

Enquiries to: Elizabeth Piper-Cruickshank.,  
Acting Principal ER Officer,  
CHRIRPSC  
Telephone: 323 59502  
Facsimile: 323 40314  
Our Ref: ME01692

**CIRCULAR ER 05/06**

**MEMORANDUM**

Sent to: Circular Distribution List

**RE: 2006 CONTRACT – VMO CONTRACTORS ENGAGED UNDER IRM 3.9-3**

Reference is made to the Circular ER 99/05 in which detail was provided on the new hourly rates, on-call and recall provisions to be applied to VMO Contractors.

As indicated in the previous Circular, a complete review of the existing VMO Contract has been completed. The **attached** VMO Contract has been approved for use from January 2006, and where necessary steps should be taken to re-negotiate existing VMO Contractor arrangements accordingly.

The new contract also includes provisions detailing the new method for calculation of on-call and recall. Under no circumstances are any other amendments to be made to the provisions of the contract. Copies of the contract may be obtained electronically by contact the Corporate Human Resource/Industrial Relations Policy and Strategy Centre on the number listed below.

The covering policy documentation, IRM 3.9-3, is still subject to review and will be released in due course. Please ensure that all appropriate areas are advised of the details of this Circular.

Should you have any questions in relation to this matter, please contact Ms Liz Piper-Cruickshank, Acting Principal Employment Relations Officer, on (07) 3235 9502.

Michael Hawkins

**A/ Director**

**Corporate Human Resource/Industrial Relations Policy and Strategy Centre**

/ /2006

**Office**  
Queensland Health  
State Health Building  
147-163 Charlotte Street  
BRISBANE Q 4000

**Postal**  
Queensland Health  
GPO Box 48  
BRISBANE Q 4001

**Phone**  
(07) 323 41920

**Fax**  
(07) 323 40314

# **CONTRACT**

**between**

**STATE OF QUEENSLAND  
through the Department of Health  
("Queensland Health")**

**and**

**[INSERT NAME OF VMO]  
("the VMO")**

**for the provision of  
MEDICAL SERVICES**



**Queensland  
Government**  

---

**Queensland Health**

Table of Contents

<b>1. Definitions &amp; Interpretation</b> .....	<b>3</b>
<b>2. Term</b> .....	<b>4</b>
<b>3. Appointment of VMO as Independent Contractor</b> .....	<b>4</b>
<b>4. Provision of Services</b> .....	<b>4</b>
<b>5. Sessions</b> .....	<b>5</b>
<b>6. On Call Times</b> .....	<b>5</b>
<b>7. Rostering</b> .....	<b>5</b>
<b>8. Continuation of Duty</b> .....	<b>5</b>
<b>9. Recalls</b> .....	<b>6</b>
<b>10. VMO-Initiated Services</b> .....	<b>6</b>
<b>11. Authorised Practitioners</b> .....	<b>6</b>
<b>12. Withdrawal of Approval of Authorised Practitioner</b> .....	<b>7</b>
<b>13. Fees</b> .....	<b>8</b>
<b>14. Invoicing &amp; Payment</b> .....	<b>9</b>
<b>15. Absences</b> .....	<b>10</b>
<b>16. Insurances</b> .....	<b>10</b>
<b>17. Indemnity</b> .....	<b>11</b>
<b>18. Queensland Health Rules</b> .....	<b>12</b>
<b>19. Confidentiality and Privacy</b> .....	<b>13</b>
<b>20. Termination</b> .....	<b>13</b>
<b>21. Dispute Resolution</b> .....	<b>13</b>
<b>22. Notices</b> .....	<b>14</b>
<b>23. GST</b> .....	<b>14</b>
<b>24. General Provisions</b> .....	<b>15</b>
<b>Schedule 1</b> .....	<b>17</b>
<b>Schedule 2</b> .....	<b>18</b>
<b>Schedule 3</b> .....	<b>19</b>

**THIS AGREEMENT is made**

**BETWEEN:** State of Queensland acting through the Department of Health (“Queensland Health”);  
**AND:** The company or person set out in Item 1 of Schedule 1 (“the VMO”).

**RECITALS:**

- A. Queensland Health operates one or more hospitals and other health facilities situated in the District and is responsible for the provision and management of public sector health services under the *Health Services Act 1991*.
- B. As part of its responsibility for public sector health services, Queensland Health requires various medical services, including specialist services.
- C. The VMO is able to provide medical services.
- D. The parties wish to contract on the terms set out in this Agreement.

**AGREED TERMS:**

**1. Definitions & Interpretation**

1.1 In this Agreement unless the contrary intention appears:

“**authorised practitioner**” means a medical practitioner approved by Queensland Health under clause 11;

“**commencement date**” means the date set out in Item 2 of Schedule 1;

“**confidential information**” means any information about Queensland Health, a hospital or a health facility that:

- (a) is by its nature confidential;
- (b) is designated by Queensland Health as confidential; or
- (c) the VMO knows or ought to know is confidential;

and includes:

- (i) the terms of this Agreement, and any negotiations or amendments of this Agreement;
- (ii) information comprised in or relating to any intellectual property rights of Queensland Health; and
- (iii) information relating to the internal management and structure or the personnel, policies and strategies of Queensland Health, a hospital or a health facility;

“**director of medical services**” means the medical superintendent of the hospital or other person fulfilling a similar role;

“**Director-General**” means the Director-General of Queensland Health or the person acting in that position from time to time;

“**District**” means the Health Service District named in Item 3 of Schedule 1, being an area of Queensland declared by the Governor in Council under the *Health Services Act 1991* to be a Health Service District;

“**District Manager**” means the Manager of the District or the person acting in that position from time to time;

“**hospital**” means the public hospital or health facility named at Item 4 of Schedule 1, at which the VMO is to provide the Services;

“**medical practitioner**” means a medical practitioner who is registered by the Medical Board of Queensland under the *Medical Practitioners Registration Act 2001*;

“**medical superintendent**” means the senior medical officer (however titled) of the hospital;

