

FUNDING AGREEMENT No. 44748

BETWEEN

**THE COMMONWEALTH OF AUSTRALIA (REPRESENTED BY THE
AUSTRALIAN AGENCY FOR INTERNATIONAL DEVELOPMENT)**

AND

**THE UNIVERSITY OF MELBOURNE, THROUGH THE DEPARTMENT OF
PEDIATRICS, INTERNATIONAL CHILD HEALTH UNIT ("CICH"), THE
MacFARLANE BURNET INSTITUTE FOR MEDICAL RESEARCH AND
PUBLIC HEALTH ("BURNET") AND THE MENZIES SCHOOL OF HEALTH
RESEARCH ("MENZIES")**

FOR THE WOMEN'S AND CHILDREN'S KNOWLEDGE HUB

This funding agreement ("Agreement") is made between AusAID and The University of Melbourne, through the Department of Paediatrics, International Child Health Unit ("CICH") ABN 84 002 705 224, the MacFarlane Burnet Institute for Medical Research and Public Health ("Burnet") ABN 49 007 349 984 and the Menzies School of Health Research ("Menzies") ABN 70 413 542 847. When referred to jointly these bodies shall be jointly called the "WCH Organisations".

The Agreement sets out mutually agreed rights and obligations with respect to the initiative to assist in improving the effectiveness of a scaled-up Australian aid program in health, by making a substantial contribution to the generation and organisation of knowledge of practical value to AusAID, to partner country governments, and to a broad range of development partners through the **Provision of Services for Women's and Children's Knowledge Hub ("WCH Hub Initiative")**.

Up to **AUD6,000,000** ("Funds") plus GST to a maximum **AUD600,000** has been approved by AusAID for a four year commitment (2008 to 2011), subject to the conditions outlined below.

The overall aim of the **WCH Hub Initiative** will be to harness and focus technical experts, researchers and practitioners within Australia and the region to generate and share knowledge and promote innovation and to strengthen the evidence of work undertaken in women's and children's health.

During the establishment period the WCH Organisations will set up the operations of the **WCH Hub Initiative** in accordance with proposal for the **WCH Hub Initiative** submitted by the WCH Organisations to AusAID on 14 January 2008 ("Proposal") with emphasis on the recruitment of key personnel and the development of structures and processes for effective communication and co-ordination. An extended Work Plan and associated budget covering the period to 31 December 2008 will also be agreed with AusAID.

Each WCH Organisation will only be liable to the extent that the wilful, wrongful, unlawful or negligent act or omission of that particular WCH Organisation or any of its agents directly caused any loss, damage, liability, cost or expense, including legal expenses on a solicitor and own client basis, to AusAID.

1. **Agreement Period**

This Agreement is divided into:

- 1.1 The establishment period commencing 7 April 2008 and ending 31 December 2008
- 1.2 The implementation period commencing 1 January 2009 and ending 30 June 2011.

2. Reporting and Work Plan Approval

2.1 The WCH Organisations must provide to AusAID an electronic copy of the following documents:

- (a) on or before 15 November every year of the Agreement commencing in 2008:
 - a draft work plan with necessary annexes - to be finalised following the meeting with AusAID as set out in clause 3.1 of this Agreement – that details proposed activities for the forthcoming year; and
- (b) on or before 31 January every year of the Agreement commencing in 2009:
 - a report that succinctly presents the key achievements from the previous funding period;
 - approved work plan with necessary annexes that details proposed activities for the forthcoming year (“Work Plan”); and
- (c) no later than three months after the completion of the Agreement between AusAID and the WCH Organisations, a Final Report.

2.2 Report specifications:

Draft Work Plan

Draft Work Plan (of not more than 10 pages), plus any annexes as necessary, must contain:

- (a) planned activities for the upcoming year, including any specific areas of work jointly agreed with AusAID; and
- (b) an implementation schedule and resources.

