



Australian Government
Department of Health and Ageing

1. 33610
3-34520
45-61358.

FUNDING DEED

between the

COMMONWEALTH OF AUSTRALIA

as represented by the

Department of Health and Ageing
ABN 83 605 426 759

and

AUSTIN HEALTH
ABN 96 237 388 063

Olivia Newton-John Cancer &
Wellbeing Centre.
Version: May 2008 – Construction and Fitout Deed

BRE 537
Cost Centre 4674

SCHEDULE 1

A. COMMENCEMENT DATE (clause 1.1)

The Commencement Date is the date on which the last Party executes this Deed.

B. CONSTRUCTION PERIOD (clauses 1.1 and 9.1)

The Construction Period will commence in late 2009 and finish in December 2012.

C. PROJECT PERIOD (clauses 1.1 and 2)

The Project Period commences on the Commencement Date and finishes in December 2012.

D. FACILITIES (clause 1.1)

The Facilities consist of the facilities at the Olivia Newton-John Cancer & Wellness Centre based at the Austin Hospital, Melbourne.

E. PROJECT (clauses 1.1, 9 and 10)

Aim of the Project

The Aim of the Project is, through the construction of the Works, to use the completed Works and the Facilities for the Intended Purpose throughout the Intended Purpose Period.

Project

In accordance with the Project Plan and the Budget, the Participant must perform the Works to implement the construction of ONJC&WC, a purpose-built facility that will combine cancer treatment services with the clinical research programs currently run by Austin Health and the International Ludwig Institute for Cancer Research. The centre will have a focus on improving support for cancer patients and their families, and will provide training for medical oncology and specialist cancer nursing and allied health staff.

The Centre will comprise of a three-level building that will include a Radiation Oncology Centre, an Ambulatory Oncology Centre, a Wellness Centre and a Cancer Information and Research Centre (as well as a Research Centre level to be accommodated by Ludwig Institute).

F. FUNDS AND PAYMENT SCHEDULE (clauses 6, 8 and 11)

Subject to **clause 11.7**, the maximum amount of Funds to be paid by the Commonwealth to the Participant is \$15 million (GST exclusive) payable in accordance with the following payment schedule:

Date	Milestone	Deliverable	Amount
Nov 2008	Execution of Funding Agreement	Execution of Funding Agreement.	\$500,000.00
2 March 2009	Submission of Feasibility Study and Schematic Design for ONJC&WC within Progress Report.	Submission and Commonwealth acceptance of Progress Report.	\$4,500,000.00
31 August 2009	Design Development plan and evidence (including photographic) of the demolition of Heidelberg House within Progress Report.	Submission and Commonwealth acceptance of Progress Report.	\$5,000,000.00
1 February 2010	Evidence (including photographic) of the commencement of construction of the ONJC&WC within Progress Report.	Submission and Commonwealth acceptance of Progress Report.	\$4,500,000.00
17 May 2010	Progress Report, including a summary of progress on the ONJC&WC.	Submission and Commonwealth acceptance of Progress Report.	\$500,000.00

The due date for payment is within thirty (30) Business Days after receipt of a correctly rendered invoice in accordance with **Item I of Schedule 1**.

G. BUDGET (clause 4.1(a))

A budget is attached at schedule 2. An updated budget is required from Austin Health by 30 January 2009.

H. PROJECT PLAN (clause 4.1(b))

A project plan is attached at schedule 3.

I. INVOICE REQUIREMENTS (clause 6.3)

The Participant must submit to the Commonwealth a correctly rendered invoice. A correctly rendered invoice is one which is in the form of tax invoice and includes:

- (a) the Payment Date;
- (b) the full legal description of the Participant;
- (c) the Participant's ABN;
- (d) the details of the amount of GST payable;

- (e) the date of the invoice and the invoice number;
- (f) the reference of 'Olivia Newton-John Cancer Centre Budget Measure';
- (g) the name of the Commonwealth's Liaison Officer; and
- (h) the full details of the bank account to be credited, if not already provided.