“**month**” means a calendar month;

“**on call**” means on call pursuant to clause 6;

“**on call time**” means the time between the following hours (or mainly between those hours):

- (a) 6.00pm on one day and 8.00am the following day; or
- (b) 8.00am and 6.00pm on a Saturday, Sunday or public holiday;

“**personal information**” means information or an opinion, whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion;

“**recall**” means an attendance by the VMO at a hospital or health facility at the request of Queensland Health pursuant to clause 9;

“**Services**” means the medical services to be provided by the VMO under this Agreement, as set out in Schedule 2;

“**session**” means a period rostered by Queensland Health during which the VMO is to provide the Services;

“**VMO**” means the visiting medical officer set out in Item 1 of Schedule 1;

“**VMO-initiated Services**” means Services provided at the initiation of the VMO and approved by Queensland Health under clause 10; and

“**year**” means a financial year.

- 1.2 In this Agreement, unless the context otherwise requires:
- (a) words expressing the singular include the plural and vice versa and words denoting gender include all genders;
  - (b) a reference to a clause is a reference to a clause of this Agreement;
  - (c) headings are included for convenience only and shall not affect the interpretation of this Agreement;
  - (d) the Schedules form part of this Agreement;
  - (e) a reference to any legislation or subordinate legislation or an industrial award includes all legislation or subordinate legislation or awards amending or consolidating or replacing it as the case may be; and
  - (f) where any word or phrase is defined in this Agreement, any other grammatical form of that word or phrase will have a corresponding meaning.

## **2. Term**

- 2.1 The term of this Agreement will be the period set out in Item 5 of Schedule 1, commencing on the commencement date.
- 2.2 If the VMO notifies Queensland Health in writing at least 3 months prior to the end of the original term that it wishes to extend this Agreement for a stated period, and Queensland Health notifies the VMO in writing that it is agreeable to that extension, then this Agreement will continue for the agreed further period.
- 2.3 If the VMO continues to provide the Services after the expiration of the term mentioned in clause 2.1 or any period of extension agreed under clause 2.2, the VMO's engagement will be on a month to month basis and otherwise on the terms and conditions of this Agreement as far as they may be applicable to a monthly engagement.

## **3. Appointment of VMO as Independent Contractor**

- 3.1 Queensland Health appoints the VMO to provide the Services as an independent contractor (and not as an employee) in accordance with this Agreement.
- 3.2 The VMO may provide the Services through any one or more of the authorised practitioners.
- 3.3 The VMO (and any authorised practitioner) shall not be or become an employee of Queensland Health by virtue of this Agreement and the terms and conditions of any industrial award or industrial agreement relating to the employment of medical practitioners by Queensland Health shall not apply.

## **4. Provision of Services**

- 4.1 The VMO agrees to provide the Services for the term of this Agreement and any agreed period of extension.
- 4.2 Queensland Health may designate the particular Services to be provided by the VMO from time to time and the patients who will receive the Services.
- 4.3 The VMO must:
- (a) provide the Services for the sessions as specified in Item 6 of Schedule 1;
  - (b) be available to provide the Services, and provide them, as necessary during on call times; and
  - (c) provide the Services on recall or continuation of duty as agreed between the VMO and Queensland Health.
- 4.4 The VMO may provide VMO-initiated Services if approved by Queensland Health.
- 4.5 Unless otherwise approved by Queensland Health, the VMO must ensure that an authorised practitioner remains at the hospital for the duration of each session.

- 4.6 If a session falls on a public holiday, the VMO may elect not to provide the Services for that session, in which case the VMO will not be entitled to payment for the session. The VMO's decision not to provide the Services on a public holiday will not be a breach of this Agreement.
- 4.7 The VMO must, and must ensure that the authorised practitioners:
- (a) consult regularly with the District Manager and the Director of Medical Services of the Hospital as required from time to time;
  - (b) act professionally at all times in the performance of the Services, exercising the appropriate level of skill, care and diligence normally required with the performance of the Services;
  - (c) comply with Queensland Health's quality management policies and principles and participate in the hospital wide accreditation program; and
  - (d) participate in clinical education and teaching.
- 4.8 The parties agree that ownership of and all rights (including copyright) in patient records created by the VMO and each authorised practitioner in the performance of obligations under this Agreement will, upon their creation, vest in Queensland Health.

## **5. Sessions**

- 5.1 Queensland Health may from time to time prepare a roster of dates and times of sessions during which the VMO is to provide the Services.
- 5.2 Queensland Health may by agreement with the VMO reschedule any session.

## **6. On Call Times**

- 6.1 Queensland Health may from time to time by agreement with the VMO roster the VMO to be on call.
- 6.2 Unless the VMO and Queensland Health otherwise agree, the VMO will not be rostered on call more than 14 times in any fortnight commencing at 8.00am Monday.
- 6.3 When the VMO is rostered on call, the VMO must:
- (a) be available to provide the Services;
  - (b) be capable of being contacted without undue delay by Queensland Health by a means acceptable to Queensland Health; and
  - (c) immediately provide the Services when requested by Queensland Health.

## **7. Rostering**

- 7.1 Queensland Health will advise the VMO of rostered session times and on call times at least seven (7) days in advance.
- 7.2 Where the VMO provides the Services through more than one authorised practitioner:
- (a) Queensland Health may roster the authorised practitioners for sessions and on call times so as to ensure the overall level of the Services specified in this Agreement;
  - (b) in determining a roster, Queensland Health will divide the sessions and on call time in a manner which is convenient to the parties;
  - (c) the VMO must liaise as necessary with Queensland Health and with authorised practitioners, to facilitate roosting; and
  - (d) the VMO may substitute one authorised practitioner for another authorised practitioner for any rostered session or on call time if the VMO has given reasonable prior notice to Queensland Health and it does not, in the reasonable opinion of Queensland Health, jeopardise the proper provision of medical care to Queensland Health's patients.

