



Australian Government
Department of Health and Ageing

AGREEMENT

between the

COMMONWEALTH OF AUSTRALIA

as represented by the

Department of Health and Ageing

ABN 83 605 426 759

and

THE STATE OF QUEENSLAND

as represented by

Queensland Health

ABN 66 329 169 412

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THIS Agreement is made

BETWEEN the

COMMONWEALTH OF AUSTRALIA ('the Commonwealth'), as represented by the Department of Health and Ageing ('the Department') ABN 83 605 426 759;

AND

THE STATE OF QUEENSLAND ('the State') as represented by Queensland Health
ABN 66 329 169 412

RECITALS:

- A. The Commonwealth has developed the Health and Hospitals Fund Program.
- B. The objectives and outcomes of the Health and Hospitals Fund Program, whilst not replacing State and Territory effort, are to invest in major health infrastructure programs that will make significant progress towards achieving the Commonwealth's health reform targets. The HHF will be used for strategic investments in the health system that will underpin major improvements in efficiency, access or outcomes of health care.
- C. The Commonwealth has agreed to jointly fund with the State, the Project for construction of the Townsville Hospital Expansion as described in this Agreement in support of the objectives and outcomes of the Program on the following terms and conditions.

THE PARTIES AGREE as follows:

1. INTERPRETATION

1.1 In this Agreement, unless the contrary intention appears:

"**Agreement**" means this document and includes any schedules and annexures;

"**BCII Act**" means the *Building and Construction Industry Improvement Act 2005*;

"**Business Day**" means any day that is not a Saturday, Sunday, public or bank holiday in Queensland.

"**Code**" means the National Code of Practice for the Construction Industry, as amended from time to time;

"**Code Monitoring Group**" has the same meaning as is given to that term in the Implementation Guidelines;

"**Commencement Date**" means the date of execution of this Agreement by the Parties and, if signed on separate days, the date of last execution;

"**Commonwealth Material**" means any Material:

- (a) provided by the Commonwealth to the State for the purposes of this Agreement; or
- (b) copied at any time from the Material referred to in paragraph (a);

"**Confidential Information**" means information that:

- (a) is by its nature confidential;
- (b) is designated by the Commonwealth as being confidential; or
- (c) the State knows or ought to know is confidential;

but does not include information that:

- (d) is or becomes public knowledge, other than by breach of this Agreement or by any other unlawful means;
- (e) is in the possession of the State without restriction in relation to disclosure before the date of receipt from the Commonwealth; or
- (f) has been independently developed or acquired by the State;

"Department" includes any department or agency of the Commonwealth which is from time to time responsible for the administration of this Agreement;

"Designated Use" means the use, if any, specified in item A1 of the Schedule;

"Dispose" means to sell, lease or sub-lease, licence or sub-licence, or otherwise transfer or give up ownership or the right to occupy or use, or to enter into an agreement to do any of the preceding acts and **"Disposing"** and **"Disposal"** have a corresponding meaning;

"Existing Material" means all Material in existence prior to the date of execution of this Agreement that is:

- (a) incorporated in;
- (b) supplied with, or as part of; or
- (c) required to be supplied with, or as part of:

the Project Material and includes any Material identified as Existing Material in Item G;

"Facility" or **"Facilities"** means the facilities identified in Item A1 of the Schedule;

"Final Report" means the Material provided to the Commonwealth in accordance with clauses 4.1 and 4.3;

"Financial Statement" means a statement provided in accordance with clause 4 that includes details of the Funds received by the State and contributions received for the Project from other sources, signed by an appropriate officer of the State and specifying the manner in which, and the purposes for which, any Funds paid by the Department under this Agreement have been expended (accompanied by supporting documentation);

"Funding Period" means the period specified in Item B during which the Funds will be paid to the State in accordance with this Agreement;

"Funding Schedule" means the funding schedule required to be provided by the State under clause 16 and Item A of the Schedule;

"Funds" means the amount specified in Item D or part thereof as payable in accordance with clause 2.1 and includes all interest earned on that amount.

"Implementation Guidelines" means the Australian Government Implementation Guidelines for the National Code of Practice, reissued June 2006;

"Intellectual Property" includes all copyright (including moral rights and rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered and unregistered designs, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

"Interest" means interest calculated at the ninety (90) day bank-accepted bill rate (available from the Reserve Bank of Australia) less ten (10) basis points;

"Law" means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time anywhere in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law as applicable from time to time;

"Liaison Officer" means the persons or position holders specified in Item E;

"Material" means documents, software (including source code and object code), goods, information and data stored by any means including all copies and extracts of the same;

"OHS Accreditation Scheme" means the OHS accreditation scheme established by the *Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005*;

"Operation Period" a period of 20 years commencing on the date that the State commences using the Facilities for the purposes of the Project and the Designated Use;

"Party" means a party to this Agreement;

"Progress Reports" means the Material provided to the Commonwealth in accordance with clauses 4.1 and 4.2;

"Project" means the project specified in Item A for which the Funds are paid to the State;

"Project Material" means all Material including Reports:

- (a) brought into existence for the purpose of performing the Project;
- (b) incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (a); or
- (c) copied or derived from the Material referred to in paragraphs (a) or (b);

"Project Period" means the period specified in Item A of the Schedule as being the Project Period;

"Project Work Plan" means the project work plan required to be provided by the State under clause 16 and Item A of the Schedule;

"Related Entity" has the same meaning as given to that term in the Implementation Guidelines;

"Relevant Authority" means any:

- (a) department, authority, agency or regulatory body of the Commonwealth or of any State or Territory where the Works are carried out; or
- (b) Law where the Works are carried out, or a standard commonly applying in the building or construction industry in the State or Territory where the Works are carried out, which applies or is relevant to the building, construction or fit out by the State of the Facilities;

"Repayment Amount" means any amount payable by the State under clause 3B.9 or 3B.10;

"Report" means the Progress Reports and the Final Report;

"Required Operational Date" means the date specified in Item A1 of the Schedule as being the Required Operational Date;

"State's Contribution" means the funds and other resources that the State must contribute to the Project in accordance with clause 17, as set out in Item I; and

"Works" means the design, construction and completion of the Townsville Hospital's expansion of its bed and operating theatre capacity and associated spaces at the Facilities as described in more detail in Item A of the Schedule and as contemplated by the Project Work Plan.