J. INTENDED PURPOSE (clauses 1.1 and 9.1)

The intended purpose of the funding is to contribute towards the development of the ONJC&WC, a purpose-built facility that will combine cancer treatment services with the clinical research programs currently run by Austin Health and the International Ludwig Institute for Cancer Research. The centre will have a focus on improving support for cancer patients and their families, and will provide training for medical oncology and specialist cancer nursing and allied health staff.

K. SPECIAL CONDITIONS (clause 39)

The following special conditions apply for the purposes of this Deed:

Special Condition 1

- 1.1 The Participant and the Commonwealth acknowledge that the Participant proposes to construct a three level building at the Austin Hospital in Melbourne, including a Radiation Oncology Centre, an Ambulatory Oncology Centre, a Wellness Centre, and a Cancer Information and Research Centre as well as a Research Centre to be accommodated by the Ludwig Institute.
- 1.2 The Participant acknowledges and agrees that the Commonwealth considers it fundamental to the due and proper completion of the Project that the Facilities continue to be operated for the Intended Purpose or purposes substantially similar to, or complementary to, the Intended Purpose at all times during the Intended Purpose Period.
- 1.3 If, at any time prior to the end of the Intended Purpose Period, the Participant proposes to:
 - (a) cease to operate the Facilities for the Intended Purpose (or substantially similar or complementary purposes);
 - (b) Dispose of the Facilities or any part of the improvements or land on which the Facilities are located; or
 - (c) otherwise deal with, or operate, the Facilities or the improvements or land in a manner which would, or would be considered reasonably likely to, adversely affect the Participant's ability to fulfil its obligations under this Deed (including the use of the Works for the Intended Purpose during the Intended Purpose Period),

the Participant must immediately notify the Commonwealth in writing of that proposal and provide the Commonwealth with full details of the nature of such action and the reasons for which the Participant proposes to take such action.

- 1.4 In order to protect the Commonwealth's interests, and in consideration of the investment made by the Commonwealth under this Deed, the Participant agrees to comply with such directions of the Commonwealth in relation to the proposal referred to in **special condition 1.3** above, as the Commonwealth may at its absolute discretion require.
- 1.5 The Participant acknowledges and agrees that the directions of the Commonwealth under **special condition 1.4** above may include the Commonwealth requiring the Participant to deal with the Facilities or the land on which the Facilities are located in the manner proposed by the Participant, subject to the Commonwealth (or its nominee) being granted an interest in the land or Facilities sufficient, in the Commonwealth's opinion, to enable the Works and the Facilities to be used for the Intended Purpose until the completion of the Intended Purpose Period.
- 1.6 If the Participant fails to comply with its obligations under **special conditions 1.1 -1.5** inclusive above ("**Breach Event**"), the Commonwealth will, without limitation to any other rights it has under this Deed or at Law or in equity, be entitled to recover from the Participant an amount calculated in accordance with the scale set out in **special condition 1.7** below.
- 1.7 If the **special condition 1.6** applies, the Participant will be required to repay the Commonwealth, as liquidated damages and not as a penalty, the recoverable amount calculated as follows:
- (a) if the Breach Event occurs during the first or second year of the Intended Purpose Period, the recoverable amount is 95% of the Funds paid to the Participant pursuant to this Deed;
 - (b) if the Breach Event occurs during the third year of the Intended Purpose Period, the recoverable amount is 90% of the Funds paid to the Organisation pursuant to this Deed;
 - (c) if the Breach Event occurs during the fourth year of the Intended Purpose Period, the recoverable amount is 85% of the Funds paid to the Participant pursuant to this Deed;
 - (d) if the Breach Event occurs during the fifth year of the Intended Purpose Period, the recoverable amount is 80% of the Funds paid to the Participant pursuant to this Deed;
 - (e) if the Breach Event occurs during the sixth year of the Intended Purpose Period, the recoverable amount is 75% of the Funds paid to the Participant pursuant to this Deed;
 - (f) if the Breach Event occurs during the seventh year of the Intended Purpose Period, the recoverable amount is 65% of the Funds paid to the Participant pursuant to this Deed;
 - (g) if the Breach Event occurs during the eighth year of the Intended Purpose Period, the recoverable amount is 50% of the Funds paid to the Participant pursuant to this Deed;