## **8. Continuation of Duty**

- 8.1 Where circumstances are such that either party considers that it is necessary for the VMO to continue to provide the Services immediately on the expiration of a session, and the other party is agreeable, the VMO must provide the Services for such period of time as may be agreed between the parties.
- 8.2 If, in the reasonable opinion of Queensland Health, emergency circumstances exist which necessitate the VMO continuing to provide the Services immediately on the expiration of a session, the VMO must provide the Services for such continued period as may be required by Queensland Health.

## **9. Recalls**

- 9.1 Queensland Health may from time to time request the VMO to provide the Services on recall outside the VMO's rostered session and on call times.
- 9.2 The VMO may in its discretion elect whether or not to comply with a request under clause 9.1, having regard to clinical and ethical considerations.
- 9.3 If the VMO is agreeable to a request from Queensland Health under clause 9.1, it must provide the Services as soon as possible.

## **10. VMO-Initiated Services**

- 10.1 Queensland Health is not obliged to pay any amount to the VMO for VMO-initiated Services unless the VMO has complied with this clause 10.
- 10.2 The VMO may request Queensland Health to approve VMO-initiated Services. A request to approve VMO-initiated Services must, wherever practicable, be in writing.
- 10.3 Queensland Health may in its discretion approve or reject a request under clause 10.2, having regard to:
- (a) the nature of the Services;
  - (b) the staffing arrangements of the hospital;
  - (c) the clinical needs of a patient; or
  - (d) any other matter which, in the reasonable opinion of Queensland Health, is relevant.
- 10.4 Queensland Health will notify the VMO (in writing wherever practicable) of its approval or rejection of a request from the VMO under clause 10.2. An approval may be granted for such period of time as Queensland Health determines.

## **11. Authorised Practitioners**

- 11.1 The VMO must nominate in writing one or more medical practitioners who are registered by the Medical Board of Queensland as medical practitioners for the purposes of performing the Services under this Agreement. The VMO must provide Queensland Health with reasonable particulars of the nominated medical practitioner's qualifications and experience with each nomination.
- 11.2 If the Services to be provided by the VMO under this Agreement are specialist services, a medical practitioner nominated by the VMO under clause 11.1 must be registered by the Medical Board of Queensland as a specialist in the relevant field.
- 11.3 Queensland Health may in its discretion approve any one or more of the nominated medical practitioners to be authorised practitioners for the purpose of this Agreement.
- 11.4 Notwithstanding an approval given by Queensland Health under clause 11.2, the VMO remains responsible for the provision, and the standard, of the Services under this Agreement.
- 11.5 The VMO will only be entitled to payment for Services which are provided by an authorised practitioner.
- 11.6 If for any reason an authorised practitioner has not been approved within 3 months from the commencement date, either party may by notice in writing terminate this Agreement.
- 11.7 The VMO may from time to time nominate additional or replacement medical practitioners to be authorised practitioners. However, if at any time there ceases to be an authorised medical practitioner, the

VMO must nominate a replacement. Any additional or replacement nominees are subject to approval under clause 11.3.

11.8 The VMO is responsible for ensuring that the authorised practitioners provide the Services in accordance with this Agreement.

11.9 A medical practitioner will cease to be an authorised practitioner under this Agreement if:

- (a) the medical practitioner's nomination is withdrawn by the VMO by notice in writing to Queensland Health;
- (b) the approval of Queensland Health is withdrawn in accordance with clause 12; or
- (c) the medical practitioner is removed or suspended from the register by the Medical Board of Queensland under the *Medical Practitioners Registration Act 2001*.

11.10 If a medical practitioner ceases to be an authorised practitioner under this Agreement the VMO must ensure that the medical practitioner:

- (a) immediately ceases to perform the Services;
- (b) completes any recording of information in respect of patients within 4 days; and
- (c) returns to Queensland Health within 7 days any instruments, equipment, clothing or other items of Queensland Health's property which may be in the medical practitioner's possession.

## **12. Withdrawal of Approval of Authorised Practitioner**

12.1 If an authorised practitioner:

- (a) is convicted in Queensland of an indictable offence or is convicted outside Queensland of an act or omission which, if it had occurred in Queensland, would have constituted an indictable offence; or
- (b) is detained in, or admitted to, a hospital or a place of safety, voluntarily or involuntarily, under the provisions of the *Mental Health Act 2000*,

Queensland Health may by notice in writing to the VMO withdraw its approval of that authorised practitioner.

12.2 The VMO must, immediately on becoming aware of an event mentioned in clause 12.1 in respect of an authorised practitioner, notify Queensland Health in writing of that event.

12.3 If Queensland Health considers that an authorised practitioner:

- (a) has failed to act in accordance with the provisions of this Agreement;
- (b) is negligent, careless, incompetent or inefficient in the provision of the Services;
- (c) uses intoxicating beverages or drugs to excess; or
- (d) displays disgraceful or improper conduct or conduct which shows an unfitness to continue to provide the Services,

Queensland Health may, by notice in writing, request the VMO to show cause why the approval of the authorised practitioner should not be withdrawn.

12.4 A show cause notice under clause 12.3 must specify:

- (a) that it is given under clause 12.3;
- (b) the date by which the VMO must respond, being not less than 14 days after the date of the notice; and
- (c) the reason for the show cause notice.

- 12.5 The VMO must provide Queensland Health with a written response to the show cause notice by the date specified in the show cause notice. If the VMO fails to respond to the show cause notice by the specified date, Queensland Health may immediately by notice to the VMO withdraw the approval of the authorised practitioner.
- 12.6 If the VMO responds to the show cause notice by the date specified in the show cause notice, Queensland Health will duly consider that response and will notify the VMO in writing either that it:
- (a) intends to withdraw its approval of the authorised practitioner; or
  - (b) does not intend to withdraw its approval of the authorised practitioner.
- 12.7 Where Queensland Health gives notice under clause 12.6(a), the VMO may, by further notice in writing to Queensland Health, request that the matter be treated as a dispute for the purposes of clause 21, in which case the provisions of that clause will apply.
- 12.8 If the VMO does not, within 7 days after receipt of notice under clause 12.6(a), give notice to Queensland Health under clause 12.7, Queensland Health may by notice to the VMO withdraw the approval of the authorised practitioner.