Annual Report

The Annual Report (of not more than 10 pages), plus any annexes as necessary, must contain:

- (a) key achievements, including in relation to the development of knowledge resources and issues around service provision for women and children; work undertaken in relation to capacity assessment and development among Australian institutions in the area of service provision for women and children; outcomes of convening work undertaken by the WCH Organisations; evidence of the relevance, usefulness and value added by

the products developed and delivered by the WCH Organisations in regard to provision of services for women and children; evidence of additional resources leveraged by the WCH Organisations that contribute towards Hub sustainability. Priority areas of interest and focus will be jointly agreed between AusAID and the WCH Organisations during joint annual consultations in the lead up to the submission of the Annual Work Plan;

- (b) an independently audited financial statement of the funding provided under the agreement, including an acquittal against the budget for the relevant year of the Annual Work Plan;
- (c) planned activities for the upcoming year, including an implementation schedule and resources; and
- (d) key monitoring and evaluation activities, including approach to managing risks.

Final Report

The Final Report, submitted no later than three months after the completion of the final funding round under the Agreement must contain:

- (a) key achievements over the life of the WCH Hub Initiative against agreed objectives;
- (b) key lessons arising from the WCH Hub Initiative; and
- (c) an independently audited financial statement which acquits the funds against the budget provided in final Annual Work Plan.

3. Collaboration and coordination between AusAID and other knowledge hubs

- 3.1 To facilitate a more structured sharing of information, experiences and the potential value added by the establishment of this and other knowledge hubs established by AusAID ("Knowledge Hubs"), the WCH Organisations will take part in an annual meeting organised by AusAID and include Principals from each of the Knowledge Hubs and key whole of government and other interlocutors. The timing of such a meeting will be negotiated to maximise participation, but ideally will coincide with the preparation of Annual Work Plans by each of the Knowledge Hubs. At this meeting Principals of each Knowledge Hub will make a brief presentation of key achievements, emerging challenges and responses to their respective thematic priority, as well as outline plans for the coming year. In the case of the WCH Hub Initiative it would be highly preferable if Principals from each of the WCH Organisations could participate in this meeting.

- 3.2 AusAID envisages that the participants to the meeting outlined in clause 3.1 above will form the core group that provides oversight and strategic direction to the Knowledge Hubs and the partnership arrangements.
- 3.3 In addition to the annual meeting described in 3.1 above, AusAID will seek informal opportunities to engage with the WCH Organisations, including through participation in any major events AusAID or the WCH Organisations organise.

4. Funding and Payment

- 4.1 Total AusAID funding under this Agreement will be up to a total of **AUD6,000,000**, plus GST, if any, up to an amount of **AUD600,000**.
- 4.2 Funding of **AUD500,000**, plus GST if any up to a maximum amount of **AUD50,000** will be payable to Burnet for further distribution to the WCH Organizations as an acquittable grant by AusAID upon countersignature of this Agreement by each of the WCH Organisations. This initial amount is for the establishment of the **WCH Hub Initiative** and to undertake the start up activities detailed in the Proposal at Table 1 of Attachment A. AusAID acknowledges that the Proposal may be amended by agreement in writing between AusAID and the WCH Organisations.
- 4.3 AusAID may provide additional funding for 2008 within the overall funding limit, subject to the submission and acceptance of an extended Work Plan up to 31 December 2008 and disbursement and acquittal of the initial grant payment.
- 4.4 Annual grants will be of up to **AUD2,000,000** per year, plus GST, if any, up to an amount of **AUD200,000**. The precise funding level will be agreed between the WCH Organisations and AusAID during the annual consultations held each November/December.
- 4.5 AusAID will make future grant payments in one annual tranche in January of each subsequent year, on demonstration by the WCH Organisations of achievements against the key objectives, acceptance of annual Work Plans and related budgets, and subject to acquittal of the previous grant (Fund Acquittal). Future grant payments will also be subject to expenditure of 75% of the previous grant against the budget outlined in the agreed Annual Work Plan.
- 4.6 A review will be jointly undertaken in late 2010 by AusAID, the WCH Organisations and the other Knowledge Hubs to assess their impact and determine any ongoing support for them beyond the life of this Agreement.