1.2 In this Agreement, unless the contrary intention appears:

- (a) words in the singular number include the plural and words in the plural number include the singular;
- (b) words importing a gender include any other gender;
- (c) words importing persons include a partnership and a body whether corporate or otherwise;
- (d) where any word or phrase is given a defined meaning, any other form of that word or phrase has a corresponding meaning;
- (e) an uncertainty or ambiguity in the meaning of a provision of this Agreement will not be interpreted against a party just because that party prepared the provision;
- (f) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth and, if it has been or is amended, is a reference to that statute or other legislation as amended;
- (g) reference to a Party (by whatever title) will, where the context so admits, include the officers, employees, agents and subcontractors of the Party, and the Party's successors and assigns; and
- (h) all references to 'clauses' are clauses in this Agreement all references to 'Items' are to Items in the Schedule to this Agreement, and any references to 'Schedule' are to the Schedule to this Agreement.

- 1.3 If there is any conflict or inconsistency between:
- (a) the terms and conditions contained in the clauses of this Agreement and any part of the Schedule, then the terms and conditions of the clauses will prevail to the extent of the conflict or inconsistency;
 - (b) the terms and conditions contained in the clauses of this Agreement and any part of the Funding Schedule or the Project Work Plan, then the terms and conditions of the clauses will prevail to the extent of the conflict or inconsistency;
 - (c) the terms and conditions contained in the clauses of this Agreement and any part of the annexures (if any), then the terms and conditions of the clauses will prevail to the extent of the conflict or inconsistency;
 - (d) any part of the Schedule and any part of the annexures (if any) or any part of the Project Work Plan or the Funding Schedule, then the Schedule will prevail to the extent of the conflict or inconsistency; and
 - (e) any part of the annexures (if any) and any part of the Project Work Plan or the Funding Schedule, then the annexures will prevail to the extent of the conflict or inconsistency.
- 1.4 The laws of the Australian Capital Territory apply to this Agreement.
- 1.5 This Agreement records the entire agreement between the Parties in relation to its subject matter.
- 1.6 No variation of this Agreement is binding unless agreed in writing between the Parties.
- 1.7 If a court or tribunal says any provision of this Agreement has no effect or interprets a provision to reduce an obligation or right, this does not invalidate any other provision.
- 1.8 If a Party does not exercise, or delays in exercising, any of its rights under this Agreement or at law, that failure or delay does not operate as a waiver of those rights.
- 1.9 A single or partial exercise by a Party of any of its rights under this Agreement or at law does not prevent the further exercise of any right.
- 1.10. The State cannot assign its obligations, and agrees not to assign its rights, under this Agreement without, in either case, prior approval in writing from the Commonwealth.
- 2. FUNDING**
- 2.1 Subject to Parliamentary appropriation, the State complying with its obligations under clause 17 and to the provisions of this Agreement, the Department agrees to pay the Funds to the State in accordance with the payment schedule set out in Item D and the Funding Schedule as and when approved by the Department in accordance with clause 16.2(b).
- 2.2 The funding to be contributed by the Department for the Project will not exceed the amount of Funds specified in Item D.

- 2.3 The State must advise the Department of any funds (other than the Funds or the State's Contribution) that it is or will be receiving for the Project.
- 2.4 The Department may at its discretion defer, reduce or not make a payment of Funds where it forms the reasonable opinion that:
- (a) the full payment is not properly required by the State because of Project surpluses or underspends; or
 - (b) the State has failed to make some or all of the State's Contribution or otherwise failed to comply with its obligations under clause 17.
- 2.5 Without limiting its rights, the Department may at its discretion defer, reduce or not make a payment of Funds until the State has performed all of its obligations that are required to be performed up to the date of that payment under this Agreement.
- 2.6 In consideration of the provision of the Funds, the State must use the Funds only for the Project and according to the terms and conditions set out in this Agreement.
- 2.7 The State agrees to submit invoices for payment of the Funds. The amount of the invoice must not exceed the amount of Funds properly required by the State for its use in relation to the Project up to the date of the next invoice.

3. MANAGEMENT OF FUNDS

- 3.1 The State must keep proper accounts and records of its receipt and use of the Funds, separately from other accounts and records of the State.
- 3.2 The State must not commit any part of the Funds for expenditure that is likely to occur after the end of the Funding Period without prior written approval from the Department.

3A. CONDUCT OF THE WORKS

- 3A.1 The State will ensure that the Works and all activities relating to the Project are carried out in accordance with the requirements and standards of all Relevant Authorities applicable to the Works and the Project.
- 3A.2 The State must ensure the Works are completed on or before the date for completion of the Works specified in the Project Work Plan approved by the Commonwealth under clause 16.2(b).
- 3A.3 The State must provide to the Commonwealth, or ensure that the Commonwealth is provided with, written evidence satisfactory to the Commonwealth of the proper completion of all Works on or before the date for completion of the Works specified in clause 3A.2 above.
- 3A.4 The State will ensure that the Works will be fit for their intended purposes including for use for the purposes of the Project and the Designated Use.

3B. FACILITIES AND USE OF FACILITIES

- 3B.1 For the avoidance of doubt, this clause 3B (with the exception of clause 3B.6) applies whether or not the State is the owner of the Facilities or of the completed Works.