### **13. Fees**

- 13.1 In consideration of the VMO providing the Services in accordance with this Agreement, Queensland Health agrees to pay the VMO as follows:
- (a) for sessions:
    - (i) for the first year of this Agreement - at the applicable loaded rate per hour from Schedule 3(B);
    - (ii) for each subsequent year of this Agreement - at the next succeeding loaded rate per hour from Schedule 3(B);
  - (b) for availability during on call times – the VMO will be paid based on the level of frequency of participation in the on call roster arrangements agreed with Queensland Health, as follows:
    - (i) where the VMO is rostered on call more frequently than one in four – at the applicable Level 1 rate set out in Item 7 of Schedule 1;
    - (ii) where the VMO is rostered on call one in four or up to one in seven inclusive – at the applicable Level 2 rate set out in Item 7 of Schedule 1; and
    - (iii) where the VMO is rostered on call less frequently than one in seven – at the applicable Level 3 rate set out in Item 7 of Schedule 1;
  - (c) for recalls:
    - (i) on the days of the week from Monday to Friday (excluding public holidays) between the hours of 8.00am and 6.00pm – for the actual time spent by the VMO, at the rate of 150% of the applicable loaded rate for recalls per hour from Schedule 3(C); and
    - (ii) at other times – in accordance with paragraph (d) as if the VMO were providing Services at the request of Queensland Health during on call times;
  - (d) for Services provided at the request of Queensland Health during on call times:
    - (i) for Services provided between the hours of 8.00am and midnight (2400 hours) - at the rate of 150% of the applicable loaded rate for recalls per hour from Schedule 3(C); and
    - (ii) for Services provided between the hours of midnight (2400 hours) and 8.00am - at the rate of 200% of the applicable loaded rate for recalls per hour from Schedule 3(C),

to be calculated in accordance with the following:

- (iii) the VMO will be paid for a minimum of two hours for the first request for Services and a minimum of one hour for each subsequent request for Services in any 24 hour period commencing at 8.00am;
  - (iv) the applicable rate for the minimum payment will be the relevant rate set out in paragraph (i) or (ii); and
  - (v) where the time spent by the VMO providing the Services exceeds the minimum periods set out in paragraph (iii) above, the VMO will be entitled to be paid for the actual time spent, calculated to the nearest quarter of an hour; and
  - (vi) a subsequent request for Services that is made during the minimum periods set out in paragraph (iii) above will not constitute a separate request for services and the VMO will not be entitled to payment for it;:
- (e) for approved VMO-initiated Services - at the rate set out in Item 9 of Schedule 1;
  - (f) for continuation of duty:
    - (i) for the first year of this Agreement - at the applicable loaded rate per hour from Schedule 3(B); and
    - (ii) for each subsequent year of this Agreement - at the next succeeding loaded rate per hour from Schedule 3(B).

13.2 Payments under clause 13.1 will be calculated at the rate applicable to the authorised practitioner who actually provided the Services.

13.3 The VMO will not be entitled to receive any payment in respect of absence time which has not been approved by Queensland Health.

13.4 The VMO must not, and must ensure that each authorised practitioner does not, seek or accept any remuneration, payment or gratuity from a patient or from any person associated with a patient, for any Services provided under this Agreement.

#### **14. Invoicing & Payment**

14.1 The VMO must, within 14 days after the end of each month, submit to Queensland Health, on the form supplied by Queensland Health, an account for the Services, which includes:

- (a) the number of sessions attended;
- (b) the date, time and duration of all recalls (occurring during on call times as mentioned in clause 6.3(c) and during recall as mentioned in clause 9);
- (c) the date of each on call session;
- (d) the date, time and duration of all approved VMO-initiated Services;
- (e) the date, time and duration (calculated to the nearest quarter of an hour) of any period of continuation of duty; and
- (f) the name, and relevant year of entitlement from the schedule of payment rates in Schedule 3, of the authorised practitioner who actually provided the Services, for the relevant month.

14.2 Queensland Health will pay the VMO for the Services not more than 30 days after receipt of an account from the VMO which is in order for payment.

14.3 Payment for the Services will be made to the VMO in accordance with this Agreement and Queensland Health will not be liable to make any payment directly to an authorised practitioner. It is the responsibility of the VMO to pay any authorised practitioner for any of the Services provided by the authorised practitioner.

## 15. Absences

- 15.1 The VMO will not be in breach of this Agreement for failure to provide the Services if:
- (a) the failure is:
    - (i) an unplanned absence due to illness or other emergent or unforeseen circumstances affecting an authorised practitioner and the VMO has complied with clause 15.2; or
    - (ii) a planned absence and the VMO has complied with clause 15.3;
  - (b) the total aggregate number of sessions for which the VMO is absent under clause 15.1(a) does not exceed the eligible absence sessions set out in clause 15.5; and
  - (c) Queensland Health has approved the absence in accordance with clause 15.4.
- 15.2 As soon as possible after becoming aware of any circumstances affecting an authorised practitioner mentioned in clause 15.1(a)(i), the VMO must advise Queensland Health of the relevant circumstances and must, within one week, apply in writing for an approved absence.
- 15.3 Where the VMO wishes to take a planned absence, the VMO must seek approval for the absence:
- (a) at least four weeks prior notice to Queensland Health if the planned period of absence is eight weeks or less; or
  - (b) at least eight weeks prior notice to Queensland Health if the planned period of absence is greater than eight weeks,
- and it is the responsibility of the VMO to make efforts to secure a locum to provide the Services in the VMO's absence.
- 15.4 In deciding whether to approve an absence, Queensland Health must act reasonably. The parties agree that it is reasonable for Queensland Health to take all or any of the following matters into consideration:
- (a) the eligible absence sessions calculated in accordance with clause 15.5;
  - (b) whether the VMO has been able to secure a locum to provide the Services in the VMO's absence and whether the proposed locum is acceptable to the District Manager;
  - (c) the operational convenience of the hospital or health facility at which the VMO provides the Services;
  - (d) whether other visiting medical officers or Queensland Health staff have applied for absence or leave at the same time as the VMO;
  - (e) the health of an authorised practitioner or the nature of emergent or other unforeseen circumstances affecting an authorised practitioner; or
  - (f) whether the VMO has complied with clauses 15.2 or 15.3 as the case may be.
- 15.5 The eligible absence sessions will be calculated in accordance with the following formula:
- $$a = \frac{b - c}{4.6}$$
- where:
- “a” is the number of eligible absence sessions for each authorised practitioner, to the nearest whole number (if it is less than one but not negative, the number of eligible absence sessions will be one);
- “b” is the total number of sessions attended by the authorised practitioner up to the proposed date of commencement of absence, including scheduled sessions which fell on a public holiday but which were not rescheduled; and
- “c” is the number of approved absences, expressed as a number of sessions, previously taken.
- 15.6 Queensland Health may in its absolute discretion give approval for an absence notwithstanding that it does not comply with this clause 15.

