



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

STATE OF WESTERN AUSTRALIA

as represented by the

Metropolitan Health Service

ABN 13 993 250 709

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 WESTERN AUSTRALIA ('the State') as represented by the Department of Health of Western Australia ABN 13 993 250 709

RECITALS:

- A. The Commonwealth has developed the National Bowel Cancer Screening Program. The National Bowel Cancer Screening Program offers free faecal occult blood tests to Australians turning 50, 55 or 65 years of age between January 2008 and December 2010;
- B. The objectives and outcomes of the National Bowel Cancer Screening Program are to reduce the morbidity and mortality associated with bowel cancer;
- C. The Commonwealth has agreed to fund the State for the Project described in this Agreement in support of the objectives and outcomes of the National Bowel Cancer Screening 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;

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;

Existing Material means all Material in existence prior to the commencement of the Project Period;

- (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;

Funds means the amount or part thereof payable by the Commonwealth as specified in Item D and includes any interest on the Funds;

Intellectual Property includes all copyright (including 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;

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;

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

Project Material means all Material:

- (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 of funding specified in Item B;

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) a 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 annexures (if any), then the terms and conditions of the clauses will prevail to the extent of the conflict or inconsistency; and
 - (c) any part of the Schedule and any part of the annexures (if any), then the Schedule 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 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.
 - 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 other funds 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 the full payment is not properly required by the State because of Project surpluses or underspends.
 - 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 in the manner specified in Item D. 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 Project Period without prior written approval from the Department.

4. REPORTS – NOT USED

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.
- 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.

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, 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 – NOT USED

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) after providing the State with written notice specifying the breach and providing the State with fourteen (14) calendar days in which to rectify the breach, the Department is satisfied that the terms and conditions of this Agreement have not been complied with by the State; or
- (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 Project Period or on any earlier 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 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 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.

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
- (a) required by law to be disclosed; or
 - (b) required to be disclosed for the purpose of fulfilling its obligations under this Agreement.
- 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, including by facsimile, 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.

SCHEDULE

A. PROJECT (clauses 1.1 and 2.4)

Aim

To establish and maintain a Program Coordination Function for the National Bowel Cancer Screening Program (the 'Program'). The Program Coordination Function is referred to herein as the 'Participant Follow-up Function'.

Purpose

To encourage Program participants who have received a positive Faecal Occult Blood Test ('FOBT') result to progress through the screening pathway, where they are not recorded on the National Bowel Cancer Screening Program Register (the 'Register') as having attended the necessary follow-up.

To meet this purpose the State must:

- recruit appropriately qualified personnel to undertake the Participant Follow-up Function. The desirable qualifications for the Participant Follow-up Function are outlined in the *National Bowel Cancer Screening Program Phase 2 Participant Follow-up Function: Scope and Minimum Guidelines* document at **Attachment A** this Schedule. The Participant Follow-up Function may be undertaken by employees of the State or Subcontractors.
- Liaise with Medicare Australia at the commencement of the Agreement in relation to the National Bowel Cancer Screening Program Register and training they will be providing in relation to the Participant Follow-up Function.
- be responsible for ongoing training and recruitment for the Participant Follow-up Function (as required);
- implement the Participant Follow-up Function in accordance with the *National Bowel Cancer Screening Program Phase 2 Participant Follow-up Function: Scope and Minimum Guidelines* document at **Attachment A** this Schedule; and
- maintain the Participant Follow-up Function in accordance with the *National Bowel Cancer Screening Program Phase 2 Participant Follow-up Function: Scope and Minimum Guidelines* document at **Attachment A** this Schedule until the completion of this Agreement on 30 June 2011.

B. PROJECT PERIOD (clause 1.1 and 3.2)

The Project Period is from the date of execution of this Agreement until 30 June 2011.

The Project will be conducted according to the following timeframes:

Milestone	Timeline
Execution of Agreement	December 2008
Project commence	January 2009
Project complete	30 June 2011

C. REPORTS - NOT USED

D. FUNDS (clauses 1.1, 2 and 3)

The maximum amount of Funds to be paid by the Commonwealth to the State is \$549,276 (GST exclusive).

The due date for payment is 30 days after receipt of a correctly rendered invoice by the Commonwealth.

A correctly rendered invoice is one that:

- (a) identifies the name of the Project;
- (b) sets out the name of the Commonwealth Liaison Officer;
- (c) contains a claim for the amount of funds properly required; and

Funds will be provided according to the following:

Milestone	Payment (GST exclusive)
On execution of this Agreement and receipt of a correctly rendered invoice by the Commonwealth	\$183,092
July 2009 on receipt of a correctly rendered invoice by the Commonwealth and confirmation, through attendance and participation by a Program Manager, or nominated delegate, in 80% of the bi-monthly Program Manager meetings, that progress is being made.	\$183,092
July 2010 on receipt of a correctly rendered invoice by the Commonwealth and confirmation, through attendance and participation by a Program Manager, or nominated delegate, in 80% of the bi-monthly Program Manager meetings, that progress is being made.	\$183,092
Total	\$549,276

E. LIAISON OFFICERS (clauses 1.1, 5 and 15)**Commonwealth's Liaison Officer**

The Commonwealth's Liaison Officer is the person holding, occupying or performing the duties of Assistant Director, Screening Section. This position is currently occupied by Ms Tania Haslam available at the following address:

Courier Address:

Level 6, Scarborough House, Atlantic St
WODEN ACT 2606

Postal Address:

Screening Section
Department of Health and Ageing
GPO Box 9848 (MPD 13)
CANBERRA ACT 2601

Phone: (02) 6289 7021

Fax: (02) 6289 3677

Email: Tania.Haslam@health.gov.au

State's Liaison Officer

The State's Liaison Officer is Gloria Sutherland available at the following address:

Senior Project Coordinator
Bowel Cancer Screening Implementation Team
WA Department of Health
1st Floor, 1 Centro Avenue
SUBIACO WA 6008

Phone: (08) 9489 2882
Fax: (08) 9489 2887
Email: gloria.sutherland@health.wa.gov.au
F. **ACKNOWLEDGEMENT (clause 8)**

Not Applicable.

G. EXISTING MATERIAL (clause 7)

National Bowel Cancer Screening Program Phase 2 Participant Follow-up Function: Scope and Minimum Guidelines document at **Attachment A** this Schedule.

SIGNED

for and on behalf of the
COMMONWEALTH OF AUSTRALIA
acting through the Department of Health
and Ageing ABN 83 605 426 759 on:

2 February 2009

Date

by:

Andriana Koukari

Name of signatory

Assistant Secretary
Population Health
Programs Branch

Position of signatory

In the presence of:

Julie Barclay

Name of witness

Andriana Koukari

Signature

Julie Barclay

Signature of witness

SIGNED

for and on behalf of
THE STATE OF WESTERN
AUSTRALIA as represented by the
Department of Health of Western
Australia ABN 13 993 250 709

on:

29th JAN 2009.

Date

by:

IAN HAMMOND

Name of signatory

DIRECTOR, WALPCW.

Position of signatory

In the presence of:

RHONDA COLEMAN

Name of witness

Ian Hammond

Signature

Rhonda Coleman

Signature of witness