration to:

- a. The VMO's future availability.
- b. The VMO's past utilisation of their allocated OR lists or sessions for Public Patients.

Step 3 Following consideration of the above factors the Territory will offer the VMO a 3 year commitment on the number of OR lists or sessions that will be made available to the VMO in each year of the service contract.

Step 4 Once accepted by the VMO the number of OR lists or sessions made available to the VMO in each year of the service contract can only be varied as detailed in 1(b) below.

(b) Variation to workload

- (i) The VMO will give the Territory 6 months notice (or a lesser period if agreed) of their intention to reduce their allocation of OR list or sessions.
- (ii) The Territory will give the VMO 6 months notice (or a lesser period if agreed) of its intention to reduce the number of OR lists or sessions allocated to the VMO but may only do so if the reduction is directly related to the VMO's availability and/or the VMO's utilisation of their allocated OR lists or sessions for Public Patients.
- (iii) The number of OR lists or sessions allocated to the VMO can be varied at any time with the agreement of the parties.

(2) Procedural Fee for Service or Sessional service contracts of up to 7 years duration.

(a) Setting of workload.

Step 1 The Territory will calculate the average number of operating room (OR) lists or sessions worked annually by the VMO during the previous 3 years, if relevant.

Step 2 The Territory will give consideration to:

- a. The VMO's future availability;
- b. The VMO's past utilisation of their allocated OR lists or sessions for Public Patients;
- c. Any changes in the number of Specialists operating within the specialty;
- d. Where applicable, the total waiting list for the specialty and the proportion of the total specialty waiting list represented by the VMO's individual waiting list; and/or
- e. Any changes in medical or dental technology that will impact on the requirement for OR or sessional time during the next year.

Step 3 Following consideration of the above factors the Territory will offer the VMO a commitment on the number of OR lists or sessions that will be made available to the VMO in the next 12 months.

Step 4 Once accepted by the VMO the number of OR lists or sessions made available to the VMO can only be varied as detailed in 2(b) below.

(b) Variation to workload

(i) The VMO will give the Territory 6 months notice (or a lesser period if agreed) of their intention to reduce their allocation of OR list or sessions.

(ii) The Territory will give the VMO 6 months notice (or a lesser period if agreed) of its intention to reduce the number of OR lists or sessions allocated to the VMO but may only do so if the reduction is directly related to:

1. the VMO's future availability;
2. the VMO's past utilisation of their allocated OR Lists or sessions for Public Patients;
3. any changes in the number of Specialists operating within the specialty;
4. where applicable, the total waiting list for the specialty and the proportion of the total specialty waiting list represented by the VMO's individual waiting list; and/or
5. any changes in medical or dental technology that has or will impact on the requirement for OR or sessional time during the year.

(iii) The number of OR lists or sessions allocated to the VMO can be varied at any time with the agreement of the parties.

(3) Non-procedural Fee for Service service contracts.

- (a) The Territory and VMO acknowledge that non-procedural FFS service contracts are inherently variable, on a month-to-month basis.
- (b) The VMO is paid for the individual Services provided and billed against the MBS.
- (c) All claims made by the VMO will be against an appropriate MBS item number and be in accordance with the principles and rules specified within the MBS or by Medicare. The Territory will specify any additional principles or rules required by the Territory in writing.

(4) Non-Procedural Sessional service contracts.

- (a) The Territory and VMO acknowledge that Non-Procedural Sessional service contracts are inherently variable, on a month-to-month basis.
- (b) The VMO will be paid for the sessional hours claimed in accordance with **clause 6** of the service contract.

Insert (1), (2), (3) or (4) above as required.

SCHEDULE 3 – SPECIAL CONDITIONS

Special Conditions under this Schedule may include conditions appropriate to the special circumstances of a VMO's engagement, including, but not limited to:

- any special conditions required by The Little Company of Mary Health Services for VMOs with visiting rights at Calvary Public Hospital or Clare Holland House.
- special arrangements for the engagement of a locum tenens
- special arrangements in cases where a VMO conducts his or her practice as a doctor or dentist through a practice corporation
- management hours and management duties agreed to between the Territory and the VMO
- transitional arrangements in cases where a VMO is or has been entitled to conditions under another service contract or like agreement
- special provisions affecting the termination of one service contract and the commencement of a replacement service contract.

SCHEDULE 4 – CONDITIONS OF LIABILITY COVER

AUSTRALIAN CAPITAL TERRITORY

CONDITIONS OF LIABILITY COVER

FOR

VISITING MEDICAL OFFICERS

November 2006

VISITING MEDICAL OFFICER CONDITIONS OF LIABILITY COVER

The definition of “Public Patient” set out in **clause 1.1** of a service contract does not apply to this **Schedule 4**.

1. Indemnity

1.1 In accordance with **clause 5.1** of a service contract 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 a service contract.

2. Liability Coverage

2.1 Subject to **clause 2.4** and **clause 4** of these Conditions, the Territory must indemnify the VMO (and if a service contract is with the VMO’s 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 a service contract 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 must indemnify the VMO (and if a service contract is with the VMO’s 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 10 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 which ever 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 a service contract.

Management and conduct

- 4.2 The management and conduct of a Claim to be indemnified under a service contract 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 a service contract 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; and
 - (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 a service contract 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 a service contract and the VMO must 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 a service 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 a service contract but the Territory holds information in respect of the incident giving rise to the Claim the Territory must, 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 must cease to be provided, in accordance with the terms and conditions of a service contract, 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 a service contract in respect of a Claim.
- 5.2 A review panel convened by the Chief Executive must 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 a service contract in respect of the relevant Claim, the decision will be notified to the VMO and the Chief Executive. The Territory must immediately provide or continue to provide indemnity for a particular Claim and must 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 a service contract, the Chief Executive must 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 a service contract.

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 a service contract to ACTIA includes any officer or employee of the ACT Government involved in the investigation, management or conduct of Claims indemnified under a service contract;

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.

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 a service contract after the commencement date of a service contract and ending on the date of expiration or termination of a service contract.
- (2) If no such indemnity is in effect, the period commencing on the commencement date of a service contract and ending on the date of expiration or termination of a service contract.

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; or
- (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 a service contract;

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.