- 3B.2 The State will ensure, and represents and warrants, that:
- (a) the Facilities are and will at all times be fit for the purposes of carrying out the Project (including the Works);
 - (b) the undertaking of the Project (including the Works) and the use of the Facilities in support of the objectives and outcomes of the Project, has not, and will not, infringe any condition of ownership or occupation of the Facilities;
 - (c) the use of the Facilities for the Project (including the Works) in support of the outcomes and objectives of the Project, has not, and will not, infringe any requirements of a Relevant Authority;
 - (d) the Facilities (after completion of the Works) will comply with all relevant Australian Standards, Laws and any other standards or requirements which relate to the ongoing use of the Facilities in support of the objectives and outcomes of the Project; and
 - (e) the Facilities will, at all times during the Project Period, be able to be used for the purposes of the Project in accordance with, and as envisaged under, this Agreement.
- 3B.3 The State must notify the Commonwealth within 10 days of it commencing the operation and use of the Facilities for the purposes of the Project and the Designated Use.
- 3B.4 The State must ensure that the Facilities are operational and are being used for the purposes of the Project and the Designated Use on or before the Required Operational Date.
- 3B.5 The State must at all times during the Operation Period:
- (a) ensure that the Facilities are available for use, and are used only, for the purposes of the Project and the Designated Use (or any other purpose approved by the Commonwealth in advance in writing);
 - (b) ensure that the Facilities are safeguarded against loss, damage or unauthorised use;
 - (c) ensure that the Works and the Facilities are maintained in good condition;
 - (d) reinstate the Works in the case where they are damaged or destroyed; and
 - (e) not dispose of the Facilities without the prior written approval of the Commonwealth.
- 3B.6 If the State is not the owner of the Facilities and there is not an existing agreement with the owner of the Facilities (whether between the State and the owner of the Facilities or otherwise) that entitles the State to comply with its obligations under this Agreement:
- (a) it must enter into a written agreement with the owner of the Facilities, or ensure that an agreement is entered into with the owner of the Facilities, that allows for the undertaking and completion of the Works during the Funding Period and the use and occupation of the Facilities for the purposes of the

Project and the Designated Use until the end of the Operation Period (a Use Agreement);

- (b) prior to a Use Agreement being executed, the State must:
 - (i) provide a copy of the proposed Use Agreement to the Commonwealth;
 - (ii) request and obtain the prior written approval of the Commonwealth to the Use Agreement; and
 - (iii) provide the Commonwealth (at the State's own cost) with any information, assistance and cooperation reasonably required by the Commonwealth to assist it to assess the State's request for the Commonwealth's written approval to the Use Agreement;
- (c) the State must not expend any of the Funds (or permit any of the Funds to be expended) on the Works unless and until the Commonwealth has given its prior written approval to the Use Agreement but, to avoid doubt, this clause 3B.6 does not prevent the State from expending part of the Funds (or permitting part of the Funds to be expended) on the design of the Facilities or other activities preparatory to the construction of the Facility.

3B.7 The State must not, and must ensure that all relevant third parties do not, do anything that would give the owner of the Facilities the right to terminate the Use Agreement or any other arrangement or agreement enabling the State to comply with its obligations under this Agreement.

3B.8 Without limiting any of the Commonwealth's rights at Law or otherwise under this Agreement, if, at the Required Operational Date, the Facilities are not operational and are not being used for the purposes of the Project and the Designated Use, then the State must within 30 days after the Required Operational Date, pay to the Commonwealth an amount equivalent to the Funds.

3B.9 Without limiting any of the Commonwealth's rights at Law or otherwise under this Agreement, if the State fails to operate and use the Facilities for the purposes of the Project and the Designated Use at any time during the Operation Period, the State must repay to the Commonwealth, within 30 days of receiving notice from the Commonwealth, the Repayment Amount calculated in accordance with Item H1 of the Schedule as a debt due to the Commonwealth.

3B.10 Without limiting any of the Commonwealth's rights at Law or otherwise under this Agreement, if the State (or a relevant third party with an interest in the Facilities) disposes of the Facilities or the right to occupy and use the Facilities during the Project Period, such that the Commonwealth reasonably considers that the undertaking of the Project (including the Works) or the use of the Facilities for the purposes of the Project will not or is unlikely to be achieved, the State must repay to the Commonwealth, within 30 days of receiving notice from the Commonwealth, the Repayment Amount calculated in accordance with or as specified in Item H2 of the Schedule as a debt due to the Commonwealth.

- 3B.11 The State acknowledges and agrees that the Facilities are not owned, or will not be owned (as the case may be) by the Commonwealth and the Commonwealth has no responsibility for them.
- 3B.12 The State accepts all liabilities and risks associated with the use, misuse or failure to use the Facilities.
- 3B.13 If the State fails to make payments as required by clause 3B.8, 3B.9 or 3B.10
- (a) the State must pay to the Commonwealth Interest on the Repayment Amount from the date it was due, for the period it remains unpaid; and
 - (b) the Repayment Amount, and Interest owed under this clause will be recoverable by the Commonwealth as a debt due to the Commonwealth by the State.
- 3B.14 This clause 3B survives the expiration or earlier termination of this Agreement.

3C. ASSUMPTION OF RISKS FOR THE WORKS BY THE STATE

- 3C.1 The State accepts all risks in respect of the design, construction and commissioning of the Works, including (without limitation) the risk of:
- (a) the actual cost of the design, construction and commissioning of the Works being greater than anticipated and, without limitation, being greater than the Funds;
 - (b) the design, construction and commissioning of the Works not being completed in accordance with the requirements of any contract between the State and a subcontractor;
 - (c) liabilities associated with:
 - (i) occupational health and safety;
 - (ii) environmental issues;
 - (iii) payments to contractors and subcontractors; and
 - (iv) liabilities to third parties;
 - (d) compliance with all Law relating to the Works.

