

PROJECT AGREEMENT FOR THE PROTON BEAM FACILITY

An agreement between:

- the Commonwealth of Australia; and
- South Australia.

The output of this project will contribute to a fully operational proton beam therapy facility by providing a fully operational proton beam inclusive of accelerator equipment, at the South Australian Health and Medical Research Institute.

Project Agreement for the Proton Beam Facility

OVERVIEW

1. This Project Agreement (the Agreement) is created subject to the provisions of the Intergovernmental Agreement on Federal Financial Relations (IGA FFR) and should be read in conjunction with that Agreement and its Schedules, which provide information in relation to performance reporting and payment arrangements under the IGA FFR.

Purpose

2. This Agreement will support the delivery of a fully operational (beam delivered to the end of the nozzle) proton beam inclusive of accelerator equipment for the therapy facility (the Facility) at the South Australian Health and Medical Research Institute (SAHMRI). The Facility will deliver new research capabilities to help Australian researchers develop the next generation of cancer treatments, including for complex children's cancer. The Facility will also be an alternative to conventional radiotherapy for the treatment of certain types of cancer.

Reporting Arrangements

3. South Australia will report against the agreed milestones during the operation of this Agreement, as set out in Part 4 – Project Milestones, Reporting and Payments.

Financial Arrangements

4. The Commonwealth will provide an estimated total financial contribution to South Australia of \$68 million, exclusive of GST in respect of this Agreement, as set out in Part 5 – Financial Arrangements.

PART 1 – FORMALITIES

5. This Agreement constitutes the entire agreement for this project.

Parties to this Agreement

6. This Agreement is between the Commonwealth of Australia (the Commonwealth) and South Australia.

Term of the Agreement

7. This Agreement will commence as soon as the Commonwealth and South Australia sign it and will expire on 30 June 2023 or on completion of the project, including final performance reporting and processing of final payments against milestones, unless terminated earlier or extended as agreed in writing by the Parties.

PART 2 – PROJECT OUTPUTS

Outputs

8. The output of this Agreement will be the:
 - (a) installation of a fully operational proton beam inclusive of accelerator equipment.

PART 3 – ROLES AND RESPONSIBILITIES OF EACH PARTY

Role of the Commonwealth

9. The Commonwealth will be responsible for:
 - (a) monitoring and assessing achievement against milestones in the delivery of the proton beam therapy project under this Agreement to ensure that outputs are delivered within the agreed timeframe; and
 - (b) providing a consequent financial contribution to South Australia to support the implementation of this Agreement.

Role of South Australia

10. South Australia will be responsible for:
 - (a) developing and providing to the Commonwealth a project plan within 90 days of the signing of this agreement;
 - (b) all aspects of delivering on the project outputs set out in the Project Plan and in this Agreement in accordance with clauses 13 to 15 of this Agreement;
 - (c) reporting on the delivery of outputs as set out in Part 4 – Project Milestones, Reporting and Payments;
11. South Australia will also be responsible for ensuring that, for the purposes of the practical completion, projects will:
 - a. be complete and free from defects or omissions, except for defects or omissions that are minor in nature, that South Australia cannot reasonably fix, or by fixing, will significantly inconvenience users of the works;
 - b. not cause any legal or physical impediment to the use and occupation of the property and the works for the designated use; and
 - c. be fit for use for the designated use.

Shared roles

12. The Parties will meet the requirements of Schedule E, Clause 26 of the IGA FFR, by ensuring that prior agreement is reached on the nature and content of any events, announcements, promotional material or publicity relating to activities under this Agreement, and that the roles of both Parties will be acknowledged and recognised appropriately.

Project Plans

13. A Project Plan is required for this Agreement. It will be agreed by senior Commonwealth and South Australian officials and submitted to the Commonwealth Department of Health.
14. Project Plans typically include details on scope, project schedule, budget, project stakeholders, governance arrangements, communication plan, high level design plans and a risk management plan. South Australia has the flexibility to determine how to meet this requirement and can make use of any existing information or document prepared for another purpose.
15. The Project Plan is expected to be a flexible document that may be varied over time to accommodate changed circumstances. However, variations to the Project Plan that directly affect payment milestones and their achievement are subject to written agreement between senior Commonwealth and South Australian officials.

PART 4 – PROJECT MILESTONES, REPORTING AND PAYMENTS

16. Table 1 summarises the milestones for the project, their relationship to the outputs, expected completion dates, relevant reporting dates and expected payments to be made. The Commonwealth will make payments subject to the annual performance report demonstrating the relevant milestone has been met.

