

Australian Capital Territory

Health (Visiting Medical Officer Core Conditions) Determination 2016

Notifiable Instrument NI2016—502

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 2016*.

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 Visiting Medical Officer service contracts.

4 Revocation

NI2013-381 is revoked.

Simon Corbell MLA
Minister for Health

5 September 2016

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Visiting Medical Officers – Core Conditions

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1. Interpretation

1.1 Definitions

The following definitions apply in this Agreement, unless the context otherwise requires:

ACT Health / Calvary Health Care Policy & Procedure

means the policies and procedures specified in **Schedule 5**, as updated from time to time and such other policies and procedures that are introduced and published on the ACT Health internet site [insert web address] or the Calvary Health Care internet site [insert web address] and advised to the VMO from time to time (such dissemination to clearly identify they are an ACT Health policy or procedure for the purposes of this Agreement).

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;

such attendance being either:

- in response to a request from a salaried medical officer, VMO or executive authorised by the Director-General; or
- as otherwise provided for by relevant Clinical Policy & Procedures where the VMO reasonably considers their attendance to be clinically necessary.

Neither a Ward Round or an agreed additional session constitutes a call-back.

A Call-back relates to an attendance at a Health Facility regardless of the number of patients seen during that attendance.

Calvary Health Care

means the public division of Calvary Health Care ACT operated by Little Company of Mary **Health Care**.

Clinical Policy & Procedure

means those policies and procedures relating to the provision of Health Services, updated from time to time and such other policies and procedures that are introduced and published on the ACT Health internet site [insert web address] or the Calvary Health Care internet site [insert web address], including but not limited to the matters referred to in clause 15.2 of this Agreement.

Combined FFS & Sessional Contract

means a Service Contract where the VMO is engaged to work on both a Fee for Service and Sessional basis. A Combined FFS & Sessional Contract has a primary nature. Where the major part of the Health Services provided by the VMO is on a Fee for Service basis, all Health Services rendered by the VMO will be paid at the Fee for Service rate save for the Services expressly

stated to be Sessional (such as outpatient clinics). The reverse applies where the major part of the Health Services is provided by the VMO on a Sessional basis.

Compensable Patient	means a person who has elected to recover from any other person, by way of compensation or damages (including payment in settlement of a claim for compensation or damages), the cost of the service provided in respect of the injury, illness or disease for which he/she received care and treatment. (ie. workers compensation, MVA third party personal claim, personal injury claim etc).
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 this Agreement, 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).
Correct Claim	means a claim for payment that is in accordance with sub-clause 6.5 of this Agreement.
Delegate	means a person for the time being occupying a position to which the Director-General has delegated a power under this Agreement.
Dental Board	means the Dental Board of Australia.
Dental Practitioner	means a person registered or deemed to be registered as a dental practitioner under the <i>Health Practitioner Regulation National Law (ACT) Act 2010</i> .
Dental Specialist	means a person registered or deemed to be registered as a dental specialist under the <i>Health Practitioner Regulation National Law (ACT) Act 2010</i> .
Department of Veterans' Affairs (DVA) Patient	is a patient who is an entitled veteran, war widow or widower under the Repatriation Private Patient Scheme.

Director-General	means, except in Schedule 4 , and as the context requires: (1) the Director-General, ACT Health; or (2) the Chief Executive Officer of Calvary Health Care ACT.
DVA Fee schedule	means the Department of Veteran Affairs (DVA) Fee schedule issued by the Commonwealth Department of Veteran Affairs. Unless a particular edition of the DVA Fee schedule is referenced, a reference to the DVA Fee schedule means the most recent issue of the DVA Fee schedule. A reference to the DVA Fee schedule also includes reference to the rules for the application and restriction of benefits payable under the DVA Fee schedule (in the relevant DVA Fee schedule) and to any statement of interpretation of those rules by the Commonwealth Department of Veteran Affairs.
Fee for Service (FFS) Contract	means a Service Contract where the Contract Price for the whole or the majority of the Health Services provided by the VMO is calculated on the basis of specified fees for specified Health Services.
Healthcare Agreement	means the National Healthcare 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	means The Canberra Hospital or the public hospital run by Calvary Health Care or any other facility specified in section 6 the <i>Health Act 1993</i> (ACT), provided such facility has been approved by the Territory as a Health Facility for the provision of Services under this Agreement. At the date of this Agreement, the following additional facilities have been approved: <ul style="list-style-type: none"> • Calvary John James Hospital • Calvary Bruce Private Hospital • Barton Private Hospital • National Capital Private Hospital • Queanbeyan District Hospital • Capital Day Surgical Centre • Canberra Private Hospital
Health Service(s)	has the same meaning as in section 5 the <i>Health Act 1993</i> (ACT).
Ineligible Patient	means any non-Australian resident whose country is not part of a reciprocal agreement with Australia for the provision of medical or Health Services, or who is otherwise not eligible to receive publicly funded health care.

Medical Board	means the Medical Board of Australia.
Medical Practitioner	means a person registered or deemed to be registered as a medical practitioner under the <i>Health Practitioner Regulation National Law (ACT) Act 2010</i> .
Medicare Benefits Schedule, or MBS	means the Medicare Benefits Schedule issued by the Commonwealth Department of Health and Ageing. Unless a particular edition of the MBS is expressly stated, a reference to the MBS means the most recent issue of the July MBS. A reference to the MBS also includes reference to the rules for the application and restriction of benefits payable under the MBS (in the relevant MBS) and to any statement of interpretation of those rules by the Commonwealth Department of Human Services which administers the MBS on behalf of Medicare Australia.
On-call	means rostered by the Territory to be subject to and available for Call-back. Being On-call includes an obligation to take a telephone call at the time it is made, and if that is not practicable, to respond to the call as soon as the VMO has opportunity to break the activity they are performing to return the call (usually within 15 minutes). An SMS message may be used as an alternative means of communication if the VMO cannot be first contacted by telephone call. Additional attempts to contact will be made if there is no acknowledgement. Being On-call also includes an obligation to attend the Health Facility within a response time appropriate to the clinical circumstances and usually within 30 minutes of being Called-back.
other VMOs	means another VMO who has or have a current 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 (ACT)</i> .
Private Patient	means a patient who has elected to be treated privately including to be charged for a Health Service rendered in a Health Facility and who has not revoked that election, and who has been accepted by the VMO as a Private Patient of the VMO.
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 this agreement 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. A Public Patient does not include a person who is a Compensable Patient, a Department of Veterans Affairs Patient, or a Private Patient.

Scope of Clinical Practice	has the same meaning as in section 54 of the <i>Health Act 1993 (ACT)</i> .
Service Contract	has the same meaning as in section 100 of the <i>Health Act 1993 (ACT)</i>
Services	means the Health Services and other services described in Schedule 2 , in addition to the obligations contained in this Agreement.
Sessional Contract	means a Service Contract where the VMO is primarily engaged to work on an hourly or sessional basis, and the Contract Price for the whole, or a major part, of the Services provided by the VMO is calculated by reference to an hourly fee and the number of hours the VMO works.
Session	A scheduled period of work four (4) hours in duration.
Special Condition	if any, mean a special condition agreed by the parties to this Agreement 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 37.2 .
Territory:	means: <ol 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 (Cwlth)</i>.
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.
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 (ACT)</i> .

Ward Round

for the purposes of this Agreement, a Ward Round is a planned/scheduled clinical activity carried out by a VMO, either alone or with other medical practitioners and/or nursing and allied health staff. A Ward Round may involve the attendance on one or more patients under the care of the VMO or on patients who are under the primary care of another medical practitioner.

- Attendances on a Private Patient are not included in a Ward Round.
- Attendances on Public Patients during a Call-back do not constitute a Ward Round.
- Attendances on Public Patients which are covered in the post-operative aftercare provisions of the MBS do not constitute a Ward Round.

1.2 General

In this Agreement, 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 this Agreement 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 this Agreement 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, as well as to Compensable patients, DVA Patients and Ineligible patients.
- 2.2 The Territory engages the VMO to perform the Services on the terms set out in this Agreement.
- 2.3 The VMO is engaged to provide the Services to patients within their Scope of Clinical Practice as granted by the Territory. The VMO’s scope of clinical practice will be reviewed in accordance with the provisions of the Health Act. The VMO is responsible for the medical or dental care and treatment they administer in respect of patients admitted under their care.
- 2.4 The VMO is responsible for the maintenance of their professional standards in accordance with their Scope of Clinical Practice granted by the Territory.