4. REPORTS

- 4.1 The State must provide the Commonwealth's Liaison Officer with Progress Reports and a Final Report in accordance with the time-frame for Reports specified in Item C.
- 4.2 Each Progress Report must contain the information specified in Item C and must also include:
- (a) a Financial Statement;
 - (b) information covering the Project Period to the date of the Progress Report on whether the objectives and outcomes of the Project are being achieved; and
 - (c) if requested by the Department, a copy of any Material produced in relation to this Agreement up to the date of the Progress Report.

- 4.3 The Final Report must contain the information specified in Item C and must also include:
- (a) a Financial Statement; and
 - (b) a comprehensive report on whether the objectives and outcomes of the Project have, at the time of the relevant Final Report, been achieved and if not, the reasons why those objectives and outcomes were not achieved at that time.
- 4.4 This clause 4 survives the expiration or earlier termination of this Agreement.

5. LIAISON

- 5.1 The State must liaise with and report to the Commonwealth's Liaison Officer as reasonably required by the Commonwealth's Liaison Officer for the purposes of this Agreement.
- 5.2 Upon receipt of reasonable written notice, the State must within the time-frame stipulated in the notice, or within a reasonable time-frame if no time-frame is stipulated in the notice, provide any information in relation to the Project requested by the Department for the purposes of this Agreement, including monitoring and evaluation.

6. ACCESS TO PREMISES AND MATERIALS

- 6.1 The State must, at all reasonable times, give to persons authorised in writing by the Department, permission to:
- (a) inspect any Material relevant to this Agreement; and
 - (b) access and copy any records of the State relating to the Project or the receipt, expenditure or other use of the Funds and the State's Contribution.
- 6.2 The State agrees to provide all assistance reasonably requested by the Department in respect of any inquiry into or concerning the Project or this Agreement.
- 6.3 This clause 6 applies until the date of the expiration or earlier termination of this Agreement and for a period of 7 years from that date.

6A. COMPLIANCE WITH LAWS

- 6A.1 If the amount of the Funds provided under this Agreement is
- (a) \$10 million or more; or
 - (b) \$5 million or more, but less than \$10 million, and represents at least 50% of the total construction value of the Works,
- then the State must comply with the clauses set out below. In all other cases, the State must, and ensure its contractors, subcontractors, consultants and suppliers, use reasonable endeavours to follow and implement best practice standards at least equivalent to those set out in the Code, the Implementation Guidelines and the OHS Accreditation Scheme.
- 6A.2 In the performance of the Project (including the Works), the State must comply, and ensure its contractors, sub-contractors, consultants, suppliers, officers and employees

comply, with the Code, the Implementation Guidelines and the OHS Accreditation Scheme.

6A.3 The State must ensure that all:

- (a) requests for tender made;
- (b) expressions of interest made;
- (c) submissions and invitations to join common use arrangements made; and
- (d) all contracts and agreements entered into;

by the State (including its officers and employees), and by its contractors, subcontractors, consultants and suppliers, in relation to the Project (including the Works) contain the commitment to apply the Code and the Implementation Guidelines as set out in the document titled "Model Tender and Contract Documentation" which is available at www.workplace.gov.au/building.

6A.4 The State must ensure that all head contracts for building work under this Agreement that are valued at three million dollars (\$3,000,000) or more must:

- (a) be notified to the Office of the Federal Safety Commissioner at the earliest possible opportunity (that is, when approaching the market); and
- (b) contain a requirement that the contracted builder:
 - (i) is accredited under the OHS Accreditation Scheme;
 - (ii) maintains the OHS Accreditation Scheme accreditation for the life of the contract; and
 - (iii) must comply with all conditions of the OHS Accreditation Scheme.
- (c) For the purpose of this clause, building work has the same meaning as given to it in section 5 of the BCII Act.

6A.5 Compliance with the Code, the Implementation Guidelines and the OHS Accreditation Scheme does not limit or affect the State's obligations under this Agreement, or otherwise arising out of or in connection with the Project.

6A.6 The State must create and maintain, and ensure its contractors, subcontractors, consultants, suppliers, officers and employees create and maintain, adequate records of their compliance with the Code, the Implementation Guidelines and the OHS Accreditation Scheme in relation to the Project (including the Works).

6A.6 The State must permit, and ensure that its contractors, subcontractors, consultants and suppliers permit, the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner or the Office of the Federal Safety Commissioner, to have full access to their premises and records to:

- (a) inspect any work (including the Works), material, machinery, appliance, article or facility;
- (b) inspect and copy any record relevant to the Works, the Project or this Agreement; and
- (c) interview any person;

as is necessary to monitor compliance with the Code, the Implementation Guidelines and the OHS Accreditation Scheme.

- 6A.7 The State must produce, and ensure that its contractors, subcontractors, consultants and suppliers produce, for the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner or the Office of the Federal Safety Commissioner, any specified document within a specified period (being not less than 14 days from the date of the request) in person, by fax or by post.
- 6A.8 The Commonwealth and those persons authorised by it may publish or otherwise disclose information in relation to compliance by the State, its employees and officers, its contractors, sub-contractors, consultants and suppliers, with the Code, the Implementation Guidelines and the OHS Accreditation Scheme
- 6A.9 Notwithstanding any other provision of this Agreement, the State must not appoint a contractor, subcontractor, consultant or supplier in relation State the Project where the appointment would breach a sanction imposed by the Minister for Education, Employment and Workplace Relations.
- 6A.10 If the State does not ensure compliance with the requirements of the Code, the Implementation Guidelines or the OHS Accreditation Scheme in the performance of this Agreement such that a sanction is applied by the Minister for Education, Employment and Workplace Relations, the Code Monitoring Group or the Commonwealth, then the Commonwealth, without prejudice to any rights that would otherwise accrue, is entitled to record that non-compliance and take it into account in the evaluation of any future tenders or applications for funding that may be lodged by the State or any of its related entities in respect of work for, or funding from, any part of the Commonwealth or its agencies.