Table 1: Performance requirements, reporting and payment summary

| Outputs | Performance milestones | Report due | Payment |
|---|--|-------------|----------|
| In accordance with clause 8 of this Agreement | SAHMRI meeting all of the conditions precedent under the Grant Funding Deed between the Treasurer for and on behalf of the Crown in right of the State of South Australia and SAHMRI dated 10 May 2019. | July 2020 | \$26.72m |
| | A report from SAHMRI confirming transfer of title from ProTom International Holdings to SAHMRI of: <ul style="list-style-type: none"> • Synchrotron • Radio-Frequency Quadrupole • patient positioning system; and • The Main Power Supply | June 2021 | \$14.0m |
| | A report from SAHMRI confirming the factory acceptance testing of the following equipment: <ul style="list-style-type: none"> • The synchrotron • Radio-Frequency Quadrupole • Main Power Supply, and • 1 scanning nozzle Together with a report confirming production of scanned beam for the Fixed Beam Room equipment at MIT Bates. | August 2022 | \$22.0m |
| | A report confirming transfer of title from ProTom International Holdings to SAHMRI of all remaining major components and delivery into Australia of those components. | June 2023 | \$5.28m |

17. If a milestone is met in advance of the due date, where the relevant performance report demonstrates that the milestone has been met, the Commonwealth may make the associated payment earlier than scheduled provided it falls within the same financial year as the original milestone date. If a performance milestone is not met by the due date, funding will be rolled over to a subsequent period subject to Commonwealth Budget Rules.

Reporting arrangements

18. South Australia will provide performance reports in accordance with Table 1 during the operation of the Agreement. Each performance report is to contain a description of actual performance in the period to date against the project milestones.
19. South Australia will prepare a final Project Report within 90 days of the completion of all the projects agreed under this Agreement and confirm the installation and integration of the accelerator equipment into treatment rooms and is fit for designated use. This final report will be used for public information and dissemination purposes and will evaluate the Project from South

Australia's perspective and include a description of the conduct, benefits and outcomes of the Project.

PART 5 – FINANCIAL ARRANGEMENTS

20. The Commonwealth will provide an estimated total financial contribution to South Australia of \$68 million in respect of this Agreement. All payments are GST exclusive.
21. The Commonwealth's funding contribution will not be reduced where South Australia secures funding from other activity partners.
22. The Commonwealth's estimated financial contributions to the operation of this Agreement, including through National Partnership payments to South Australia paid in accordance with *Schedule D – Payment Arrangements* of the IGA FFR, are shown in Table 2.

Table 2: Estimated financial contributions

| (\$ million) | 2020-21 | 2022-23 | Total |
|--|--------------|--------------|-------------|
| Estimated total budget | 40.72 | 27.28 | 68.0 |
| Less estimated National Partnership Payments | 40.72 | 27.28 | 68.0 |
| Balance of non-Commonwealth contributions | 0.0 | 0.0 | 0.0 |

23. Having regard to the agreed estimated costs of projects specified in this Agreement, South Australia will not be required to pay a refund to the Commonwealth if the actual cost of the project is less than the agreed estimated cost of the project. Similarly, South Australia bears all risk should the costs of a project exceed the agreed estimated costs, the exception being that the Commonwealth will contribute the required amount to cover any shortfall in the relevant milestone payments due to exchange rate variance. The Parties acknowledge that this arrangement provides the maximum incentive for South Australia to deliver projects cost effectively and efficiently.

PART 6 – GOVERNANCE ARRANGEMENTS

Enforceability of the Agreement

24. The Parties do not intend any of the provisions of this Agreement to be legally enforceable. However, that does not lessen the Parties' commitment to this Agreement.

Variation of the Agreement

25. The Agreement may be amended at any time by agreement in writing by the Parties.
26. Either Party to the Agreement may terminate their participation in the Agreement at any time by notifying the other Party in writing.

Delegations

27. The Commonwealth Minister may delegate the assessment of performance against milestones and the authorisation of related project payments to senior Commonwealth officials, having regard to the financial and policy risks associated with those payments.

Dispute resolution

28. Either Party may give notice to the other Party of a dispute under this Agreement.
29. Officials of both Parties will attempt to resolve any dispute in the first instance.
30. If a dispute cannot be resolved by officials, it may be escalated to the relevant Ministers.

The Parties have confirmed their commitment to this agreement as follows:

**Signed for and on behalf of the Commonwealth
of Australia by**



**The Honourable Mark Butler MP
Minister for Health and Aged Care**

[Day] [Month] [Year]

15 08 2022

**Signed for and on behalf of the
State of South Australia by**



**The Honourable Chris Picton MP
Minister for Health and Wellbeing
South Australia**

[Day] [Month] [Year]

11 9 2022.