- (h) if the Breach Event occurs during the ninth year of the Intended Purpose Period, the recoverable amount is 25% of the Funds paid to the Participant pursuant to this Deed; and
 - (i) if the Breach Event occurs during the tenth year of the Intended Purpose Period, the recoverable amount is 10% of the Funds paid to the Participant pursuant to this Deed.
- 1.8 If the Participant fails to make payment as required by **special condition 1.5**, the relevant amount will be recoverable by the Commonwealth as a debt due to the Commonwealth by the Participant.
- 1.9 The Participant acknowledges that amount recoverable under **special condition 1.5** represents a reasonable pre-estimate of the loss to be incurred by the Commonwealth if a Breach Event were to occur.
- 1.10 In this **special condition 1**, "**Intended Purpose Period**" means a period of ten (10) years from the end of the Construction Period.
- 1.11 This **special condition 1** survives the expiration or earlier termination of this Deed.

Special Condition 2

- 3.1 This Project is bound by the application of the Australian Government Building and Construction OHS Accreditation Scheme ("**Scheme**") and the following conditions:
- (a) all head contracts for building work under this Project that are valued at three million dollars (\$3,000,000) or more must:
 - (i) be notified to the Office of the Federal Safety Commissioner at the earliest possible opportunity (that is, when approaching the market); and
 - (ii) contain a requirement that the builder:
 - (A) is accredited under the Scheme;
 - (B) maintains Scheme accreditation for the life of the contract; and
 - (C) must comply with all conditions of the Scheme accreditation

L. REPORTS (clauses 1.1 and 17)

The Participant will provide the following Reports in accordance with the following timetable:

Report	Due date
Updated budget	30 January 2009
Progress Report: Including Feasibility Study and Schematic Design for ONJC&WC.	2 March 2009
End of Financial Year Report and progress report, including design development plan and evidence (eg. photographic) of the demolition of Heidelberg House.	31 August 2009
Progress Report: Including evidence (eg. photographic) of the commencement of construction of the ONJC&WC within Progress Report.	1 Feb 2010
Progress Report, including a summary of progress on the ONJC&WC.	17 May 2010
End of Financial Year Report including spending of Government funds to date.	31 August 2010
Progress Report on project.	1 July 2011
Final Report including all spending of Government funding throughout project.	3 December 2012

Additional information to be provided with each Progress Report

In addition to the information required under **clause 17.5** each Progress Report must include a report of the conduct of the Project:

- (a) detailing the progress to date;
- (b) whether any difficulties were encountered that may lead to delay in meeting Project milestones, what actions (if any) were taken to remedy them, and revised timelines for key result areas; and
- (c) expenditure to date against the Budget and must include a cost breakdown of expenditure.

Additional information to be provided with Final Report

In addition to the information required under **clause 17.6**, the Final Report must include:

- (a) a summary of the activities and the expenditure of Government funds for the entire Project Period;
- (b) information regarding major outcomes and achievements;
- (c) a comprehensive financial report (refer to Clause 11.4(d));
- (d) a statement of compliance with the Code, the Implementation Guidelines and the Industry Guidelines; and

- (e) where applicable, the reasons and an explanation as to why the Aims of the Project were not achieved.

Additional information to be provided with End of Financial Year Reports (if any):

In addition to the information required under clause 17.7, each End of Financial Year Report must include the following:

Nothing additional.

M. ACKNOWLEDGMENT (clause 22)

The Participant must acknowledge the financial and any other support it has received from the Commonwealth. Acknowledgment is to be included in any Project material produced as: "The Olivia Newton-John Cancer & Wellness Centre received funding from the Australian Government" or in another form approved in writing by the Commonwealth.