2.5 The VMO must comply with all relevant Clinical Policy & Procedures, all ACT Health / Calvary Health Care Policy & Procedures and all reasonable administrative (non-clinical) directions given by the Territory in relation to the Services.

2.6 Categories of VMO.

- (1) A VMO may be engaged in any speciality approved by the Australian Health Workforce Ministerial Council.

See: <http://www.ahpra.gov.au/Registration/Registers-of-Practitioners/Specialties-and-Specialty-Fields.aspx>

- (2) A VMO may otherwise be engaged as a breast-screen radiologist.

2.7 Treatment of Private Patients

- (1) During the period of this Agreement and within the limits of available resources, the Territory may make available for use of the VMO, facilities for the care of their 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 comply with ACT Health / Calvary Health Care Policy & Procedures and cooperate with the Territory to assist the efficient operation of the Territory's admission and referral processes.
- (4) Nothing in this **clause 2.7** places an obligation on the VMO to accept a patient as a Private Patient or constrains the VMO in determining any fee for their treatment of a Private Patient.

2.8 A Visiting Medical Officer required by the Director-General or Delegate to undertake additional responsibilities specifically associated with the management of a Unit, department or service (as set out from time to time in the duty statement and associated documents for a head of a Unit) shall be paid the allowance set out in **Item 3(10) 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 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 including allocation of duties, approval of rosters, implementation of performance agreements in respect of supervised staff and monitoring of hours worked;
- (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 and implementation.

2.9 The VMO and the Director-General or Delegate will consult and agree in writing per **clause 2.10** upon the number of hours required for the performance of the additional responsibilities, as well as the specifics of those additional responsibilities. The hourly rate of management allowance is the relevant session hourly rate for the VMO's category of VMO. The hours agreed for the additional responsibilities must be sufficient to enable the VMO to perform those responsibilities to the standard required.

- 2.10 The agreement of the parties will be effected by revision to **Schedule 2** of this Agreement that will include:
- (1) The 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 specifics of the additional responsibilities.
 - (4) The agreed manner of recording attendance in relation to the performance of the role.
- 2.11 The parties will also agree on appropriate revisions or additions to existing Key Performance Indicators (KPIs) set down in accordance with **clause 17**.
- 2.12 The VMOs performance in their role as head of a Unit, department or service 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 17** of this Agreement, and any change to the responsibilities or the number of required hours agreed during the Annual Review will be effected by further revision to **Schedule 2** of this Agreement.

3. No Authority to Bind the Territory

- 3.1 Nothing in this Agreement 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 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.
- 4.2 In compliance with section 101 of the *Health Act 1993 (ACT)*, this Agreement cannot be extended by written agreement of the parties in circumstances where it differs from the Core Conditions that apply to a Service Contract as at the date it is proposed that this Agreement be so extended.

5. Indemnity and Insurance

- 5.1 The Territory must indemnify the VMO in accordance with the Conditions of Liability Cover specified in **Schedule 4**.
- 5.2 If the VMO is treating patients in a Health Facility who are not Public Patients, the VMO must effect and keep current a professional indemnity insurance policy covering the VMO for the treatment of patients who are not Public Patients for a sum not less than \$20,000,000 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 the Conditions of Liability Cover specified in **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 The VMO will render a claim for payment to the Territory on a monthly basis for Services performed in that month. Each claim for payment is to be a Correct Claim and is to be rendered no later than the 28th day of the following month for Services performed in the prior month.
- 6.2 The Territory will pay the VMO the Contract Price within 14 days following its receipt of a Correct Claim.
- 6.3 Where a claim (or claims) in a claim for payment are not Correct Claims, the Territory will pay the VMO for those portions of the claim for payment which it is satisfied are correct and return a copy of the claim for payment to the VMO, including identifying the claim(s) that have been rejected and the basis for rejection. Where the VMO is able to provide additional information or detail to assist in further consideration of the rejected claim(s), this must be submitted with the following month's claim for payment.
- (1) If a claim is rejected a second time, it cannot be further resubmitted without the prior agreement of the Territory. The VMO agrees the Territory is under no obligation to accept such further resubmissions and that it may do so at its sole discretion. For the avoidance of doubt, **Clause 21** still applies.
- 6.4 Where the VMO renders a claim for payment:
- (1) after the 28th day of the following month (**a late claim**); and or
 - (2) which includes claims for Services performed in months earlier than the prior month (**a past services component**); and
 - (3) the claim for payment is otherwise a Correct Claim, the Territory will pay the late claim or the past services component of a Correct Claim, within a reasonable period of time (but not more than 30 days after the receipt of the Correct Claim) allowing for the administrative difficulties of the Territory occasioned by the VMO rendering a late claim (or claim for payment which includes a past services component).
- 6.5 Where a claim for payment is greater than 12 months late or the past services component is greater than 12 months past, the VMO agrees the Territory has no obligation to pay such late claim or past service component. The Territory may, in its absolute discretion and in circumstances where the VMO can indicate extenuating circumstances satisfactory to the Territory, determine to accept such late claim or past services component after a period of greater than 12 months, and pay it within a reasonable period of time. The VMO acknowledges that any agreement by the Territory to accept such late claim or past services component from the VMO, or any other VMO, does not oblige the Territory to accept any subsequent late claim or past services component.
- 6.6 A claim for payment is correctly rendered (**Correct Claim**) if:
- (1) a goods and services tax ("GST") is payable by virtue of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) ("GST Act") in respect of the provision of the Services, the VMO has rendered the claim for payment to

the Territory as a tax invoice as required by the GST Act (unless the VMO, as supplier, has entered into an agreement with the Territory, as recipient, enabling the Territory to issue a Recipient Created Tax Invoice when it makes payment);

- (2) the amount in the claim for payment is in respect of Services which have been performed in accordance with this Agreement and recorded in accordance with **clause 10.1**;
- (3) the amount in the claim for payment is correctly calculated in accordance with the Agreement including by reference to the MBS and any relevant Clinical Policy & Procedure or any relevant ACT Health / Calvary Health Care Policy & Procedure;
- (4) the claim for payment sets out details of the Services provided, is accompanied by the record specified in **clause 6.7** and sets out, or is accompanied by, any other details, reports or records required by this Agreement; and
- (5) the claim for payment 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 claims for payment.

6.7 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 (which form may include a requirement for electronic lodgement). The record will specify in respect of the Services:

- (1) the date, full name and/or unit record number (URN) of the patient treated by the VMO and the nature of the Services;
- (2) times of commencement and conclusion of patient care sessions, which are to accurately match the patient's medical or dental records and the operation record (including 'supervising surgeon' and 'supervisor present in operating suite' fields where claiming for operative or invasive procedures performed by Registrars);
- (3) particulars of the VMO's On-call periods including the dates and time periods specified in the roster;
- (4) hours of attendance at approved meetings for which payment has been agreed, including sufficient particulars of the meeting attended such that the meeting can be identified and attendance corroborated;
- (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 (or when not requested, the basis for the VMO reasonably considering their attendance to be clinically necessary), and appropriate entry by the VMO in the medical or dental record of the relevant patient(s) attended during the Call-back period, including any treatment(s); and
- (7) particulars of the VMO's leave of absence.

6.8 If insufficient information to satisfy the requirements of **clause 6.7** is provided, then **clause 6.3** will apply and the Territory will return the claim for payment and request the VMO provide the missing information. The VMO will provide the additional

information and re-submit the claim for payment (or revised claim for payment) within the time period specified by the Territory.

- 6.9 A failure to comply with **clause 6.7** and **clause 6.8** is a breach of this Agreement.
- 6.10 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, in writing, 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 a total of 6 weeks do not count toward the 25% figure. The Territory will not cancel more than 10% of the VMO's annual workload without the agreement of the VMO. The VMO acknowledges that cancellation of the VMO's workload under this clause is distinct from annual review and variation of the VMO's workload in accordance with **Schedule 2**.
- (1) Where a session is cancelled in accordance with this clause, the cancelled session will continue to count towards any calculation of the number of contracted sessions, provided that any such calculations are within the contractual limits.
- 6.11 The VMO must be notified of any cancelled sessions by letter, facsimile, SMS, telephone or email (to an email address provided by the VMO) as specified in **Item 1 of Schedule 1**.
- 6.12 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 includes 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.