## 16. Insurances

- 16.1 The VMO must effect and maintain for the term of this Agreement workers' compensation insurance in relation to the authorised practitioners in accordance with the *Worker's Compensation and Rehabilitation Act 2003*.
- 16.2 If requested by Queensland Health, the VMO will, within 14 days of the request, produce to the District Manager evidence of the existence and currency of the insurance required by clause 16.1.

## **17. Indemnity**

- 17.1 In this clause 17:

**"appearance"** means an appearance before an investigative agency or the Medical Board of Queensland arising out of the provision of the Services under this Agreement; and

**"claim"** means any claim, legal action, proceedings or demand (other than a criminal proceeding) arising out of the provision of the Services in which the VMO or an authorised practitioner is named as a respondent or defendant;

**"investigative agency"** any of the following entities:

- (a) the Crime and Misconduct Commission;
- (b) a commission under the Commissions of Inquiry Act 1950;
- (c) the Parliamentary Crime and Misconduct Committee;
- (d) a court (where the practitioner has received a subpoena or summons to appear);
- (e) the Anti-Discrimination Commission Queensland;
- (f) the Guardianship and Administration Tribunal;
- (g) the Adult Guardian;
- (h) the Commission for Children and Young People;
- (i) a coronial inquest; or
- (j) any other investigative agency determined by the Director General of Queensland Health;

but does not include an investigation by the police;

**"wilful neglect"** means malicious or reckless conduct that would, if proven and if the VMO or authorised practitioner were an employee, be a disciplinary breach providing reasonable grounds for terminating the employment.

- 17.2 Notwithstanding that the VMO is an independent contractor, in recognition of the value of visiting medical officers in the public sector, Queensland Health agrees, subject to clauses 17.3 and 17.4:

- (a) in respect of a claim - to indemnify the VMO and each authorised practitioner against all claims made against the VMO or authorised practitioner arising out of the provision of the Services under this Agreement, such indemnity to comprise:
  - (i) payment by Queensland Health of any damages awarded or negotiated in respect of a claim;
  - (ii) defence of a claim by solicitors to be nominated and instructed by Queensland Health and payment of the costs of defending or settling the claim;
- (b) in respect of an appearance - to appoint and instruct solicitors, at Queensland Health's cost, to provide representation for, and legal assistance to, the VMO or authorised practitioner in respect of the appearance.

- 17.3 The VMO or an authorised practitioner will not be entitled to indemnity under clause 17.2 if:

- (a) the VMO or authorised practitioner has not performed the Services in accordance with relevant permission granted by the Credentials and Clinical Privileging Committee for the hospital;
- (b) in the case of a claim:

- (i) the VMO or authorised practitioner has been convicted of a criminal charge arising from the conduct the subject of the claim; or
  - (ii) the VMO's, or authorised practitioner's, conduct the subject of the claim has been proven, to the satisfaction of Queensland Health, to constitute wilful neglect; or
- (c) in the case of an appearance:
- (i) the VMO or authorised practitioner has been convicted of a criminal charge arising from the conduct the subject of the appearance;
  - (ii) the VMO's, or authorised practitioner's, conduct the subject of the appearance has been proven, to the satisfaction of Queensland Health, to constitute wilful neglect;
  - (iii) the VMO's, or authorised practitioner's, conduct the subject of the appearance has been referred to an investigative agency or the Medical Board of Queensland by Queensland Health (through the General Manager, Health Services); or
  - (iv) the VMO's, or authorised practitioner's, conduct the subject of the appearance has been referred to the Professional Conduct Review Panel or the Medical Tribunal by the Medical Board of Queensland.
- 17.4 In the case of claims which involve an allegation of "failure to warn" by the VMO or an authorised practitioner which relates to a private consultation, Queensland Health will indemnify the VMO or authorised practitioner in respect of the "failure to warn" aspect of the claim provided that:
- (a) the patient the subject of the claim was admitted as a public patient in a public hospital for the purpose of the procedure or treatment to which the consent relates;
  - (b) the VMO or authorised practitioner had permission from the relevant Credentials and Clinical Privileging Committee to undertake the procedure or treatment to which the consent relates; and
  - (c) the consent procedure utilised by the VMO or authorised practitioner complied with Queensland Health's Consent Policy at the relevant time.
- 17.5 The VMO must notify Queensland Health as soon as possible of any claim or circumstances which may give rise to a claim.
- 17.6 The VMO and each authorised practitioner must co-operate fully with and assist Queensland Health and its lawyers to conduct the defence of a claim, whether or not the VMO or an authorised practitioner is named as a respondent or defendant.
- 17.7 In the event that a criminal charge is brought against the VMO or an authorised practitioner, Queensland Health will reimburse the VMO or authorised practitioner the reasonable costs incurred by the VMO or authorised practitioner in defending the criminal charge if:
- (a) the charge arose out of the performance of the Services for Queensland Health under this Agreement;
  - (b) the VMO or authorised practitioner is not, after committal proceedings, committed for trial in respect of the charge, or is acquitted of the charge at trial, or the charge is withdrawn or discontinued for any reason; and
  - (c) the VMO's or authorised practitioner's conduct the subject of the charge has not been proven, to the satisfaction of Queensland Health, to constitute wilful neglect.
- 17.8 If Queensland Health (through the General Manager, Health Services) and the VMO or authorised practitioner are unable to reach agreement as to the amount of reasonable costs under clause 17.7, the matter will be referred for a final decision to a costs assessor chosen by the VMO or authorised practitioner from a panel of assessors to be nominated by Queensland Health. The costs assessor's costs will be paid by Queensland Health.
- 17.9 The VMO must notify Queensland Health as soon as possible of any matter which might affect the VMO's or an authorised practitioner's entitlement to indemnity under this Agreement.
- 17.10 Where a VMO or authorised practitioner wishes to seek indemnity under this Agreement, the applicable procedure and forms will be those set out in Queensland Health's "Indemnity Policy for Queensland Health and Other Approved Medical Practitioners, IRM 3.8-4".