6B. INSURANCE

- 6B.1 The State will ensure that all subcontractors engaged in connection with the performance of the Works or the Project obtain and maintain all appropriate insurances (including all insurances that would be obtained and maintained by a prudent and professional person engaged to perform functions the same or similar to the relevant third party) relating to that third party's engagement in relation to the Works or the Project.

7. INTELLECTUAL PROPERTY

- 7.1 Any Intellectual Property rights and title to, or in relation to, the Project Material will vest, upon creation, in the State.
- 7.2 The State grants to the Commonwealth a perpetual, irrevocable, royalty-free and licence fee-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, copy, modify and exploit the Project Material.
- 7.3 This clause 7 does not affect the ownership of any Intellectual Property in any Existing Material. However, the State undertakes to grant to the Commonwealth, or arrange for the grant to the Commonwealth, of a perpetual, irrevocable, royalty-free and licence fee-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, copy, modify and exploit the Existing Material in conjunction with the other Project Material.
- 7.4 The State warrants that anything done by the State in the course of the Project, including in developing the Reports, will not infringe the Intellectual Property rights of any person.
- 7.5 For this clause, the 'Specified Acts' means the following classes or types of acts or omissions by or on behalf of the Commonwealth:
- (a) those which would, but for this clause, infringe the author's right of attribution of authorship or the author's right of integrity of authorship;
- but does not include:
- (b) those which would infringe the author's right not to have authorship falsely attributed.
- 7.6 The State warrants that:
- (a) the author of any Project Material, other than Existing Material has given or will give a written consent to the Specified Acts (whether occurring before or after the consent is given) which is given directly or indirectly for the Commonwealth's benefit; and
 - (b) the author of any Existing Material has given or will give a written consent to the Specified Acts (whether occurring before or after the consent is given) which is given directly or indirectly for the Commonwealth's benefit in relation to such Material being used, reproduced, adapted and exploited in conjunction with the other Project Material.
- 7.7 Intellectual Property rights and title to, or in relation to, Commonwealth Material remains vested at all times in the Commonwealth.
- 7.8 The Commonwealth grants to the State a royalty-free and licence fee-free, world-wide, non-exclusive licence to use, copy and modify the Commonwealth Material for the purposes of the Project. The State agrees to ensure that all Commonwealth Material is used strictly in accordance with any conditions or restrictions specified by the Commonwealth.

7.9 At the end of the Project Period or on the earlier termination of this Agreement, the State must deliver a complete copy of the Project Material and the Commonwealth Material to the Department, or deal with it as otherwise directed by the Department.

8. ACKNOWLEDGMENT AND PUBLICATIONS

8.1 The State must acknowledge the financial and other support it has received from the Commonwealth in:

- (a) all publications, promotional and advertising materials, public announcements and activities by it or on its behalf in relation to the Project or any products, processes or inventions developed as a result of the Project; and
- (b) the form set out in Item F, and if not set out in Item F, then in a form approved by the Department prior to its use.

8.2 This clause 8 survives the expiration or earlier termination of this Agreement.

9. NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY

9.1 The State must not represent itself, and must ensure that its employees do not represent themselves, as being an employee, partner or agent of the Commonwealth, or as otherwise able to bind or represent the Commonwealth.

9.2 The State is not by virtue of this Agreement, or for any purpose an employee, partner or agent of the Commonwealth, or invested with any power or authority to bind or represent the Commonwealth.

10. SUSPENSION AND TERMINATION

10.1 If:

- (a) the Department is reasonably satisfied that the terms and conditions of this Agreement have not been complied with by the State;
- (b) the State, by notice in writing given to the Department, withdraws from this Agreement; or
- (c) the Department considers it appropriate for any other reason;

the Department may, by written notice to the State, terminate this Agreement or require the State to immediately suspend dealings with the Funds.

10.2 If this Agreement is terminated in accordance with clause 10.1(c), the Commonwealth will only be liable for any reasonable costs (excluding, without limitation, loss of prospective income or profits) unavoidably incurred by the State, which are directly attributable to the termination. The Commonwealth will not be liable to pay any amount in excess of the amount of Funds remaining unpaid under this Agreement at the date of termination.

10.3 On termination of this Agreement, or for the duration of any suspension of dealings with the Funds, the State must hold the Funds in utmost good faith for use only in accordance with the directions of the Department and will cease all other dealings with the Funds. The Department may, upon the production of information to its satisfaction, approve in writing the expenditure of Funds properly incurred/committed by the State prior to the date of termination or suspension.

- 10.4 The Department may end the suspension of dealings with the Funds by written notice to the State, subject to such preconditions which the Department may reasonably require.
- 10.5 Subject to clause 10.2, the Department will not be obliged to pay any part of the Funds to the State after the termination of this Agreement or during any period of suspension of dealings with the Funds.
- 10.6 Except as provided in this clause, the Commonwealth will not come under any liability to the State for termination of this Agreement in accordance with clause 10.1.

11. REPAYMENT OF FUNDS

11.1 If:

- (a) on the expiration of the Funding Period or on termination of this Agreement, any Funds:
- (i) remain unspent or uncommitted; or
 - (ii) cannot, by reconciliation between the accounts and records maintained by the State (as reported to the Department by the State in the financial statements referred to in clauses 4.2 and 4.3 (Reports)) be shown to the reasonable satisfaction of the Department to have been spent or committed in accordance with this Agreement; or
- (b) at any time the Department forms the reasonable opinion that any Funds have been used, spent or committed by the State other than in accordance with this Agreement;

the Department may by written notice to the State require the State to repay that part of the Funds, and the State must repay to the Department the amount set out in the notice, within 28 days of receipt of the notice.