- 6.13 If a session is cancelled by the Territory, the VMO is not required to continue to be available for that session.
- 6.14 The VMO will not be paid for any absence, including approved leave .
- 6.15 In respect to Ineligible Patients:
- (1) the VMO will be paid for Health Services provided to an Ineligible Patient who the VMO is required, by the Territory, to treat as a Public Patient in a public Health Facility under this Agreement.
- (2) In return for payment in accordance with **6.15(1)**, the VMO agrees to assign to ACT Health their private practice right of recovery of payment for those Health Services rendered by the VMO to the Ineligible Patient.
- (3) The assignment in **6.15(2)** only applies to those Health Services provided in accordance with **6.15(1)**.

- 6.16 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, after consultation with the VMO, 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.
- 6.17 The VMO is responsible for any GST liability and reporting under the GST Act.
- 6.18 The Territory will make superannuation contributions on behalf of the VMO in accordance with the *Superannuation Guarantee Charge Act 1992* (Cth) and the *Superannuation Guarantee (Administration) Act 1992* (Cth), to the maximum super contribution base for the applicable quarter, not on all earnings in the applicable quarter.
- 6.19 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 an account in a superannuation fund of which 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 6.4, 6.6 and 6.7** above; and
- (b) The Specified Personnel must consent to the contributions being made; and
- (c) The Specified Personnel must nominate an account in a superannuation fund which:
- (i) complies with the regulatory provisions defined in the *Superannuation Industry (Supervision) Act 1993* (Cth); 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.
- 6.20 Subject to any relevant Commonwealth legislation and any ruling or determination by the Commissioner of Taxation, a VMO, with the consent of the Territory, may elect to sacrifice relevant payments made to the VMO.

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 must not be claimed and will not be paid for periods that the VMO is on leave of absence, where the VMO has cancelled under **clause 7.4** or is 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 (determined by either the number of hours rostered On-call or the frequency of being rostered On-call). 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 they will not be available for a rostered On-call session.
 - (2) The VMO is to assist the Territory securing another suitable VMO or staff specialist to cover the VMO's rostered On-call period.
 - (3) The VMO is unable to cancel their On-call roster less than 14 days prior to the rostered period, save for circumstances of personal illness or injury or family circumstance, or where the VMO has arranged a substitute VMO or staff specialist, who is suitable to the Territory, to be On-call.
 - (4) If the VMO is rostered On-call but is unable to fulfil the obligation because of personal illness or injury, or family circumstance, the VMO will promptly notify the Territory of their unavailability and its likely duration, and where possible, assist the Territory securing another suitable VMO or staff specialist to cover the VMO's rostered On-call period.

8. Call-back

8.1 The Territory will pay the VMO the Call-back amount calculated in accordance with **[Item 3(1) Schedule 1 FOR FFS OR Item 3(6) Schedule 1 FOR SESSIONAL OR WHERE A COMBINED FFS AND SESSIONAL CONTRACT Item 3(1) Schedule 1 OR Item 3(6) Schedule 1 AS APPLICABLE]**. For sessional or where a combined FFS & sessional contract that is primarily sessional contract, the Call-back amount is paid to the VMO in relation to all patients the VMO attends upon during the period of the Call-back and the payment covers all work undertaken for the duration of the Call-back, irrespective of the number of patients attended upon.

8.2 When the VMO is called-back by a salaried medical officer, VMO or executive authorised by the Director-General, the VMO is required to attend the relevant Health Facility.

8.3 Sessions cancelled after overnight Call-back

- (1) If the VMO finds it necessary to cancel a morning session owing to fatigue resulting from being called-back to a Health Facility for a total of four hours or more between the hours of 10pm and 8am, or if the call-back 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 category of VMO, provided that the VMO does not treat other patients for that session at any public or private Health Facility.
- (3) Where a session is cancelled in accordance with this clause, the cancelled session will continue to count towards any calculation of the number of contracted sessions.

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. Patient Records

- 10.1 The VMO will complete on the relevant Territory patient records a record of all Health Services provided by the VMO to each patient, within 24 hours after the Health 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 Health Service and other clinical records including all patient notes, medical and dental records, correspondence, X-Ray and other clinical or diagnostic materials whether written or otherwise are owned by the Territory.
- 10.4 The VMO acknowledges that Health Service and other 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 1997* (ACT), and consistent with the Health Privacy Principles therein.
- 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 at the session rate applicable to the VMO's category where the Director-General 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 Director-General or Delegate, meetings not held on Territory funded premises will not be approved as paid meetings.

- 11.4 The VMO will be paid for attending an approved meeting where evidence of attendance at the approved meeting is included with the claim for payment in accordance with **clause 6.7(4)**.

12. Registration

The VMO must notify the Territory immediately in writing if there is any change to the VMO's registration status. Change to registration status includes, but is not limited to, conditions, undertakings and reprimands. The VMO's notification to the Territory must include a copy of the correspondence the VMO received from Australian Health Practitioner Regulation Agency (**AHPRA**) and or the clinical college(s) responsible for the discipline in which the VMO practises.

13. Attendance

- 13.1 The VMO will:

- (1) participate in an On-call roster that was 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, such agreement not to be unreasonably withheld.

- 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 patients who are not Public Patients, such detail to be reflected in the record of services submitted for each calendar month in accordance with **clause 6.7**.

- 13.3 If the VMO is rostered On-call, they 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. Any alternate arrangements for appropriate response time, whether less than or greater than 30 minutes, are to be determined in consultation with the head of the Unit.

- 13.4 A VMO may request an ongoing reduction in their participation in the On-call roster. The Director-General 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 revising **Schedule 2** to this Agreement. 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 at the respective Health Facility, unless otherwise agreed between the Territory and the VMO.

14. Teaching

- 14.1 The VMO will participate in the teaching and training of postgraduate medical and dental officers, such teaching and training being an essential and integral part of the provision of the Services under this Agreement. Payment for formal teaching as agreed in advance between the VMO and the Director-General or Delegate will be

paid. Payment will be made at the base sessional rate irrespective of the scheduled time for the teaching session. 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 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 Deputy Director-General or Executive Director must approve the request; and
- (2) The VMO, the training institution and the relevant Deputy Director-General 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 Health Service required under this Agreement within the range of their approved Scope of Clinical Practice, qualifications and experience and the standards accepted by the clinical college(s) responsible for the discipline in which the VMO practises, and in accordance with Clinical Policy & Procedures and all relevant ACT Health / Calvary Health Care Policy & Procedures.

15.2 Without limiting **clause 15.1** the VMO will:

- (1) comply with ACT Health / Calvary Health Care Policy & Procedures and the Clinical Policy & Procedures of the relevant Health Facility as amended from time to time, including but not limited to:
 - (a) commencement times of theatre sessions;
 - (b) work health and safety (including anti-discrimination, victimisation and bullying and harassment as well as those with respect to professional, courteous and collegiate behaviours and interactions with colleagues and employees or contractors of the Territory);
 - (c) risk management;
 - (d) pre-, intra- and post-operative care;
 - (e) assigning clinical priority or category to patients (including, where applicable, re-assessment of clinical priority or category prior to the VMO taking leave of absence);
 - (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, peer review and credentialing policies, procedures and requirements of:
 - (a) the relevant Health Facility (including Clinical Policy & Procedures); and
 - (b) the clinical college(s) responsible for the discipline in which the VMO practises;
- (3) attend scheduled meetings as directed by the Territory, with payment being made for attendance at such meetings approved in advance in accordance with **clause 11**;
- (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 approved in advance 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 approved in advance 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 Health Services and other clinical services and the arrangement of agreed times for the conduct of organised Ward Rounds;
- (7) ensure completion of patient records and medical information in accordance with **clause 10**;
- (8) facilitate communications between medical, dental, nursing, allied health and other persons employed or engaged by the Territory, including conducting such communications in a professional, courteous and collegiate manner;
- (9) contribute to efficient and cost effective management of surgical lists, operating sessions and patient throughput, including allocation of operating theatre sessions, on-time commencement and completion of scheduled operating theatre sessions, and regular assignment and re-assignment of clinical priority or category to patients reflective of the patients clinical need;
- (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 AHPRA and or the Medical Board or Dental Board from time to time, including the ethical standards with respect to professional, courteous and collegiate behaviours towards medical practitioner peers and colleagues, medical trainees and students, nursing staff, patients and Health Facility administrative staff;
- (12) where practicable and 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. Compliance with ACT Health / Calvary Health Care Policy & Procedures

- 16.1 For the purposes of this Agreement, where in a relevant Clinical Policy & Procedure or an ACT Health / Calvary Health Care Policy & Procedure there is a reference to an employee of ACT Health / Calvary Health Care, VMO will be taken to mean employee for the purpose of the relevant Clinical Policy & Procedure or ACT Health / Calvary Health Care Policy & Procedure.
- 16.2 The purpose of **clause 16.1** is for the avoidance of any ambiguity and to confirm that a VMO is subject to the same responsibilities, obligations and duties of ACT Health / Calvary Health Care employees as applicable when providing the Services at a Health Facility.