## **18. Queensland Health Rules**

- 18.1 The VMO must ensure that each authorised practitioner complies with any directions, policies, rules, by-laws, practices and procedures in effect from time to time at the hospital, including those relating to security and occupational health and safety.
- 18.2 The VMO agrees to participate and co-operate in any clinical audits of the Services that may be required by Queensland Health from time to time.

## **19. Confidentiality and Privacy**

- 19.1 The VMO must not (and must ensure that each authorised practitioner does not) disclose any confidential information except to its accountants, legal advisors or as required by law or where the prior written consent of Queensland Health has been obtained to a disclosure.
- 19.2 The VMO acknowledges that it and each authorised practitioner are bound by s62A of the *Health Services Act 1991*.
- 19.3 The VMO must, with respect to any personal information it collects or accesses when providing the Services:
- (a) not use the personal information other than for the purpose of performing this Agreement, unless required or authorised by law;
  - (b) not disclose the personal information without the prior written consent of Queensland Health, unless required or authorised by law;
  - (c) take reasonable steps to protect the personal information from misuse and loss and from unauthorised access, use, modification or disclosure;
  - (d) ensure that only the authorised practitioners or any other authorised personnel have access to the personal information;
  - (e) make its authorised practitioners, officers, employees and agents aware of the VMO's obligations under this clause including, when requested by Queensland Health, requiring those persons to promptly sign a privacy deed in a form required by Queensland Health; and
  - (f) comply with such other privacy and security measures as Queensland Health reasonably advises the VMO in writing from time to time.
- 19.4 The VMO must immediately notify Queensland Health upon becoming aware of any breach of clause 19.3.

## **20. Termination**

- 20.1 Either party may terminate this Agreement at any time on giving not less than 3 months notice in writing to the other party.
- 20.2 Queensland Health may by notice in writing to the VMO immediately terminate this Agreement if the VMO:
- (a) fails to comply with any provision of this Agreement and that failure is not remedied within 14 days after Queensland Health has given notice to the VMO to remedy the failure;
  - (b) becomes an undischarged bankrupt or takes advantage of the laws in force at the time being relating to bankrupt or insolvent debtors; or
  - (c) takes or has instituted against it any action or proceeding whether voluntary or compulsory which has the object or may result in its winding up, other than a voluntary winding up by members for the purpose of reconstruction or amalgamation, or is placed under official management or enters into a compromise or other arrangement with its creditors or a receiver or receiver and manager is appointed to carry on its business for the benefit of its creditors or any of them.
- 20.3 The VMO must, immediately upon becoming aware of an event mentioned in clause 20.2(b) or (c), notify Queensland Health in writing of that fact.

## **21. Dispute Resolution**

- 21.1 If a dispute arises between the parties in respect of this Agreement, either party may by notice in writing request the other party to negotiate with a view to resolving the dispute. Upon receipt of a notice under this clause, the parties must enter into negotiations in good faith as soon as possible to attempt to resolve the dispute.
- 21.2 If the dispute has not been satisfactorily resolved 14 days after the giving of a notice under clause 21.1, either party may by notice in writing request the Director-General to call a conference for such purpose.
- 21.3 On receipt of a notice under clause 21.2, the Director-General (or a person nominated by the Director-General) shall convene a conference within 28 days. The persons to be involved in the conference will include:
- (a) the Director-General or the Director-General's nominee, who will be the chairperson of the conference;
  - (b) a representative of Queensland Health from within the District;
  - (c) the VMO; and
  - (d) a nominee of the Australian Medical Association.
- 21.4 If the dispute is not resolved within 7 days after the conference under clause 21.3 has been convened, the parties agree to refer the dispute for determination to a person nominated by the President for the time being of the Queensland Law Society, who will act as an expert and not as an arbitrator. The expert's determination will be final and binding on the parties, and the costs of the expert will be borne equally by the parties.
- 21.5 Pending determination of a dispute under this clause, the parties agree to continue to perform their obligations under this Agreement.

## **22. Notices**

- 22.1 A notice, request, application or any other communication ("notice") under this Agreement may be given orally or in writing, except where this Agreement requires the notice to be in writing.
- 22.2 The VMO must refer any matter relating to the performance of this Agreement to the District Manager or a person nominated by the District Manager.
- 22.3 The addresses for service of the parties are as follows:
- (a) for Queensland Health - as set out in Item 10 of Schedule 1; and
  - (b) for the VMO - as set out in Item 11 of Schedule 1, or such subsequent address as one party may notify to the other in writing.
- 22.4 A notice under this Agreement shall be deemed to have been given:
- (a) if delivered by hand or by courier - on the date of delivery;
  - (b) if sent by prepaid certified mail - 1 business day after the date of posting;
  - (c) if sent by facsimile machine - immediately upon an apparently successful facsimile transmission being noted by the sender's facsimile machine, unless the transmission is not fully intelligible and the recipient requests re-transmission within 2 working hours. For the purpose of this clause, "working hours" means the hours between 9.00am and 4.00pm on a business day in the place of receipt.