5. Grant Conditions

- 5.1 In order that payment can be made, AusAID requires the WCH Organisations to agree to the following provisions contained in paragraphs 5.2 to 5.35.

- 5.2 The WCH Organisations must commence the WCH Hub Initiative on the 7 April 2008 and conclude by **30 June 2011**.
- 5.3 The WCH Organisations must carry out the WCH Hub Initiative in accordance with the Proposal and subsequent agreed Annual Work Plans.
- 5.4 The WCH Organisations must advise AusAID immediately of any substantial difficulties or delays in implementation of the WCH Hub Initiative.
- 5.5 The WCH Organisations will acknowledge in writing to AusAID receipt of the funds immediately on its receipt.
- 5.6 The Funds and any interest earned must be used diligently and for the sole purpose of the activities outlined above and in accordance with the Proposal proposed budget and subsequently approved Annual Work Plans and related budgets. Interest must only be expended on the WCH Hub Initiative. The bank accounts used by the WCH Organisations must be in the name of one of the WCH Organisations (not a personal bank account). The Funds will be deposited by AusAID into an account nominated by Burnet for further distribution to the WCH Organizations:

How quickly
equal split of
+ an agreed amount
or Hub
administration

for activities / mfg / convening

5.7 Each of the WCH Organisations that receives funding directly or indirectly under this Agreement must maintain a sound administrative and financial system capable of verifying all statements of acquittal. In addition, the WCH Organisations must:

- (a) keep proper and detailed accounts, records and assets registers along with adequate management records providing clear audit trails in relation to expenditure under this Agreement;
- (b) afford adequate facilities for audit and inspection of the financial records referred to above by AusAID and its authorised representatives at all reasonable times and allow copies and extracts to be taken;
- (c) preserve the financial records referred to above for a period of seven years from the date of completion of the WCH Hub Initiative; and
- (d) if requested by AusAID, provide an independently audited statement of WCH Hub Initiative expenditure by an auditor nominated by AusAID. AusAID will act reasonably in the selection of such an auditor. In the event that an audit is required, AusAID will nominate this item for the final Work Plan and include in the final years budget.

5.8 A consolidated financial statement of expenditure by the WCH Organisations must be submitted together with the Annual Report as set out in Clause 2.2 of this Agreement and will jointly serve as the financial report for the Funds.

5.9 A final financial statement must be submitted together with the Final Report within three months of completion of the WCH Hub Initiative activities. Any unspent Funds must be repaid to AusAID with the Final Report. Each fund acquittal must include details of any interest earned on the Funds provided.

5.10 The financial statements will be subject to the internal and external auditing procedures laid down in the rules and regulations applicable to the WCH Organisations.

5.11 Prior to receiving subsequent tranches of the Funds, the WCH Organisations will provide a statement, signed by an appropriate senior official of each of the WCH Organisations, indicating the proportion of previous funding tranches that have been expended in accordance with the terms of this Agreement.

5.12 The WCH Organisations will acknowledge AusAID funding assistance where appropriate and advise AusAID of matters relating to any publicity and media relations.

5.13 The WCH Organisations must obtain written approval from AusAID prior to any substantive changes in the activities or expenditure of the WCH Organisations for which the Funds are to be utilised.

5.14 If deemed necessary, the WCH Organisations and AusAID may agree to jointly monitor or evaluate the use of the Funds. In any event, planning for such a study will be undertaken in an open and collaborative manner.