17. Annual Review

- 17.1 The purpose of an annual review is to review performance and to clearly establish workload and performance expectations of all parties for the following 12 months. This will provide a stronger basis for establishing the, and understanding of, the expectations of all parties in the following 12 months.
- 17.2 (1) The VMO will meet with the clinical head (however described) of their unit (or department or service), at least once each year to:
- (a) review the VMO's performance in relation to **clause 15, clause 16** and **Schedule 2**;
 - (b) review any issues the VMO has in regard to the Territory's performance in support of the VMO's Health Service practice; and
 - (c) agree on the goals, targets, key performance indicators (KPIs) and any variation to the work schedule for the next 12 month review period, the VMO's agreement not to be unreasonably withheld. If agreement is not reached, **clause 21** will apply.
- (2) If the VMO occupies the position of clinical head of their unit (or department or service), the review process referred to in **clause 17.2(1)** will be undertaken with the relevant Health Facility's senior medical or dental officer (however described) and the relevant Executive Director.
- 17.3 The Territory will be represented by the individuals designated in **clause 17.2(1)** and **clause 17.2(2)** or, if the designated individual is not available, by an individual of a higher rank within the Health Facility.
- 17.4 The Territory will make available at least two weeks prior to the review:
- (1) an agenda;
 - (2) data for discussion; and
 - (3) any other reference material to be used.

18. Absence

- 18.1 Provided the VMO has addressed patient needs and impact and otherwise complied with Clinical Policy & Procedure or ACT Health / Calvary Health Care Policy & Procedure as relevant to those needs, the VMO may take:

- (1) leave on public holidays (except where rostered to attend a Health Facility, including rostered as On-call);
 - (2) up to 12 weeks leave of absence each calendar year (or such other amount of leave as agreed in writing by the parties); and
 - (3) study and conference leave up to a maximum of 2 weeks per calendar year. This leave may be accumulated from year to year to a maximum of 4 weeks.
- 18.2 Leave, whether public holiday, study and conference leave, or leave of absence may be taken in combination at one time when agreed between the parties. The VMO is required to provide notice in writing to the Contact Officer of their proposed intention to take leave within the timeframes as follows, unless a lesser period is agreed by the Territory:
- (1) less than or equal to 6 weeks duration, then 28 days / 4 weeks notice;
 - (2) more than 6 weeks but less than or equal to 12 weeks duration, then 56 days / 8 weeks notice;
 - (3) more than 12 weeks duration, then 84 days / 12 weeks notice.
- 18.3 For the purpose of this clause, a week is the period of time a VMO would be otherwise on duty in a continuous 7 day period.
- 18.4 If the VMO is unable to provide the Services because of personal illness or injury, or family circumstance, the VMO will promptly notify the Territory of their unavailability and its likely duration and where possible assist the Territory securing suitable cover for the VMO for the duration of their absence.
- 18.5 Sessions cancelled at the instigation of the Territory will not form part of the period of absence referred to in **clause 18.1(2)**, unless agreed between the parties or where a session is cancelled as a result of the VMO's decision to take leave.
- 18.6 The VMO may recommend a locum tenens to provide the Services while the VMO is on approved leave of absence (**clause 18.1**) or absent for personal illness, injury or family circumstance (**clause 18.4**) provided that:
- (1) there is no other VMO who can undertake the Services;
 - (2) the locum tenens applies for engagement and Scope of Clinical Practice with the Territory and has the appropriate qualifications and experience to provide the Services;
 - (3) the engagement and Scope of Clinical Practice 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.
- 18.7 Prior to taking leave the VMO must provide evidence to the Contract Officer that the needs of all the VMOs patients have been considered and addressed by the VMO in consultation with the clinical head of their Unit or department or service, including compliance with Clinical Policy & Procedure or ACT Health / Calvary Health Care Policy & Procedure as relevant to those needs.

19. Termination

19.1 The VMO may terminate this Agreement by giving 3 months' notice, or a lesser period if agreed by the Territory, in writing of their intention to terminate.

19.2 The Territory may terminate this Agreement without notice or any payment 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 regularly fails to meet Call-back obligations as required under **clause 8.2 and 13.3** of this Agreement;
- (4) the VMO's Scope of Clinical Practice is revoked, noting that such an action may be appealed to the ACT Administrative Appeals Tribunal;
- (5) the VMO fails to meet the standards reasonably required by the Territory in respect of the VMO's continuing education (if applicable);
- (6) the VMO suffers an event which renders them incapable of performing the Services;
- (7) the VMO does not hold current unconditional registration under the *Health Practitioner Regulation National Law (ACT) Act 2010*, such as would prevent the VMO from providing the Health Services;
- (8) the clinical college responsible for the discipline in which the VMO practises determines that the VMO should not provide any of the Services, including Health Services (irrespective of the time frame stipulated by the clinical college);
- (9) the VMO is found by AHPRA and or 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;
- (10) the VMO is, or has been found by AHPRA and or the Medical Board or the Dental Board as applicable to be, negligent in the performance of the Services, including the Health Services;
- (11) the VMO is found by AHPRA and or the Medical Board or the Dental Board not to have conducted himself or herself in accordance with the ethical standards established by AHPRA and or the Medical Board or Dental Board from time to time;
- (12) the VMO seriously or persistently fails to comply with any relevant Clinical Policy and Procedures or any relevant ACT Health / Calvary Health Care Policy & Procedure;
- (13) the VMO fails to comply with a reasonable lawful direction of the Territory in relation to administrative (non-clinical) aspects of the Services; or
- (14) the VMO commits any serious or persistent breach of any of the provisions of this Agreement.
- (15) irrespective of the VMO's provision of the Services, the Territory (as represented by ACT Health or Calvary Health Care as applicable) forms a

reasonable view that the relationship between the VMO and the Territory has deteriorated to the extent that there is no mutual trust and confidence or good faith between the VMO and the Territory, rendering the continuation of the Agreement untenable.

- 19.3 Any failure by the VMO to perform the Services is a breach of this Agreement (save for circumstances of personal illness or injury or family circumstances or where the VMO provides a substitute suitable to the Territory (**clauses 7.4 and 18.4**) or cancellation after an overnight Call-back (**clause 8.3**).
- 19.4 If the Territory terminates this Agreement under **clause 19.2**, 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.
- 19.5 Nothing in **clause 19.2** 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 21**.
- 19.6 If this Agreement is terminated, the Territory will pay to the VMO any amount due and payable under the Agreement at the time of termination or as soon as reasonably practicable after that time, subject to the provisions in **clause 6.5**.

20. Suspension

- 20.1 The Territory may suspend the engagement of the VMO if the Territory has reasonable grounds to believe that:
- (1) the VMO has not conducted themselves in accordance with the current ethical standards established by the Medical Board or Dental Board from time to time;
 - (2) the VMO has not conducted themselves in accordance with the ACT Health / Calvary Health Care Policies and Procedures as specified in **clause 15.2 and Schedule 5**;
 - (3) the VMO has carried out a clinical or Health Service procedure not approved by the Territory;
 - (4) the VMO is not competent to practise medicine or meet the required standard of practice under the *Health Professionals Act 2004* (ACT);
 - (5) one or more of the grounds for termination set out in **clause 19.2** has occurred (without prejudice to the Territory's right to terminate this Agreement on the occurrence of that ground);
 - (6) the VMO has 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;

- (7) the VMO has 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
 - (8) the VMO, without the permission of the Territory, has persuaded or attempted to persuade or procure a patient to change their admission status.
- 20.2 If the Territory decides to suspend the VMO under **clause 20.1**, the Territory will give the VMO written notice of its decision to suspend the VMO including:
 - (1) grounds and reasons for the suspension;
 - (2) 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.
- 20.3 On receipt of the notice of suspension, the VMO will stop providing the Services.
- 20.4 The Territory will pay for Services provided by the VMO prior to the receipt by the VMO of the notice of suspension. These payments will be made by the Territory within the period specified in **clause 6.2** following receipt of a Correct Claim rendered in accordance with **clause 6.6**, subject to the provisions in **clause 6.5**.
- 20.5 From the time of the Territory giving notice of suspension to a VMO, provided the VMO has notified a dispute under **clause 21** and adheres to the timeframe therein, the Territory will pay to the VMO each month a payment averaged by reference to Correct Claims for Services performed in the previous 12 months, excluding weeks not worked, until the dispute is resolved under **clause 21**. The suspension will be without pay if a dispute under **clause 21** is not notified in accordance with **clause 20.6** or, once notified, the timeframe therein is not adhered to by the VMO.
- 20.6 Within 7 days of receipt of a notice of suspension, a VMO may give the Territory 7 days notice requesting that they wish the matter to be dealt with according to the dispute resolution procedures set out in **clause 21**. The VMO is to provide grounds and reasons, including particulars, with such notice of dispute. The Territory may not refuse a request that the suspension be addressed under the **clause 21** dispute resolution procedures if the notice of dispute articulates grounds and reasons, including particulars.
- 20.7 If the period of the VMO’s suspension equals the balance of the term of this Agreement and the grounds for suspension are upheld at the conclusion of the dispute resolution procedure under **clause 21**, the Territory may terminate this Agreement at the conclusion of the dispute resolution procedure by notifying the VMO in writing.
- 20.8 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 Scope of Clinical Practice 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. **Clauses 20.2 to clause 20.7** inclusive also apply to immediate suspensions taken in the interests of patient safety.