As soon as possible before an event relating to the Olivia Newton-John Cancer & Wellness centre, the Participant agrees to inform the Department of the event and invite representatives to attend.

N. PROJECT MATERIAL and EXISTING MATERIAL (clauses 1.1 and 21)

Project Material:

- Progress Reports
- Final Report
- End of Financial Year Reports

Number of copies of Project Material to be provided to the Commonwealth:

- one copy is to be provided in hard copy
- one copy is to be provided electronically

Existing Material

None stated.

O. LIAISON OFFICERS (clauses 1.1, 19 and 37)

Commonwealth's Liaison Officer

The Commonwealth's Liaison Officer shall be the person holding, occupying or performing the duties of Director, Cancer Control Section. This position is currently occupied by Ms Geraldine Daly, available at the following address:

Department of Health and Ageing
MDP 4
GPO Box 9848
CANBERRA ACT 2601

Fax: (02) 6289 2770

and available on the following telephone number and email address:

Ph: (02) 6289 2516

Email: geraldine.daly@health.gov.au

Participant's Liaison Officer

The Participant's Liaison Officer shall be the person holding, occupying or performing the duties of Chief Executive Officer. This position is currently occupied by Dr Brendan Murphy available at the following address:

Olivia Newton-John Cancer Centre
Austin Health
GPO Box 5555
HEIDELBERG VIC 3084
Fax: (03) 9496 5160

and available on the following telephone number and email address:

Ph: (03) 9496 5363

Email: brendan.murphy@austin.org.au

P. ASSETS (clauses 1.1 and 23)

None stated.

Q. REPAYMENT AMOUNT (Clauses 24.7 and 28.3)

If a Repayment Event occurs during the Construction Period, the repayment amount will be determined by the Commonwealth at its absolute discretion and may be a repayment of all of the Funds.

If a Repayment Event occurs after the end of Construction Period, but before the end of the Project Period, the repayment amount will be equal to:

- (a) the recoverable amount due under **special condition 1.7(a)**; or
- (b) the amount calculated in accordance with the following formula:

$$\text{Repayment Amount} = F - \frac{F \times Y}{PP}$$

where:

F is the total of all Funds paid by the Commonwealth to the Participant;

Y is the number of completed years since the commencement of the Project Period; and

PP is the number of years in the relevant Project Period, whichever is the greater.

R. INSURANCE (clauses 23.4(d), 24.3(e) and 31)

The Participant must obtain and maintain the following insurances:

- (a) general public liability insurance, covering legal liability to pay for personal injury and/or property damage arising out of or in any way connected with the Project, for an amount of not less than twenty million dollars (\$20,000,000) any one occurrence. The general public liability insurance must:
 - (i) be on terms approved by the Commonwealth (such terms to be those commercially available and such approval not to be unreasonably withheld);
 - (ii) have the Commonwealth as a named insured on the policy;
 - (iii) to the extent permitted by Law, be primary and without any right of contribution from any insurance effected or maintained by the Commonwealth; and
 - (iv) include provisions to the effect that:
 - (A) all insuring provisions and endorsements operate as if there was a separate policy of insurance covering each insured (cross-liability clause);
 - (B) failure by any insured to observe or fulfil the terms of the policy does not prejudice the entitlement to insurance of any other insured; and
 - (C) subject to the ability to reasonably obtain the term, the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against any insured (waiver of subrogation clause);
- (b) professional indemnity insurance, covering liability for any act, error or omission arising out of or in any way connected with the design elements of the Project. The professional indemnity insurance policy must have a limit of indemnity for an amount of not less than one million (\$1,000,000) each and every claim and in the aggregate. The policy must:
 - (i) cover claims under the *Trade Practices Act 1974 (Cth)*, *Fair Trading Act 1987 NSW*) and any similar legislation in any other State or Territory; and
 - (ii) include at least one (1) automatic right of reinstatement of the sum insured;
- (c) motor vehicle insurance, complying with all relevant statutory requirements, covering legal liability to pay for personal injury and property damage arising

out of or in any way connected with the use of any motor vehicles or other mobile equipment in connection with the Project;