11.2 If the State fails to make payment as required by clause 11.1:

- (a) the State must pay the Commonwealth Interest on the relevant amount from the date it was due, for the period it remains unpaid; and
- (b) the relevant amount, and Interest owed under this clause will be recoverable by the Commonwealth as a debt due to the Commonwealth by the State.

11.3 The operation of this clause survives the expiration or earlier termination of this Agreement.

12. INDEMNITY

- 12.1 The State indemnifies the Commonwealth, its officers, employees and agents ('those indemnified') from and against all actions, claims, demands, costs and expenses (including the costs of defending or settling any action, claim or demand) made, sustained, brought or prosecuted against those indemnified in any manner based on any loss or damage to any person or loss or damage to property which may arise in connection with any act or omission of the State or subcontractor in relation to the Project.

- 12.2 The State agrees that the Commonwealth will be taken to be acting as agent or trustee for and on behalf of those indemnified from time to time.
- 12.3 The State's liability to indemnify the Commonwealth under clause 12.1 will be reduced proportionally to the extent that any unlawful or negligent act or omission of the Commonwealth or its employees or agents contributed to the loss or damage.
- 12.4 The indemnity referred to in clause 12.1 will survive the expiration or termination of this Agreement.

13. TAXES, DUTIES AND GOVERNMENT CHARGES

- 13.1 Except as provided by this clause, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement will be borne by the State.
- 13.2 The Funds payable (the Original Funds Payable) to the State do not include any amount to cover any liability of the State for Goods and Services Tax (GST) on any supplies made under this Agreement which are taxable supplies within the meaning of *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act).
- 13.3 If a supply made by the State under this Agreement is a taxable supply under the GST Act, the State may, by notice in writing to the Department, increase the Original Funds Payable by the Department by the amount of GST that is payable by the State on that part of the Original Funds Payable which relates to the taxable supply as if that part of the Original Funds Payable is the value of the supply for the purposes of the GST Act.
- 13.4 If required by the Department, the State must substantiate to the Department's reasonable satisfaction how any change in the amounts payable by the Department determined under this clause have been calculated before such changes will take effect.
- 13.5 In relation to any taxable supplies made under this Agreement, the State agrees to issue the Department with a tax invoice in accordance with the GST Act, together with or as part of each claim for further payment of Funds submitted for payment pursuant to clause 4.2 (Reports).

14. CONFIDENTIALITY

- 14.1 The State must not disclose Confidential Information without prior approval in writing from the Department. In giving written approval the Department may impose such terms and conditions as it thinks fit.
- 14.2 The Department may at any time by notice in writing to the State, require the State to give, and to arrange for its employees and subcontractors engaged in the performance of the Projects to give written undertakings, in a form required by the Department, relating to the non-disclosure of Confidential Information. The State must promptly arrange for all such undertakings to be given.
- 14.3 The obligations on the State under this clause will not be taken to have been breached where the information referred to is required by law to be disclosed.

14.4 The obligations contained in this clause shall survive the expiration or termination of this Agreement.

15. NOTICES

15.1 A Party giving notice under this Agreement must do so in writing that is:

- (a) directed to the Party's address specified in Item E marked for the attention of the Liaison Officer; and
- (b) hand delivered or sent by pre-paid post or facsimile to that address.

15.2 A notice given in accordance with clause 15.1 is received:

- (a) if hand delivered, on delivery;
- (b) if sent by pre-paid post on the third Business Day after the date of posting;
- (c) if sent by facsimile, at the time the sender receives notification that the notice has been transmitted satisfactorily.

16. FUNDING SCHEDULE AND PROJECT WORK PLAN

16.1 The State must provide the Commonwealth's Liaison Officer with a draft Project Work Plan and Funding Schedule in accordance with the timeframes specified in Item A and including the content specified in Item A of the Schedule.

16.2 The Commonwealth will use reasonable endeavours to review the State's draft Project Work Plan and Funding Schedule within 14 days of receipt from the State and:

- (a) notify the State that it requires amendments to either or both of the Project Work Plan and the Funding Schedule, in which case the State will within 14 days of receipt of the Commonwealth's notification, prepare and submit a revised version of the Project Work Plan or the Funding Schedule (or both as the case may be), taking into account the Commonwealth's requirements;
- (b) approve the Project Work Plan or the Funding Schedule (or both as the case may be).

16.3 Each revised Project Work Plan or Funding Schedule will be subject to review by the Commonwealth in accordance with clause 16.2.

16.4 Without limiting the State's obligations under this Agreement (including without limitation its obligation to perform the Project), if and when the Commonwealth approves the Project Work Plan, the Project Work Plan will form part of this Agreement and the State must comply with, and ensure the Works and the Project are conducted in accordance with, the Project Work Plan. Other than in respect of a change to the nature or scope of the Works, which change must be agreed in writing in accordance with clause 1.6, the State may amend the Project Work Plan without the Commonwealth's prior written agreement.

16.5 If and when the Commonwealth approves the Funding Schedule, the Funding Schedule will form part of this Agreement and the State acknowledges that the Commonwealth will pay the Funds in accordance with the Funding Schedule. The State acknowledges and agrees that, except to the extent expressly stated in Item D of the Schedule, it has no entitlement to claim payment of the Funds unless and until the

Funding Schedule is approved by the Commonwealth. Once approved, the Funding Schedule may not be amended except in accordance with clause 1.6.