21. Dispute Resolution

- 21.1 If a difference or dispute arises under this Agreement (“the Dispute”), the parties will follow the procedures in this clause.

- (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 (unless the VMO is suspended in accordance with clause 20). No party will be prejudiced as to the final settlement by the continuance of work in accordance with this procedure.
- (2) The party instigating the Dispute will notify the basis of the Dispute in writing and include grounds and reasons for the Dispute, including particulars, and detail of their proposed outcome and resolutions of the matters in dispute.
- (3) The Dispute will first be discussed as informally and promptly as possible (within 7 days of notification of the Dispute), between the VMO and a person appointed by the Territory for this purpose who will be a person whose responsibilities include management of clinical and Health Services. The VMO may have a witness or representative at the meeting.
- (4) If the Dispute is not then resolved, the respondent party will within 7 days provide a written response to the matters in Dispute, including particulars, and detail their proposed outcome and resolution of the matters in Dispute.
- (5) Within 7 days the instigating party is to consider the respondent party's response and the parties are to meet to formally discuss the matters in Dispute and endeavour to resolve the Dispute.
- (6) If the Dispute has not been resolved pursuant to **clause 21.1 (3)** within 28 days of the notice of the Dispute, then the parties must undertake a mediation and/or arbitration process. The mediator/arbitrator will be an independent mediator/arbitrator who is appropriately skilled and knowledgeable in the relevant area and who is agreed by the parties or, failing agreement, nominated by the chairperson of the Institute of Arbitrators and Mediators Australia, ACT Chapter. Either party can end the mediation process if it becomes unduly long or if it is apparent and clear to either party that the dispute will not be resolved through mediation. The cost of the mediator/arbitrator will be borne by the Territory. Each party will otherwise bear their own costs.
- (7) The 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.

21.2 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) a party will be entitled to ask for and receive reasons for the decision, opinion, view, act or omission (as the case may be) of the other party (including the individual or individuals representing the Territory); and
- (3) each of the parties may be represented by an agent at any stage.

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

21.4 Nothing in this **clause 21** will prejudice the rights of either party to institute proceedings to enforce this Agreement or to seek injunctive or urgent declaratory relief in respect of any Dispute.

22. Territory Facilities and Equipment

- 22.1 The Territory must provide at a Health Facility or other Territory premise such facilities and equipment and timely access to them, so that the VMO can maintain a standard of best practice as appropriate for the provision of the Services.
- 22.2 Without limiting **clause 22.1** the Territory will provide at a Health Facility such 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 provide the Services and perform their obligations under this Agreement.
- 22.3 The VMO will, when using the Health Facility or other Territory premises (including during the provision of the Services) comply with ACT HealthACT Health / Calvary Health Care Policy & Procedures, including those on security and workplace regulations in effect at the Health Facility or premises as notified by the Territory.

23. Public Patients

- 23.1 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 their admission status.

24. Contract Material

- 24.1 Title to, and ownership of any intellectual property rights (including copyright) in all Contract Material will vest upon its creation in the Territory.
- 24.2 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.
- 24.3 For the purpose of **clause 24.2**, use (including used) includes supply, reproduce, publish, perform, communicate, adapt and copy.
- 24.4 On the expiration or earlier termination of this Agreement, the VMO will deliver to the Territory all Contract Material.

25. Territory Material and VMO's Material

- 25.1 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.
- 25.2 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.

25.3 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.

26. Non-Disclosure of Contract Information

26.1 For the purposes of this Agreement "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 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.

26.2 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.

26.3 The VMO will:

- (1) use Contract Information held in connection with this 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 1997* (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 26.2**, 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 26** except to the extent that any waiver, acquiescence, act or omission of the Territory caused or contributed to that breach, claim or proceeding.

26.4 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 this **clause 26**.

27. Conflict of Interest

27.1 The VMO:

- (1) warrants that, at the date of entering into this Agreement, no actual or perceived conflict of interest exists or is likely to arise in the performance of the Services and of the VMO's other obligations under this Agreement; and
- (2) must, if a actual or perceived conflict of interest, 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.

27.2 Nothing in this Agreement will affect the VMO's right to private practice outside a Health Facility operated by or on behalf of the Territory.

28. No Assignment or Subcontracting

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

29. Entire Agreement, Variation and No Waiver

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

29.2 This Agreement may be revised only by the written agreement of the parties prior to the expiration of this Agreement, and any revision is only to those parts of this Agreement allowed to be revised, consistent with section 101 of the *Health Act 1993 (ACT)*.

29.3 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.

30. Notices

30.1 Any notice, including any other communication, required to be given or sent to either party under this Agreement must be in writing and given to the relevant Contract Officer at the address and contact details specified in **Schedule 1, Item 1**. 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;
- (4) if sent by electronic mail or SMS, on the expiration of two business days after the date on which it was successfully sent; or

- (5) if by telephone, at the time the call was successfully made to made the VMO or, if a recorded message is left, on the expiration of two business days after the date on which it was left.

31. Severability

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

32. Applicable Law

- 32.1 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 non-exclusive jurisdiction of the courts of the Territory.
- 32.2 The VMO will ensure that the Services performed under this Agreement comply with the laws from time to time in force in the Territory.

33. Special Conditions

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

34. Survival of Clauses

- 34.1 **Clauses 5.1, 26.3 and 26.4** will survive the expiration or earlier termination of this Agreement.

35. Safe Hours

- 35.1 In respect to work undertaken by the VMO on behalf of the Territory, the Territory will arrange safe working hours and conditions and complete after-hours medical, nursing and ancillary staff rosters.

36. Research

- 36.1 The Territory will pay the VMO at the sessional rate for their category of VMO for agreed hours spent in formal research that has been undertaken with the prior written agreement of the Director-General or Delegate.
- 36.2 The VMO will seek funding for their time in any research proposal submitted to the Territory or to an external body or agency.

37. VMO's personnel

- 37.1 Suitability of personnel

The VMO, whether engaged directly or through the VMO's Practice Corporation, 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 VMO or the VMO's

Practice Corporation for the performance of the Services.

37.2 Specified Personnel

The VMO, where engaged through the VMO's Practice Corporation must:

- (1) ensure that the Services are performed by the Specified Personnel of the VMO's Practice Corporation (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.

37.3 Policies and Procedures

The VMO, whether engaged directly or through the VMO's Practice Corporation, if their personnel or the Specified Personnel the VMO's Practice Corporation are using the Territory's premises or Health Facility to perform the Services, must ensure that the VMO, their personnel or the Specified Personnel the VMO's Practice Corporation comply with all Clinical Policies & Procedures and ACT Health / Calvary Health Care Policy & Procedures, including those on security and workplace regulation in effect at or regarding the premises or Health Facility, as notified or directed by the Territory.

37.4 Employer and industrial relations obligations

The VMO, whether engaged directly or through the VMO's Practice Corporation, must, if required by the Territory, provide verification of the VMO's compliance, or the VMO's Practice Corporation's compliance with employer and industrial relations obligations their employees for the purpose of the *Government Procurement Act 2001* (ACT).