5.15 Each WCH Organisation individually indemnifies and agrees to keep indemnified the Commonwealth of Australia, its officers, employees and agents from and against any loss, damages or costs arising from any claim, demand, action, suit or proceeding that may arise out of any wilful, wrongful, unlawful or negligent act or omission by that WCH Organisation (including that WCH Organisation's agents) to the extent such act contributed to the loss, damages or costs in connection with the performance of the purposes for which the grant is made. The indemnities shall survive termination or expiration of this Agreement.

5.16 The WCH Organisations jointly or individually must not represent themselves or each other and must ensure that their respective volunteers, employees, agents and sub-contractors participating in the WCH Hub Initiative do not represent themselves as being employees or agents of the Commonwealth of Australia.

5.17 AusAID may authorise the WCH Organisations or any one of them to represent AusAID. Any such authorisation will be in writing and will specify the extent

See this information in Report from last grant a flag any issues arising from management

and limitations of the authority. Except to the extent that an authorisation provides otherwise, Clause 5.16 will apply.

- 5.18 The title to all Intellectual Property created during the course of the WCH Hub Initiative vests upon its creation in the WCH Organisations jointly or individually according to any agreement that exists between the WCH Organisations. The WCH Organisations jointly and or individually will grant to AusAID a world-wide, irrevocable, royalty-free licence to use the Intellectual Property and any material created during the course of the WCH Hub Initiative, including the right of sub-licence. Each party will retain ownership of, and all rights to, its own Background IP. The WCH Organisations jointly and or individually will grant to AusAID a world-wide, irrevocable, royalty-free licence to use the Background IP for purposes directly related to the Intellectual Property created under this agreement. For the purpose of this clause “Intellectual Property” means all rights resulting from intellectual activity whether capable of protection by statute, common law or in equity and including copyright, discoveries, inventions, patent rights, registered and unregistered trade marks, design rights, circuit layouts and plant varieties and all rights and interests of a like nature including but not limited to methods and techniques, together with any documentation relating to such rights and interests and “Background IP” shall mean any Intellectual Property owned by a WCH Organisation and developed prior to, or independently, from this Agreement.

5.19 If one or more of the WCH Organisations:

- (a) becomes, or AusAID considers there is a reasonable prospect of one or more of the WCH Organisations becoming, bankrupt or insolvent;
- (b) makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors;
- (c) fails to commence, or in the opinion of AusAID, fails to make satisfactory progress in carrying out the WCH Hub Initiative and such failure has not been remedied within the reasonable time specified in a written request from AusAID to remedy the failure;
- (d) assigns its interest in this Agreement without the consent in writing of AusAID or the other WCH Organisations; or
- (e) breaches any term of this proposal and such breach has not been remedied within the reasonable time stipulated in a written request from AusAID to remedy the breach;

then in every such case AusAID shall be entitled to terminate this Agreement forthwith but without prejudice to any of its other rights.

- 5.20 Subject to clauses 5.21 to 5.24, a party may terminate this Agreement by giving to the other a written notice to terminate (“Notice of Intention to

Terminate”) and, in the event of such termination, the WCH Organisations must provide a statement of expenditure of the Funds, signed by each of the WCH Organisations, and return any unspent Funds to AusAID.

5.21 No later than twenty-eight (28) days after receipt of a Notice of Intention to Terminate, the parties shall meet to fully co-operate in a joint determination of the following;

- (a) the date of termination;
- (b) the appropriate method and manner for effecting the necessary winding-up of the WCH Hub Initiative;
- (c) a reconciliation of the funds supplied by AusAID and an identification of any interest earned thereon as at the date of termination;
- (d) the extent of AusAID's financial responsibilities, within the amount of the Grant at the date of termination;
- (e) any issues arising from the termination of concern to AusAID with regard to its relationship with a recipient government; and
- (f) other matters which arise as a consequence of the termination.