## **23. GST**

- 23.1 In this clause 23:
- (a) words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law; and
  - (b) "GST Law" has the meaning given to that expression in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- 23.2 Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

- 23.3 If GST is payable by a supplier or by the representative member for a GST group of which the supplier is a member, on any supply made under this Agreement, the recipient will pay to the supplier an amount equal to the GST payable on the supply.
- 23.4 The recipient will pay the amount referred to in clause 23.3 in addition to and at the same time that the consideration for the supply is to be provided under this Agreement.
- 23.5 The supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under clause 23.3. The recipient can withhold payment of the amount until the supplier provides a tax invoice or an adjustment note, as appropriate.
- 23.6 If an adjustment event arises in respect of a taxable supply made by a supplier under this Agreement, the amount payable by the recipient under clause 23.3 will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.
- 23.7 Where a party is required under this Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:
- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and
  - (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

#### **24. General Provisions**

- 24.1 The VMO must not assign this Agreement without the consent in writing of Queensland Health, which consent will not be unreasonably withheld.
- 24.2 This Agreement will be governed by and construed in accordance with the law for the time being in force in the State of Queensland and the parties agree to submit to the jurisdiction of the courts of Queensland.
- 24.3 Each party will bear its own legal fees, costs and expenses of and incidental to the negotiation, preparation and execution of this Agreement. Queensland Health will pay any stamp duty on this Agreement.
- 24.4 This Agreement may be varied at any time by agreement in writing executed by both parties.
- 24.5 It will be sufficient evidence of agreement to vary a schedule to this Agreement if the parties execute and date a document purporting to be a substitute schedule.
- 24.6 If any clause of this Agreement is determined to be partly or wholly invalid, unlawful or unenforceable, that clause will be severed (to the extent of its invalidity, unlawfulness or unenforceability) from the Agreement and the remaining provisions will continue in effect as far as possible.

**EXECUTED BY THE PARTIES** on the dates set out below.

**SIGNED** for and on behalf of )  
**QUEENSLAND HEALTH** by )

..... ) .....  
(name) ) (signature)  
District Manager, a duly authorised person, )  
in the presence of: ) ...../...../.....  
(date)

.....  
(signature of witness)

*Signing clause if the VMO is an individual -*

**SIGNED** by the **VMO** in the presence of: ) .....  
(signature)  
...../...../.....  
(date)

.....  
(signature of witness)

*Signing clause if the VMO is a company -*

**SIGNED** for and on behalf of )  
..... ) .....  
(name and ACN of company) ) (signature)  
by ..... )  
(name) )  
a Director, in the presence of: ) ...../...../.....  
(date)

.....  
(signature of witness)

## Schedule 1

1. **VMO:** [#Insert name of VMO; if VMO is a company, include the ACN].
2. **Commencement date:** [#Insert commencement date].
3. **District:** [#Insert name of District] Health Service District.
4. **Hospital:** [#Insert name of hospital at which the VMO is to provide the Services. If more than one hospital, list them all.]
5. **Term:** [#Insert number] years.
6. **Sessions:** The VMO will provide the Services for the following sessions:
  - (a) each session will be for a maximum of [#insert no.] hours;
  - (b) commencing at [#insert time] am/pm;
  - (c) on the [# insert day/s] of each [#insert week or month as applicable];
  - (d) at [#insert name of hospital at which the session is to be performed].
7. **Payment rate for on call times:**

Level	Rate Payable From 1.3.05 (per hour)	Rate Payable From 1.3.06 (per hour)	Rate Payable From 1.3.07 (per hour)	Rate Payable From 1.3.08 (per hour)
Level 1	\$ 10.75	\$ 11.02	\$ 11.30	\$ 11.58
Level 2	\$ 8.60	\$ 8.82	\$ 9.04	\$ 9.27
Level 3	\$ 6.45	\$ 6.61	\$ 6.78	\$ 6.95

8. **Payment rate for Recall:** At the rate of either 150% or 200% of the applicable loaded rate for recalls per hour from Schedule 3(C) (as set out in clause 13.1(c))
9. **Payment rate for VMO-initiated Services:** [#Insert relevant loaded hourly rate].
10. **Queensland Health's address for service:** [#Insert relevant District/hospital address, including fax no.].
11. **VMO's address for service:** [#Insert VMO's address for service, including fax no.].

## Schedule 2

### The Services:

The Services to be provided by the VMO are specialist medical services in [#insert specialist field].

The Services include:

1. Treatment of public patients  
The VMO will provide treatment of public patients allocated by Queensland Health through:
  - (a) the utilisation of Queensland Health's facilities;
  - (b) the application of the VMO's specialist medical expertise;
  - (c) personal attention provided by the authorised practitioner;
  - (d) treatment delegated to others by the authorised practitioner;
  - (e) consultations arranged by the authorised practitioner.
2. The provision of instruction in relation to the Services to Queensland Health personnel who assist the VMO.
3. The provision of formal instruction classes, relating to the Services, as determined by Queensland Health.
4. The provision of advice to Queensland Health on matters relating to staff and public health facilities in connection with the Services.
5. The efficient use of resources supplied by Queensland Health, including personnel.