SCHEDULE 1 – CONTRACT DETAILS

Item 1. Contract Officers
See clauses 1.1 and 30

For the [insert **Territory** where it is TCH or TCH & Calvary Public; insert **Calvary Public Hospital** where it is Calvary Public only]:

[Insert name of Contract Officer]
[Insert contact details –
Address
Facsimile
Email address]
Email Address for billing: [Insert as appropriate]
Canberra Hospital: vmopaymentsofficer@ act.gov.au
Calvary Public Hospital: [insert email address]

For the VMO:

[Insert name of VMO] [and insert name of VMO Practice Corporation where VMO is engaged through their practice corporation]
[Insert contact details –
Address
Facsimile
Email address
Telephone number]

NOTE: Any change to contact details must be notified within 30 days of the change.

Preferred contact method for correspondence and notifications
[NOTE: Default method of communication will be email if not specified]

Item 2. Term
See clause 4

From [*the date this Agreement was executed by the VMO and returned to Health*]

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 125.06% of the fee specified in the July 2016 MBS. The Base Fee for Service Rate will be adjusted with effect from 1 July 2017 and from 1 July in each subsequent year to set a new percentage figure relative to the most recently indexed MBS rate (the outcome to be equivalent to 125.06% of the July 2016 MBS, plus the cumulative effect of indexation as set out in Item 3(5)(e) below).

“July 2016 MBS” means the Medicare Benefits Schedule issued by the Commonwealth Department of Health and Ageing effective from 1 July 2016.

“Most recently indexed MBS rate” means the most recently released version of the MBS which includes a General Fee Increase as determined by the Commonwealth Department of Health and Ageing.

Rates of Payment for Fee for Service

- (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.

[Where a contract is to include both sessional and FFS components, the full extent of at least one of those components needs to be included at 3(1) or 3(2), as appropriate. This will define the type of contract – see index.]

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

Column 1 Category of VMO	Column 2 Hourly Rate as at <insert latest date of indexation>
Visiting Medical Officers	\$309.00
BreastScreen radiologist	\$332.27 1st or 2nd Screen Readings & Meetings \$384.94 3rd Screen Readings & Assessment Clinics
General dentist	231.50
Dental specialist	309.00

(3) On-Call Allowance

As at <insert latest date of indexation> the VMO will be paid at the rate of \$343.68 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 in accordance with the table below. The total of the normal on call payment and the hardship on call allowance will be as follows:

Roster ratio (ie. 1 day in 5 etc)	Average Cumulative Call Backs per 24hrs	Advanced Trainee Registrar* Available [as defined]	Total of on call payment and hardship allowance as at <insert latest date of indexation>
1:5 or greater	< 3 hours	Not Applicable	343.68
1:5 or greater	> 3hours	YES	351.32
1:5 or greater	> 3hours	NO	366.57
1:4	< 3 hours	YES	351.32
1:4	< 3 hours	NO	366.57
1:4	> 3hours	YES	366.57
1:4	> 3hours	NO	374.24
1:3	< 3 hours	YES	381.87
1:3	< 3 hours	NO	397.15
1:3	> 3hours	YES	397.15
1:3	> 3hours	NO	404.79
1:2	< 3 hours	YES	412.41
1:2	< 3 hours	NO	458.24
1:2	> 3hours	YES	458.24
1:2	> 3hours	NO	488.80

* Advanced Trainee Registrar means a Registrar, however described, who has completed at least two years 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 two year's experience at registrar level in the specialty.

(5) Indexation Method

- (a) The rates payable under **Item 3(2), Item 3(3), Item 3(4) and Item 3(17)** above will be adjusted by 2.5% on 1 July each year.
- (b) The percentage increase (new indexation rate) specified under **3(5)(a)** above will continue to operate until such time as a new indexation rate is agreed through the negotiation/arbitration process set out in part 7 of the Health Act, from which point on that new indexation rate will apply.
- (c) The rates payable under **Item 3(1)** will be adjusted by 2.5% on 1 July each 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 5pm) Monday to Friday inclusive - at the VMO's ordinary hourly rate of pay as specified in **Item 3(2) 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(2) 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 (currently 5pm) Monday to Friday inclusive - at the VMO's ordinary hourly rate of pay as specified in **Item 3(2) 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(2) 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 their 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.

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. A Call-back payment includes all Services provided to all patients attended upon during the call-back payment period.

(7) Continuous Duty Payment

Where applicable, the VMO will be paid the appropriate after hours loading for any part of the afternoon operating room session that extends past the scheduled finishing time then applying (currently 5pm).

(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 weekend 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 36**), 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 17**, 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 sessions cancelled in accordance with **clause 6.10**, the VMO will be paid at the appropriate hourly rate for the category of VMO, as specified in **Item 3(2)** above.

(13) Sessions Cancelled after Overnight Call-Back

Where a VMO cancels a morning session in accordance with **clause 8.3**, 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) The Continuity Bonus will be calculated and paid within two months of the VMO becoming eligible. Once calculated and paid, the Continuity Bonus will not be recalculated to include any late claims (however described) for payment notwithstanding they may relate to Services delivered in the relevant 12 month period.
- (c) 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.
- (d) A payment will only be made under **Item 3(14)(a)** above if the VMO continuously participated in their On-Call and service roster for the three years of continuous service prior to the signing of the current Service Contract (save for any leave of absence authorised under **clause 18.1** or absence occasioned by personal illness or injury or family circumstance under **clauses 7.4 or 18.4** or Call-back after night duty per **clause 8.3**).

(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. The Transitional 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 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. Transitional Allowance is calculated using cost weight separation (CWS) methodology.
- (d) Transitional Allowance will be paid until such time as payments under this Agreement increase 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 (and will never be reinstated even were a VMO's payments under this Agreement to subsequently fall below the payments that the VMO would have received under their previous contract).
- (e) 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.
- (f) 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.
- (g) If the VMO is eligible for payment under this provision, the baseline level and any other relevant information will be included in **Schedule 3**.

(16) Ward Rounds

For each Public Patient attended as part of a Ward Round, the VMO will be entitled to be paid

for 15 minutes at the sessional rate relevant to their speciality as set out at **Item 3(2)**, provided that care is not otherwise covered by a separate fee-for-service payment or is not covered by pre- or post-operative care under the MBS.

(17) Obstetrics Ward Rounds

Where required to attend obstetrics handover Ward Rounds by the Clinical Director of Obstetrics and Gynaecology, a VMO will be paid \$154.50 for each such attendance. Such payment will be in addition to any entitlements the VMO might have to any other payments under this agreement, including on-call allowances or call-back payments.

Where a VMO is required to work as part of a team, jointly with staff and/or other VMOs, and undertake Ward Rounds in respect to Public Patients allocated to that team, the VMO will be able to claim payment for a Ward Round for each Public Patient seen, even if that patient would otherwise be excluded from payment under **Item 3(16)**.

(18) Daily Rates for Locums

In lieu of the provisions set out elsewhere in this Schedule, the Territory and the VMO may agree on a single daily rate of payment for locums.

Details of any such agreed rates, including the provisions covered by the rate, must be specified in **Schedule 3**.

Superannuation, in accordance with **clause 6.18**, is payable on the single daily rate.

Item 4	Specified Personnel <i>See clause 37.2</i>	Not applicable. [Or, insert names if relevant.]
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SCHEDULE 2 – SERVICES

The VMO will provide 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.

Scheduling of sessions and clinics should be in accordance with the Mechanisms for Scheduling in this Schedule.

Operating and/or procedural sessions:

[specify number] per [specify period - although may be expressed to be averaged over a period ie. "X per month, averaged over a period of Y months" provided that a minimum number for a set period is given. (Unless otherwise agreed in writing, this should be for a minimum period of 12 months)

In setting the number of sessions, reference should be had to likely leave to be taken by the VMO.

Also set out any additional or other specific requirements]

Outpatient clinics:

[specify number] per [specify period] [and/or specific other requirements]

[Or, leave empty and insert "Reserved" if not applicable]

On-call:

Participation on the On-call roster will be determined on an equitable basis (based on the number of available senior medical practitioners within the relevant discipline), and will reflect operational needs of the Health Facility.

The VMOs involvement on the On-call roster may be varied by the Territory, with 3 months notice, to ensure operational requirements are met or in consideration of the individual circumstances of the VMO.

Ward Rounds:

As reasonably required for appropriate management of the Public Patients for whom the VMO has clinical responsibility, as agreed from time to time between the VMO and the Unit Head

[and/or specific other requirements]

Meetings:

[specify meetings] and by agreement, other meetings as required from time to time. Any payment to be subject to **Clause 11**.

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 a description of the agreed managerial duties 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; the agreed manner of recording attendance in relation to the performance of the role; and the agreed KPIs for the assessment of the performance of the managerial duties – per clause 2.11.]