5.22 In the event that a Notice of Intention to Terminate is given by a party the WCH Organisations must:

- (a) forthwith do everything possible to prevent or mitigate all losses, costs and expenses arising in consequence of the termination of this Agreement and shall terminate its role in the Initiative in a prompt and orderly manner; and
- (b) if so determined as provided above, refund any uncommitted part of any tranche or funds already paid by AusAID, together with any uncommitted interest, within 30 days of the date of the joint determination.

5.23 In the event that a Notice of Intention to Terminate is given by a party AusAID shall:

- (a) if so determined as provided above, provide such funds as may be agreed as necessary to meet existing financial commitments and obligations; and
- (b) Not be liable to pay compensation in an amount which, in addition to any amounts paid or due or becoming due to the WCH organizations under this Agreement, together would exceed the amount of the Grant.

5.24 In the event a Notice of Intention to Terminate is received by AusAID from one of the WCH Organisations independently of the other members AusAID

reserves the right to negotiate amendment of this Agreement to exclude the terminating party effective at a mutually agreeable date.

- 5.25 In the event that AusAID, in accordance with this Agreement, determines that one of the WCH Organisations should be terminated AusAID reserves the right to negotiate amendment of this Agreement to exclude the terminating party effective at a mutually agreeable date.
- 5.26 The WCH Organisations, or any one of them, must not assign its or their interest in this Agreement without first obtaining the consent in writing of AusAID and the other parties.
- 5.27 The WCH Organisations acknowledge that the Australian Government has adopted a policy and laws consistent with relevant international counter-terrorism treaties and UN Security Council Resolutions 1267 (1999), 1373 (2001) and successor resolutions of not providing direct or indirect support or resources to organisations and individuals associated with terrorism.
- 5.28 The WCH Organisations must use their best endeavours to ensure that funding provided under this Agreement is expended in a manner consistent with international counter-terrorism treaties, UN Security Council Resolutions on terrorism and related Australian laws. If, during the course of this Agreement, any one of the WCH Organisations discover any link whatsoever with any organisation or individual listed by the United Nations 1267 Committee or the Australian Government as associated with terrorism it must inform AusAID immediately.
- 5.29 For the purpose of this clause, 'fraudulent activity' or 'fraud' means:
Dishonestly obtaining a benefit by deception or other means.
- (a) The WCH Organisations and its sub-contractors must not engage in any fraudulent activity. The WCH Organisations jointly and severally as the context requires are responsible for preventing and detecting fraud.
 - (b) The WCH Organisations must report in writing within 5 working days to AusAID any detected, suspected, or attempted fraudulent activity involving the WCH Hub Initiative.
 - (c) The WCH Organisations must, in consultation with AusAID, develop and implement a strategy to investigate the detected, suspected or attempted fraud based on the principles set out in the Australian Government Investigations Standards. The WCH Organisations, or one of them as the circumstances require, must undertake an investigation at the Organisation's or Organisations' cost if the investigation shows the fraud has been perpetrated by the Organisation's employees or subcontractors. Any investigator appointed by the WCH Organisations should possess the minimum qualifications specified in the *Commonwealth Fraud Control Guidelines*.

Before engaging a qualified investigator, the WCH Organisations may consult with AusAID regarding the appointment and may request assistance from AusAID in meeting the actual costs of a qualified investigator. Provided that the WCH Organisations have consulted with AusAID before engaging an investigator, AusAID may in its absolute discretion agree to meet some or all of those costs.