17. STATE'S CONTRIBUTION

17.1 The State must make the State's Contribution to the Project.

17.2 The State acknowledges and agrees that:

- (a) the Funds will not and are not intended to be sufficient to fully fund the due and proper completion of the Project and the Works in accordance with this Agreement;
- (b) the State's entitlement to retain any Funds paid by the Commonwealth in accordance with this Agreement is subject to and conditional upon the State making the State's Contribution as required under this Agreement; and
- (c) the State's Contribution must be sufficient to ensure the due and proper completion of the Project and the Works on or before the end of the Funding Period.

17.3 The State must ensure the State's Contribution is made in a manner and at times which allows for the due and proper completion of the Project and the Works in accordance with all requirements of this Agreement on or before the end of the Funding Period.

SCHEDULE

A. PROJECT

- A.1 The Project as set out in the proposal titled "Townsville Hospital Expansion" at Attachment A to the Schedule involves the expansion of the Hospital's bed, operating theatre capacity and associated spaces to meet health service needs of the Townsville catchment area.
- A.2 The State must provide the following information and plans for the Department's approval by the dates specified:
- (a) draft Project Work Plan due on or before 30 September 2009 (including details of additional beds, operating theatres and associated spaces);
 - (b) final Project Work Plan within 14 days of the date the Commonwealth provides comments on the draft Project Work Plan to the State;
 - (c) a Funding Schedule for the Funding Period, due together with the final Project Work Plan, which specifies, in relation to each of the activities identified in the Project Work Plan:
 - (i) the amount of Funding, up to \$250 million, that the State anticipates will be required to complete each stage of the Project; and
 - (ii) the criteria for assessing completion of each stage of the Project and the amount of Funding payable on completion of each stage.
- A.3 The Project Work Plan must set out the key milestones for the preparation of the site including the timing of the Works and as a minimum must also include and address the following:
- (a) floor plans including elevations;
 - (b) schedule of accommodation;
 - (c) cost plan; and
 - (d) project program and cashflow.
- A.4 The State agrees to incorporate any changes requested by the Department to the above documents in accordance with clause 16. Once approved in writing by the Department, the Project Work Plan and the Funding Schedule will, in accordance with clause 16, be deemed to form part of this Agreement. Any variation to the Project Work Plan or the Funding Schedule must be made in accordance with clause 16 of this Agreement.

FACILITIES, DESIGNATED USE AND PROJECT PERIOD

- A5. The Facilities: The Facilities comprise a new clinical block adjacent to the current main acute building which will accommodate new beds plus displaced beds and services from the expansion of the current operating theatre suite (including expansion/upgrade of the supporting infrastructure eg carparking, kitchen, medical

facilities, central energy plant) in relation to which the Works will be carried out, more particularly described as the Townsville Hospital Expansion.

- A6. The Designated Use: The Designated Use of the Facilities is to accommodate new beds and supporting infrastructure to provide tertiary services that will underpin major improvements in efficiency, access or outcomes of health care.
- A.7 The Project Period: The Project Period commences on the Commencement Date and expires on completion of the Operation Period.
- A.8 The Required Operational Date: The Required Operational Date is 30 June 2015.

B. FUNDING PERIOD

The Funding Period is from signing of this Agreement until 30 June 2014.

C. REPORTS

C.1 Progress Reports

Progress Reports must be provided each 6 months during the Funding Period, commencing 6 months after the Department receives and approves the Project Work Plan. The Department will notify the State of the specific due dates of the 6 monthly Progress Reports following receipt and approval of the Project Work Plan and the State must comply with each of those due dates.

C.2 Content of Progress Reports

In addition to the requirements of clause 4, Progress Reports during the Funding Period must include the following:

- (a) an assessment of progress in achieving the milestones of the Project Work Plan including reasons for any under-performance;
- (b) financial management issues including any changes in cost estimates and the reason for those changes;
- (c) a Financial Statement, noting that as a contribution to a project of an estimated cost of \$344 million, specific detail will not be able to be provided on the expenditure of the Funds;
- (d) details of the nature or amount of the State's Contribution at the time of that Progress Report;
- (e) any comments on overall progress including slippages or possible slippages and their impact on the Required Operational Date; and
- (f) copies of publicity or promotional material developed for the Project including examples.

- C3. In addition to the requirements of clause 4, a Progress Report must be provided 6 months from the commencement of the Operation Period, and annually thereafter, and must include the following:
- (a) information regarding the operation of the Facilities and the services provided, as collected by the State ;
 - (b) details of how the Facilities have been used for the purposes of the Project and the Designated Use during the period to which the Progress Report relates;
 - (c) details of any period during which the Facilities have not been used for the purposes of the Project or the Designated Use and the reasons for that failure;
 - (d) copies of publicity or promotional material developed for the Project including examples;
- C4. Additional information will be provided by the State during the Operation Period in response to reasonable ad hoc requests from the Commonwealth not exceeding one request per 3 month period.
- Final Report
- C5. The State must provide the Department with a Final Report for the Funding Period within 3 months from 30 June 2014 or from the commencement of the Operation Period, whichever is the earlier.
- C6. The Final Report for the Funding Period must include the following:
- (a) an overview of the site works;
 - (b) a Financial Statement, noting that as a contribution to a project of an estimated cost of \$344 million, specific detail will not be able to be provided on the expenditure of the Funds;
 - (c) details of the nature or amount of the total State's Contribution;
 - (d) comments on lessons learnt and how the process could be improved or streamlined; and
 - (e) copies of publicity or promotional material developed for the Project including examples.

D. FUNDS

- D1. Subject to the terms of this Agreement, the Department agrees to provide a total amount of up to \$250 million (GST exclusive) to the State as follows:
- (a) \$24 million payable upon signing of this Agreement;
 - (b) \$9.5 million payable upon approval of the Project Work Plan in accordance with clause 16; and
 - (b) up to \$216.5 million payable in accordance with the Funding Schedule approved in accordance with clause 16, payable on receipt of correctly rendered invoice(s).