Review (annual or otherwise):

1. The Services listed above must be reviewed and agreed at least annually, within 28 days of the anniversary date of this Agreement, between the VMO and the Unit Head (or other person per **clause 17**).
2. The Services, including operating room lists and sessions, may be revised by agreement between the parties at the time of the annual review, such agreement not to be unreasonably withheld by the VMO taking into account Health's operational needs or be unreasonably withheld by the Territory, taking into account the VMO's future availability and the VMO's past utilisation of their allocated operating room lists or sessions for Public Patients.
3. The Services, including operating room lists or sessions, may be otherwise revised by agreement between the parties, from time to time, such agreement not to be unreasonably withheld by the VMO taking into account Health's operational needs or be unreasonably withheld by the Territory, taking into account the VMO's future availability and the VMO's past utilisation of their allocated operating room lists or sessions for Public Patients.

SCHEDULE 2B – LOCUM SERVICES

[This version of schedule 2 is for use with locums only. Delete for all other forms of the contract. If used, delete Schedule 2.]

The VMO will provide inpatient, outpatient and consultative medical or dental services to registered patients, including the admission of patients under the VMO's care to Health Facilities on an as-required basis.

The VMO will provide the Services in accordance with arrangements agreed in writing prior to any work being undertaken.

Duration of Locum Period

Set out the commencement and cessation date of the locum period.

Operating and/or procedural sessions:

The VMO is engaged for the following operating and/or procedural sessions.

List the specific type, time and date of work to be undertaken.

Also set out any additional or other specific requirements]

Outpatient clinics:

[specify number] per [specify period] [and/or specific other requirements]

[Or, leave empty and insert "Reserved" if not applicable]

On-call:

Where required, the VMO will participate in the On-call roster for *[insert Unit/s]*.

Participation on the On-call roster will be determined on an equitable basis (based on the number of available senior medical practitioners within the relevant discipline), and will reflect operational needs of the Health Facility. At the time of entering into this Agreement, the VMOs minimum participation in the On-call roster is [specify minimum e.g. 1 in 4].

The VMO's participation in the on-call roster will be limited to the Locum Period set out above.

The VMOs involvement on the On-call roster may be varied by the Territory, with 3 months notice, to ensure operational requirements are met or in consideration of the individual circumstances of the VMO.

Ward Rounds:

As reasonably required for appropriate management of the Public Patients for whom the VMO has clinical responsibility, as agreed from time to time between the VMO and the Unit Head
[and/or specific other requirements]

Meetings:

*[specify meetings] and by agreement, other meetings as required from time to time. Any payment to be subject to **Clause 11**.*

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 a description of the agreed managerial duties 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; the agreed manner of recording attendance in relation to the performance of the role; and the agreed KPIs for the assessment of the performance of the managerial duties – per clause 2.11.]

Mechanism for Scheduling

1. Schedule 2 must specify the contracted workload of the VMO – e.g. as a number of sessions/clinics per week, month or year. The specific details of sessional arrangements, including timing, should be discussed with the VMO and finalised in writing as early as possible, preferably prior to signing the contract but no later than one month after the commencement of the contract.
2. A commitment on specific dates/sessions/clinics should be made as early as possible, and for as long as operationally feasible.
3. If the commitment is time limited (e.g. 4 sessions per week until 1 July, then 2 sessions per week), this must be specified, so as to ensure no ongoing expectation of a particular pattern of work on behalf of the VMO in these circumstances.
4. Proposed changes to specific working arrangements, once agreed, (i.e. changes to regular sessions or working days) should be dealt with in accordance with the provisions for setting and varying workloads in this schedule.
5. Additional sessions undertaken by the VMO will not count towards the contract obligation unless specifically identified as such beforehand.

Setting and Varying Workloads

(1) Procedural Contracts (Fee for Service or Sessional or Combined FFS & Sessional).

(a) Setting of workload.

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

Step 2 The Territory will give consideration to a range of factors including:

- a. The VMO's availability;
- b. The VMO's past utilisation of their allocated operating room 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;
- e. Any changes in medical or dental technology that will impact on the requirement for operating room or sessional time during the next year; and
- f. The operational needs and service delivery needs of the relevant Health Facility or the Territory, including the effective management of waiting lists.

Step 3 Following consideration of the above factors the Territory will offer the VMO a commitment on the number of operating room 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 operating room lists or sessions made available to the VMO can only be varied as detailed in (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 operating room list or sessions.
- (ii) The Territory will give the VMO at least 3 months notice (or a lesser period if agreed) of its intention to reduce the number of operating room lists or sessions allocated to the VMO but may only do so if the reduction is directly related to:
 - 1. the VMO's availability;
 - 2. the VMO's past utilisation of their allocated operating room 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;
 - 5. any changes in medical or dental technology that has or will impact on the requirement for operating room or sessional time during the year; and/or
 - 6. the operational needs and service delivery needs of the relevant Health Facility or the Territory including the effective management of waiting lists.
- (iii) The number of operating room lists or sessions allocated to the VMO can be varied at any time with the agreement of the parties.

(2) Non-procedural Contracts.

- (a) The Territory and VMO acknowledge that non-procedural contracts are inherently variable, on a month-to-month basis.

SCHEDULE 3 – SPECIAL CONDITIONS

(Per **clause 33** - In the event of any inconsistency between any Special Condition and any other provision of this Agreement then, to the extent of any inconsistency, this Agreement will prevail.)

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 their 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 (provided the transitional arrangement is not inconsistent with the core condition).
- special provisions affecting the termination of one Service Contract and the commencement of a replacement Service Contract (provided the transitional arrangement is not inconsistent with the core condition).
- details of baseline and other relevant information pertaining to calculation of Transitional Allowance.
- Details of daily rates for locum contracts where agreed by the parties.

SCHEDULE 4 – CONDITIONS OF LIABILITY COVER

AUSTRALIAN CAPITAL TERRITORY

CONDITIONS OF LIABILITY COVER

FOR

VISITING MEDICAL OFFICERS

August 2016

VISITING MEDICAL OFFICER CONDITIONS OF LIABILITY COVER

Definitions particular to this **Schedule 4** in addition to those set out in **clause 1.1** of this Agreement are set out in **item 7** below.

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 prior contract of liability coverage between the VMO and the Territory, howsoever described, is terminated (subject to its terms and conditions) from the commencement of this Agreement.

2. Liability Coverage

2.1 Subject to **clause 2.4, 2.6** and **clause 4** of these Conditions, the Territory must indemnify the VMO (and if this Agreement is with a VMO's practice company, the practice company as well as the VMO) 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 Health Facility conducted by a Public Health Services Provider.

2.2 Subject to **clause 2.4, 2.6** and **clause 4** of these Conditions, the Territory must indemnify the VMO (and if this Agreement is with a VMO's practice company, the practice company as well as the VMO) 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 Health Facility conducted by a Public Health Services 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 or the VMO's practice company 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 Health Facility conducted by a Public Health Services Provider provided that:

- (1) the VMO or the VMO's practice company subsequently provides that medical procedure or treatment to the person as a Public Patient in a Health Facility conducted by a Public Health Services Provider; and
- (2) the VMO or the VMO's practice company 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 or the VMO's practice company as part of a public emergency response by the Public Health Services Provider. This indemnity does not apply to incidents after it is established that the patient has elected to be treated as a Private Patient or is a Department of Veterans' Affairs Patient or Compensable 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 or the VMO's practice company that constitutes a criminal offence, serious negligence or any other gross 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 or the VMO's practice company, other than where the product is supplied to the VMO or the VMO's practice company 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 or the VMO's practice company by the Territory.

3. Visiting Medical Officer's Responsibilities

Prompt notification of all clinical complaints and certain incidents

3.1 The VMO or the VMO's practice company must promptly report in writing to the Territory all clinical complaints relevant to services provided under the contract, irrespective of whether they could be reasonably expected to give rise to a Claim, as well as any incident that could reasonably be expected to give rise to a Claim, as soon as the VMO or the VMO's practice company becomes aware of such a clinical complaint or incident. The report must be in the form of the Territory's Incident Report Form.