- (d) Following the conclusion of an investigation, where the investigation finds the WCH Organisations, an employee of one of the WCH Organisations or a subcontractor of one of the WCH Organisations has acted in a fraudulent manner, the WCH Organisations shall:
 - (i) Where money has been misappropriated, pay to AusAID or the project the full value of the AusAID funds that have been misappropriated; or
 - (ii) Where an item of property has been misappropriated, either return the item to AusAID or the project or if the item cannot be recovered or has been damaged so that it is no longer usable, replace the item with one of equal quality.
- (e) Following the conclusion of an investigation, where the investigation finds that a party other than the WCH Organisations, an employee of one of the WCH Organisations or a subcontractor of one of the WCH Organisations, has acted in a fraudulent manner, the WCH Organisations shall, at the WCH Organisations' cost:
 - (i) Make every effort to recover any AusAID funds or funded property acquired or distributed through fraudulent activity, including without limitation, one or both of the following:
 - (A) Taking recovery action in accordance with recovery procedures, including civil litigation, available in the relevant country. Before commencing any recovery action, the WCH Organisations may consult with AusAID regarding the proposed course of action and may request assistance from AusAID in meeting the costs of the recovery action. Provided that the WCH Organisations have consulted with AusAID before commencing recovery action, AusAID may in its absolute discretion agree to meet some or all of those costs.
 - (B) Referring the matter to the relevant police or other authorities responsible for prosecution of fraudulent activity.
 - (ii) If the WCH Organisations consider that after all reasonable action has been taken to recover the funds or funded property and full

recovery has not been achieved or recovery has only been achieved in part, the WCH Organisations may seek approval from AusAID that no further recovery action be taken. The WCH Organisations and each of them must provide to AusAID all information, records and documents required by AusAID to enable the AusAID delegate to make a decision on whether to approve non-recovery of funds or funded property.

- 5.30 Each of the WCH Organisations warrant that they shall not make or cause to be made or receive or seek to receive, any offer, gift or payment, consideration or benefit of any kind, which would or could be construed as an illegal or corrupt practice, either directly or indirectly to any party, as an inducement or reward in relation to the execution of this Agreement. In addition, the WCH Organisations jointly or severally shall not bribe public officials. Furthermore, each of the WCH Organisations warrants that, in relation to any sub-contractors engaged to provide goods or services in pursuance of the WCH Hub Initiative, it will:
- (a) not procure, knowingly permit or acquiesce in a sub-contractor engaging in illegal or corrupt practice on the WCH Organisation's behalf; and
 - (b) use its best endeavours to ensure all sub-contractors comply with this provision.

Any breach of this clause shall be grounds for immediate termination of this Agreement by notice from AusAID.

- 5.31 No delay, neglect or forbearance by either party in enforcing against the other any term or condition of this Agreement shall be deemed to be a waiver or in any way prejudice any right of that party.
- 5.32 Variations of this Agreement shall be made in writing and signed by all parties.
- 5.33 The WCH Organisations must when conducting the WCH Hub Initiative have regard to and comply with, relevant and applicable laws, regulations and policies, both in Australia and in the country of operation.
- 5.34 This Agreement is governed by, and is to be construed in accordance with, the law of the Australian Capital Territory and the parties submit to the exclusive jurisdiction of the courts of the Australian Capital Territory and any court hearing appeals from those courts.
- 5.35 The grant by AusAID to the WCH Organisations for the WCH Hub Initiative does not entitle or prohibit the WCH Organisations or any of them to any other or further grant.

Signed for and on behalf of the Commonwealth of Australia by

[Redacted Signature]

Bob McMillan MP

Parliamentary Secretary for International Development Assistance

Date: 7 April 2008

The WCH Organisations agree to the above conditions of funding and will carry out the WCH Hub Initiative in accordance with the Agreement.

Signed by Brendon Douglas, Executive Officer for and on behalf of Menzies School of Health Research.

Signature of Authorised Officer:

[Redacted Signature]

Signed by Dr Mike Toole, Centre for International Health Head for and on behalf of MacFarlane Burnet Institute for

Signature of Authorised Officer:

[Redacted Signature]

Signed by J. A. McKEENZIE
for and on behalf of The University of Melbourne.

Signature of Authorised Officer:

[Redacted Signature]

Witnessed by:

Name: MURRAY PROCTOR

Signature:

[Redacted Signature]

Attachment A Provision of Services for Women's and Children's Knowledge Hub