**SCHEDULE 3(A)**

**VMO RATES (BASE RATES)**

<b>LEVEL</b>	<b>BASE RATE PAYABLE AS AT 01/06/2004 (PER HOUR)</b>	<b>BASE RATE PAYABLE AS FROM 01/03/05 (PER HOUR)</b>	<b>BASE RATE PAYABLE AS FROM 01/03/06 (PER HOUR)</b>	<b>BASE RATE PAYABLE AS FROM 01/03/07 (PER HOUR)</b>	<b>BASE RATE PAYABLE AS FROM 01/03/08 (PER HOUR)</b>
<b>VISITING MEDICAL SPECIALISTS</b>					
1 <sup>ST</sup> YEAR	77.33	89.23	92.8	96.51	100.37
2 <sup>ND</sup> YEAR	80.15	92.26	95.95	99.79	103.78
3 <sup>RD</sup> YEAR	83.11	95.22	99.03	102.99	107.11
4 <sup>TH</sup> YEAR	85.80	97.62	101.52	105.58	109.80
5 <sup>TH</sup> YEAR	88.71	4th Year & thereafter			
6 <sup>TH</sup> YEAR	91.56				
7 <sup>TH</sup> YEAR AND T/A	93.87				
<b>VISITING SENIOR SPECIALISTS</b>					
1 <sup>ST</sup> YEAR	98.98	106.05	110.29	114.70	119.29
2 <sup>ND</sup> YEAR AND T/A	101.97	1st year & thereafter			
<b>VISITING MEDICAL OFFICERS</b>					
1 <sup>ST</sup> , 2 <sup>ND</sup> , 3 <sup>RD</sup> YEARS	74.51	77.49	80.59	83.81	87.16
THEREAFTER	77.33	80.42	83.64	86.99	90.47
<b>VISITING MEDICAL OFFICERS WITH FRACGP AND/OR VOCATIONAL REGISTRATION</b>					
1 <sup>ST</sup> YEAR	74.51	77.49	80.59	83.81	87.16
2 <sup>ND</sup> YEAR	77.33	80.42	83.64	86.99	90.47
3 <sup>RD</sup> YEAR AND THEREAFTER	80.15	83.36	86.69	90.16	93.77

**VMO RATES (LOADED RATES)**

**LOADED RATES**

LEVEL	LOADED RATE PAYABLE AS AT 01/06/04 (PER HOUR)	LOADED RATE PAYABLE AS FROM 01/03/05 (PER HOUR)	LOADED RATE PAYABLE AS FROM 01/03/06 (PER HOUR)	LOADED RATE PAYABLE AS FROM 01/03/07 (PER HOUR)	LOADED RATE PAYABLE AS FROM 01/03/08 (PER HOUR)
<b>VISITING MEDICAL SPECIALISTS</b>					
1 <sup>ST</sup> YEAR	125.41	187.84	194.80	198.97	203.14
2 <sup>ND</sup> YEAR	129.97	194.20	201.39	205.71	210.02
3 <sup>RD</sup> YEAR	134.77	200.45	207.87	212.33	216.78
4 <sup>TH</sup> YEAR	139.14	205.51	213.12	217.69	222.26
5 <sup>TH</sup> YEAR	143.85	4th Year & thereafter			
6 <sup>TH</sup> YEAR	148.48				
7 <sup>TH</sup> YEAR AND T/A	152.23				
<b>VISITING SENIOR SPECIALISTS</b>					
1 <sup>ST</sup> YEAR	160.5	223.22	231.49	236.45	241.41
2 <sup>ND</sup> YEAR AND T/A	165.35	1st Year & thereafter			

<b>VISITING MEDICAL OFFICERS</b>					
1 <sup>ST</sup> , 2 <sup>ND</sup> & 3 <sup>RD</sup> YEARS	120.82	163.11	169.15	172.77	176.40
THEREAFTER	125.41	169.30	175.57	179.34	183.10
<b>VISITING MEDICAL OFFICERS WITH FRACGP AND/OR VOCATIONAL REGISTRATION</b>					
1 <sup>ST</sup> YEAR	120.82	163.11	169.15	172.77	176.40
2 <sup>ND</sup> YEAR	125.41	169.30	175.57	179.34	183.10
3 <sup>RD</sup> YEAR & THEREAFTER	129.97	175.46	181.96	185.86	189.76

**VMO RATES (LOADED RATES for RECALL)**

**LOADED RATES FOR RECALL**

LEVEL	LOADED RATE PAYABLE AS AT 01/06/04 (PER HOUR)	LOADED RATE PAYABLE AS FROM 01/03/05 (PER HOUR)	LOADED RATE PAYABLE AS FROM 01/03/06 (PER HOUR)	LOADED RATE PAYABLE AS FROM 01/03/07(PER HOUR)	LOADED RATE PAYABLE AS FROM 01/03/08 (PER HOUR)
<b>VISITING MEDICAL SPECIALISTS</b>					
1 <sup>ST</sup> YEAR	97.44	120.46	129.92	138.01	146.54
2 <sup>ND</sup> YEAR	100.99	124.55	134.33	142.70	151.52
3 <sup>RD</sup> YEAR	104.73	128.55	138.64	147.28	152.38
4 <sup>TH</sup> YEAR	108.11	131.79	142.13	150.98	160.31
5 <sup>TH</sup> YEAR	111.77	4th Year & thereafter			
6 <sup>TH</sup> YEAR	115.37				
7 <sup>TH</sup> YEAR AND T/A	118.28				
<b>VISITING SENIOR SPECIALISTS</b>					
1 <sup>ST</sup> YEAR	124.71	143.17	154.41	164.02	174.16
2 <sup>ND</sup> YEAR AND T/A	128.48	1st Year & thereafter			
<b>VISITING MEDICAL OFFICERS</b>					
1 <sup>ST</sup> , 2 <sup>ND</sup> & 3 <sup>RD</sup> YEARS	93.88	104.61	112.83	119.85	127.25
THEREAFTER	97.44	108.57	117.10	124.40	132.09
<b>VISITING MEDICAL OFFICERS WITH FRACGP AND/OR VOCATIONAL REGISTRATION</b>					
1 <sup>ST</sup> YEAR	93.88	104.61	112.83	119.85	127.25
2 <sup>ND</sup> YEAR	97.44	108.57	117.10	124.40	132.09
3 <sup>RD</sup> YEAR & THEREAFTER	100.99	112.54	121.37	128.93	136.90