Claims History

3.2 The VMO or the VMO's practice company must, within 10 working days of receiving a written request from the Territory, provide to the Territory their record of public and private Claims history for a 6 year period or for as long as they have 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** of these conditions, the VMO or the VMO's practice company must promptly report as soon as practical and in writing to the Territory, any Claim against the VMO or the VMO's practice company for which the VMO or the VMO's practice company 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 the VMO's practice company, the investigation, defence or settlement of any Claim. Where the interests of the Territory and the VMO are in conflict or if the Territory's own representation does not allow it to protect the VMO's interests the Territory will advise the VMO of this and, if applicable, of the need for separate representation. The Territory will consider applications to meet the costs of separate representation on a case by case basis and reserves the right to determine the extent if any to which it is prepared to meet those costs and the procedures for doing so. The existence of conflict and any need for separate representation will not affect the indemnity and

liability coverage provided by the Territory in accordance with **clauses 1 and 2.1 to 2.6** of these conditions above.

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 or the VMO's practice company:
- (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 or the VMO's practice company does not waive any client legal privilege.
- 4.4 If the VMO or the VMO's practice company fails to comply with **clauses 3 or 4** of these conditions 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 or the VMO's practice company'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 or the VMO's practice company 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 or the VMO's practice company in exercise of the Territory's rights under this Agreement or any right that the VMO or the VMO's practice company may otherwise possess in relation to the Claim.

Availability of information

- 4.6 Where a Claim against the VMO or 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 must, upon request, provide such information to the VMO or practice company, or the medical indemnity provider of the VMO or practice company, provided it is lawful and reasonable to do so.

5. Review

- 5.1 The VMO or the VMO's practice company may make a request in writing to the Director-General 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 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 Director-General 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 Solicitor-General for the Territory; and
 - (4) a person nominated by each of the Australian Medical Association (ACT) and ACT Visiting Medical Officers 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 or the VMO's practice company and the Director-General. The Territory must immediately provide or continue to provide indemnity for a particular Claim and must advise the VMO or the VMO's practice company 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 Agreement, the Director-General must advise the VMO or the VMO's practice company 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

Director-General means the person for the time being holding the office of Director-General 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 or the VMO's practice company 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.

Coroners Claim means an inquest, inquiry or hearing under the *Coroners Act 1997* (ACT) or similar legislation of another state or territory.

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 or the VMO's practice company 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.

VMO's **practice company** means a single or multiple doctor practice company that agrees to provide the VMO to provide 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.

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 or the VMO's practice company'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 + .

SCHEDULE 5(a) – ACT HEALTH POLICY & PROCEDURES

(Per definition in clause 1.1)

1. The policies, procedures and standard operating procedures (SOPs) listed in this schedule are applicable under this contract, and VMOs are required to familiarise themselves with these documents.
2. In those documents where the status of contractors is not clearly established, a reference to ACT Health staff or ACT Health employees should be read as including a VMO.
3. Nothing in these documents will provide any entitlements beyond those defined in this agreement.
4. Any reference to dispute settling procedures will be read as a reference to the dispute resolution provisions at **clause 21** of this Agreement.
5. Where mandatory training is required under these documents, VMOs will be required to attend, and will be paid for attendance at the sessional rate applicable to the VMOs category.
6. In the event of any inconsistency between any policy or procedure listed herein and any provision of this Agreement then, to the extent of any inconsistency, this Agreement will prevail.

7. ACT Health Policies and Procedures

- Aseptic Non Touch Technique SOP
- Conflict of Interest – Close Personal Relationships Policy and SOP
- Conflict of interest Policy and SOP
- Discipline Policy
- Elective Surgery Access Policy
- Essential Education Policy and Guideline
- Hazardous Manual Tasks and Office Ergonomics: ACT Health – Work Health and Safety Management System Section 7.7
- Healthcare Associated Infections Procedure
- National Safety and Quality Health Service Standards
- Police Records Check Policy
- Respect at Work – Preventing and Managing Work Bullying, Discrimination and Harassment Policy
- Smoke-free Environment Workplace Policy
- Travel Policy
- Training Education and Study Assistance, SOP
- Emergency Medicine Specialist on call – Criteria for Calling
- ACTPS Code of Conduct
- ACTPS Alcohol and Other Drugs Policy
- Work Health and Safety Policy
- Introduction of new Health Technology Policy
- Senior Medical and Dental Practitioners – Appointment and Credentialing policy,
- Recruitment of Senior Medical & Dental Practitioners SOP
- Credentialing and Defining the Scope of Clinical Practice for Senior Medical and Dental Practitioners, with attachment “Medical Indemnity for Senior Medical and Dental Practitioners” SOP
- Reviewing the Clinical Competence of a Doctor or Dentist following Receipt of a Complaint or Concern – Policy and SOP
- Blood Borne Virus (BBV) in Health Care Workers: Scope of clinical practice management and Chief Health Officer’s role
- Acceptable Use of IT Resources Policy

- ACT Health Procurement Guidelines
- Occupational Assessment, Screening and Vaccination Procedure
- ACT Health Emergency Policy
- Language Services (Interpreters, Multilingual Staff and Translated Materials) Policy and procedure
- Seclusion and Restraint Policy
- Surgical Safety Checklist Policy

8. This list will be reviewed on a regular basis, with any changes/additions to be advised to the VMO.

9. Note that, in addition to those policies listed above, VMOs are also subject to Clinical Policies and Procedures as promulgated from time to time.

10. All current versions of the documents will be made available at www.health.act.gov.au/VMO. If the information is unavailable through the website for any reason, VMOs will be provided with access by electronic mail or another agreed method.

SCHEDULE 5(b) – CALVARY HEALTH CARE ACT POLICY & PROCEDURES

(Per definition in clause 1.1)

1. The policies, procedures and standard operating procedures (SOPs) listed in this schedule are applicable under this contract, and the VMOs are required to familiarise themselves with these documents.
2. In those documents where the status of contractors is not clearly established, a reference to ACT Health staff or ACT Health employees should be read as including a VMO.
3. Nothing in these documents will provide any entitlements beyond those defined in this agreement.
4. Any reference to dispute settling procedures will be read as a reference to the dispute resolution provisions at **clause 21** of this agreement.
5. Where mandatory training is required under these documents, VMOs will be required to attend, and will be paid for attendance at the sessional rate applicable to the VMO's category.
6. In the event of any inconsistency between any document listed herein and any provision of this agreement then, to the extent of any inconsistency, this agreement will prevail.
7. **Little Company of Mary Health Care**
The philosophy of the Little Company of Mary Health Care, which can be accessed at <http://www.calvary-act.com.au/assets/docs/common/our-philosophy/>
8. **Calvary Health Care ACT Policies and Procedures**
<http://www.calvary-act.com.au/policies-and-procedures.html>

Policies

- Acceptable Access and Use of IT
- Antimicrobial Stewardship Policy
- Child Protection Policy
- Documentation in Clinical Health Record Policy
- Clinical Records
- Code of Conduct
- Digital Recording to Teaching Sessions
- Direction not to attend the Workplace Policy
- Discharge Policy
- Discharge Referral & Front Sheet Completion
- Documentation in Clinical Health Record Policy
- Electronic Evidence Based Clinical References
- Essential (Mandatory) Training
- Health Professional Credentialing
- Management of Deceased Person Policy
- Manual Handling Policy
- Media
- MET Policy
- Patient Identification
- Photographic Policy

- Smoke Free Work Place
- SMS Policy
- Staff Screening and Immunisation
- Workplace Equity and Diversity
- Workplace Health and Safety
- Zero Tolerance of Bullying and Harassment

Procedure Documents

- Administrations of Medications
- Antimicrobial Stewardship Procedure
- Autopsy
- Child Protection Information Sharing Fact Sheet
- Child Protection Making a Report to CPS
- Child Protection Procedure
- Clinical Documentation in Health Record Procedure
- Consent to Treatment
- Discharge Procedure: Standard & Complex Discharge Management
- Documentation in Clinical Health Record Procedure
- E3 Learning Log In
- Electronic Evidence Based Clinical References Procedure
- Essential (Mandatory) Training Matrix
- Expected Date of Discharge Procedure
- Hand Hygiene
- Patient Transfer Inter-hospital Facility
- Isolation Rooms
- Managing a coronial referral procedure
- Manual Handling People
- Novel Oral Anticoagulant Agents (NOAC) Management
- Occupational Dermatitis Skin Breakdown Management
- Open Disclosure Procedure
- Patient Identification and Patient Band Use
- Pushing Beds and Trolleys
- Transmission based precautions procedure

9. This list will be reviewed on a regular basis, with any changes/additions to be advised to the VMO. Note that, in addition to those policies listed above, VMOs are also subject to Clinical Policies and Procedures as promulgated from time to time.

10. Calvary Health Care ACT is committed to providing VMOs with access to relevant policies via the internet. Until such a mechanism is in place, Calvary Health Care ACT will provide relevant policies to VMOs by other electronic means.