E. LIAISON OFFICERS

- E1. The Department's Liaison Officer is the person occupying the duties of Director, Health & Hospitals Fund with details as follows:

Postal address:

Director
Health & Hospitals Fund
Department of Health and Ageing
MDP 51
GPO Box 9848
CANBERRA ACT 2601

Tel: (02) 6289 1741
Fax: (02) 6289 4988
Email : HHHF@health.gov.au

Physical address:

Director
Health & Hospitals Fund
Department of Health and Ageing
Level 13, Scarborough House
Atlantic Street
WODEN ACT 2606

- E2. The State's Liaison Officer is the person occupying the duties of Chief Executive Officer, Townsville Health Services District with details as follows:

Postal address:

Chief Executive Officer
The Townsville Hospital
100 Angus Smith Drive
DOUGLAS QLD 4814

Tel: (07) 4796 0930
Fax: (07). 4796 0991

Physical address:

Chief Executive Officer
The Townsville Hospital
100 Angus Smith Drive
DOUGLAS QLD 4814

F. ACKNOWLEDGEMENT

- F1. All publicity or promotional Materials developed for the Project must acknowledge the contribution of the Commonwealth in the form approved by the Commonwealth, including public announcements and advertising Material.
- F2. The State must provide to the Commonwealth copies of all Materials that are to be made public before such Materials are made public and must advise the Commonwealth in advance of any public announcement regarding the Project. In the event of any public opening or launch of the Townsville Hospital Expansion a representative of the Commonwealth, which may be a Minister, may attend and speak at the opening or launch.

G. EXISTING MATERIAL

None Specified.

H. REPAYMENT AMOUNT

- H1 Where clause 3B.9 applies, the Repayment Amount will be calculated as follows:
- (a) if the failure occurs during the first year of the Operation Period, the Repayment Amount is 100% of the Funds;
 - (b) if the failure occurs during the second year of the Operation Period, the Repayment Amount is 95% of the Funds;
 - (c) if the failure occurs during the third year of the Operation Period, the Repayment Amount is 90% of the Funds;
 - (d) if the failure occurs during the fourth year of the Operation Period, the Repayment Amount is 85% of the Funds;
 - (e) if the failure occurs during the fifth year of the Operation Period, the Repayment Amount is 80% of the Funds;
 - (f) if the failure occurs during the sixth year of the Operation Period, the Repayment Amount is 75% of the Funds;
 - (g) if the failure occurs during the seventh year of the Operation Period, the Repayment Amount is 70% of the Funds;
 - (h) if the failure occurs during the eighth year of the Operation Period, the Repayment Amount is 65% of the Funds;
 - (i) if the failure occurs during the ninth year of the Operation Period, the Repayment Amount is 60% of the Funds;
 - (j) if the failure occurs during the tenth year of the Operation Period, the Repayment Amount is 55% of the Funds;
 - (k) if the failure occurs during the eleventh year of the Operation Period, the Repayment Amount is 50% of the Funds;
 - (l) if the failure occurs during the twelfth year of the Operation Period, the Repayment Amount is 45% of the Funds;

- (m) if the failure occurs during the thirteenth year of the Operation Period, the Repayment Amount is 40% of the Funds;
- (n) if the failure occurs during the fourteenth year of the Operation Period, the Repayment Amount is 35% of the Funds;
- (o) if the failure occurs during the fifteenth year of the Operation Period, the Repayment Amount is 30% of the Funds;
- (p) if the failure occurs during the sixteenth year of the Operation Period, the Repayment Amount is 25% of the Funds;
- (q) if the failure occurs during the seventeenth year of the Operation Period, the Repayment Amount is 20% of the Funds;
- (r) if the failure occurs during the eighteenth year of the Operation Period, the Repayment Amount is 15% of the Funds;
- (s) if the failure occurs during the nineteenth year of the Operation Period, the Repayment Amount is 10% of the Funds;
- (t) if the failure occurs during the twentieth year of the Operation Period, the Repayment Amount is 5% of the Funds.

H2. Where clause 3B.10 applies, the Repayment Amount will be equal to the total amount of Funds that are, at the time that the Commonwealth forms the relevant view under clause 3B.10, uncommitted or unspent or cannot be shown to the reasonable satisfaction of the Commonwealth to have been spent or committed in accordance with this Agreement.

I. STATE'S CONTRIBUTION

- I1. The State's Contribution must consist of all funds and resources required, in addition to the Funds, to ensure the due and proper completion of the Works on or before the end of the Funding Period. For the avoidance of doubt, it is envisaged that the State's Contribution will be approximately \$94 million.
- I2. The State's Contribution must be made in accordance with clause 17.

EXECUTED AS AN AGREEMENT

SIGNED for and on behalf of the COMMONWEALTH OF AUSTRALIA as represented by the Minister for Health and Ageing :

.....
Printed Name

.....
Signature

.....
Date

.....
Position

in the presence of

.....
Printed Name

.....
Signature

SIGNED for and on behalf of the STATE OF QUEENSLAND acting through Queensland Health ABN 66 329 169 412 by:

.....
Andrew Wilson
.....
Printed Name

.....
[Handwritten Signature]
.....
Signature)

The signatory warrants that he/she has authority to bind

.....
17/6/09
.....
Date

.....
Professor Andrew Wilson
Deputy Director-General
Policy Planning &
Resourcing Division
.....
Position

and

.....
KATHRYN WRIGHT
.....
Printed Name

.....
[Handwritten Signature]
.....
Signature)

The signatory warrants that he/she has authority to bind

.....
17/6/09
.....
Date

.....
CORRESPONDENCE OFFICER
.....
Position