- (d) to the extent required by Law, workers compensation insurance in respect of the Participant's liability for any loss or claim by a person employed or otherwise engaged, or deemed to be employed or otherwise engaged, by the Participant in connection with the Project;
- (e) to the extent required by Law, building insurance in respect of the Works for any loss or damage, or claim by a person under a Law in connection with the Works;
- (f) contract works insurance in respect of the Works for any loss or damage during the Construction Period, or claim by any person under a Law in connection with the Works during the Construction Period, for an amount of not less than the full reinstatement value. The contract works insurance policy will:
 - (i) be in the joint names of the Commonwealth, the Participant and any contractor or sub-contractor undertaking work in connection with the Works;
 - (ii) be maintained until the end of the Construction Period or the end of any defects liability period under the contract for the Works, whichever is the later.

For Public Liability and Professional Indemnity insurance, the policies of insurance must be maintained for a period of seven (7) years after the end of the Funding Agreement if a Claims Based Policy is held or for the duration of the Funding Agreement if an Occurrence Based Policy is held.

S. SECURITY (clause 30)

None required.

T. COMPLIANCE WITH LAWS AND POLICIES (clause 35)

No additional required.

U. PARTICIPANT CONFIDENTIAL INFORMATION (clauses 1.1 and 32)

None stated.

SCHEDULE 2 – BUDGET

Provisional budget: an updated budget is required from Austin Health by 30 January 2009.

2008-09	
Design contingency – Allowance	\$2,409,000
Future proofing	\$1,239,000
Authority Charges	\$427,000
Preliminaries – External works	\$925,000 (towards expected 1,100,000)
Total 2008-09	\$5,000,000
2009-10	
Site preparation including demolition	\$1,830,000
Builders work - infrastructure	\$410,000
Roads, paths, paved areas	\$524,000
Outbuildings and covered ways	\$2,880,000
Stormwater and sewer drainage allowance	\$950,000
Construction contingency – Allowance	\$2,529,000
Project contingency – prolongation	\$532,000
Boundary walls and fences	\$345,000 (towards expected 428,000)
Total 2009-10	\$10,000,000
Grand Total	\$15,000,000

SCHEDULE 3 – PROJECT PLAN

The ONJC&WC works will comprise of a three level building on the current site of Heidelberg House at the Austin Hospital in Melbourne. This building will include a Radiation Oncology Centre, an Ambulatory Oncology Centre, a Wellness Centre, and a Cancer Information and Research Centre, as well as a Research Centre to be accommodated by the Ludwig Institute. The Commonwealth commitment will contribute to the demolition of Heidelberg House and the design and building of the ONJC&WC.

The timeline for this project is as follows:

Late 2008	Completion of schematic design
Mid 2009	Completion of design development
Mid 2009	Completion of tender documentation
Mid 2009	Demolition of Heidelberg House
Late 2009	Commencement of construction of the ONJC&WC
Late 2012	Completion of ONJC&WC

This Funding Deed is EXECUTED as a deed

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

31 OCTOBER 2008

Date

by: **Jennie Roe**
Assistant Secretary
Chronic Disease Branch
Name of signatory

Position of signatory

in the presence of:

GERARDINE DALY
Name of witness

SIGNED, SEALED AND DELIVERED
for and on behalf of AUSTIN HEALTH
ABN 96 237 388 063 on:

31.10.08

Date

by: **MR. TIM DALY**
Name of signatory

CHAIR AUSTIN HEALTH BOARD
Position of signatory

in the presence of:

DR. BRENDAN MURPHY
Name of witness

CHIEF EXECUTIVE OFFICER
AUSTIN HEALTH.

Jennie Roe
Signature

Gerardine Dalby
Signature of witness

The Common Seal of



has been affixed by order of
the Board of Directors
in the presence of

[Signature]
Chairperson/Director
Chief Executive Officer

Signature

[Signature]
Signature of witness