



Australian Government

Department of Innovation
Industry, Science and Research

TRIM Ref: ES07/31561

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Professor Edwina Cornish
Deputy Vice Chancellor (Research)
Clayton Campus
Monash University
Victoria 3800

Dear Professor Cornish

VARIATION TO THE DEED OF AGREEMENT REGARDING FUNDING FOR AUSTRALIA'S ASSOCIATE MEMBERSHIP OF EMBL

As you are aware, the original Deed of Agreement between the Commonwealth and Monash University concerning Australia's associate membership of EMBL contains the following text within Schedule 1:

- B.2 (b) You will, as a matter of priority, work with other Fee Contributors to establish an organisation (to be called 'EMBL Australia'), to take over from you the role of Lead Institution.
- B.2 (c) In the event that We determine that EMBL Australia (or any other organisation) shall be the Lead Institution, that organisation will take over from You all the responsibilities of the Lead Institution as set out in this Deed.

Now that EMBL Australia has been established, the above text is out-of-date. I propose that we rectify this situation by amending the existing Deed to:

- (1) add a new definition to Clause 31 (for the new *Agreement relating to the establishment of EMBL Australia and the EMBL Australia Council*);
- (2) remove item B.2 (c); and
- (3) amend item B.2 (b) to read:

Your actions as Lead Institution will occur subject to the terms of the *'Agreement relating to the establishment of EMBL Australia and the EMBL Australia Council'*.

I seek your agreement to these amendments through your signature below, and your initialling of each page of each copy of **attached** the replacement pages for the Deed. Please return a signed copy of this letter plus one copy of the Deed amendment to me for our records.

If you wish to discuss any aspect of the variation to the funding agreement please contact Alex Aitkin by email at: alex.aitkin@innovation.gov.au or by phone on: (02) 6276 1520.

Yours sincerely

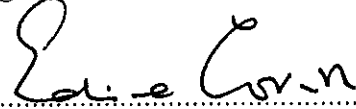


Jessie Borthwick
Head of Division
Science and Research Division

29 March 2009

Encl.

Agreed:



Professor Edwina Cornish
Deputy Vice Chancellor (Research)
Monash University

09/04/2009

30 Survival of Clauses

30.1 These clauses survive the expiration or earlier termination of this agreement: 4, 6, 10, 11, 9, 10, 11, 12, 14 and 30.

30.2 Clauses 7 and 16 apply during this agreement and for 7 years from the end of this agreement.

31 Interpretation

31.1 In this agreement, unless the contrary intention appears:

'ABN' has the same meaning as it has in section 41 of the *A New Tax System (Australian Business Number) Act 1999*;

'**Agreement relating to the establishment of EMBL Australia and the EMBL Australia Council**' refers to an agreement, entering-into-force on 21 November 2008, between Monash University, the Commonwealth Scientific and Industrial Research Organisation (CSIRO), The University of Western Australia, The University of Queensland, and The University of Sydney.

'**Auditor-General**' means the office established under the *Auditor-General Act 1997* and includes any other entity that may, from time to time, perform the functions of that office;

'**Australian Accounting Standards**' refers to the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the *Australian Securities and Investments Commission Act 2001*;

'**Australian Auditing Standards**' refers to the standards prepared by the Auditing Standards Board of the Australian Accounting Research Foundation and generally accepted audit practices to the extent they are not inconsistent with those standards;

'**Commonwealth Material**' means any Material provided by Us to You for the purposes of this agreement or which is copied or derived from that Material, except for Project Material;

'**Completion Date**' means:

- (i) the date specified in item A of Schedule 1;
- (ii) if no date is specified, the day after You have done all that You are required to do under this agreement to Our satisfaction;

'**Conflict**' refers to a conflict of interest, or risk of a conflict of interest, or an apparent conflict of interest arising through You engaging in any activity or obtaining any interest that is likely to interfere with or restrict You in providing the Project to Us fairly and independently;

'**Contributions**' means the amounts that each Fee Contributor has agreed to pay towards the Fee, and in the proportions identified at Table 1 of schedule 1.

'**Date of this Agreement**' means the date written on the signature page of this agreement, and if no date or more than one date is written there, then the date on which this agreement is signed by the last party to do so;

'**Electronic Communication**' has the same meaning as it has in section 5 of the *Electronic Transactions Act 1999*;

'EMBL' means the European Molecular Biology Laboratory.

'EMBL Partner Laboratory' means any laboratory which EMBL has licensed, through a legally-binding written agreement, to refer to itself as such.

'Faculty Development Program' means a program, referred to in EMBL Council document 2003 17E, under whose terms EMBL may incorporate within its Units two Australian funded research teams.

'the Fee' means the fee of five million Euros payable to EMBL for Australia's associate membership to EMBL.

'Fee Contributors' means the following entities: the Commonwealth, Monash University, The University of Western Australia, the Commonwealth Scientific and Industrial Research Organisation, The University of Queensland and The University of Sydney, that have collectively agreed to pay the Fee.

'Funding' or 'Funds' means Our Contribution, or the amount or amounts (in cash or kind) payable by Us under this agreement as specified in item AA of Schedule 2, including interest earned on that amount;

'GST' has the same meaning as it has in section 195-1 of the GST Act;

'GST Act' means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

'Head of Delegation' means an Australian Government official who represents Australia at meetings with representatives from other governments.

'Information Privacy Principle' has the meaning given in the Privacy Act;

'Intellectual Property Rights' 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 designs, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

'Lead Institution' means the Australian institution nominated by the Australian Government, which may enter into Membership Contracts with EMBL, and must pay the associate membership amounts to EMBL and administer Australian participation in collaborative activities with EMBL, on behalf of Australian Universities and research bodies.

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

'Membership Contracts' means those contracts entered into between the Lead Institution and EMBL, which govern the legal rights and obligations relating to the associate membership.

'Our Confidential Information' means information that:

- (iii) is described in item I of Schedule 1;
- (iv) We identify, by notice in writing to You after the Date of this Agreement, as confidential information for the purposes of this agreement; or
- (v) You know or ought to know is confidential to Us;

'Personal Information' has the same meaning as it has in section 6 of the Privacy Act;

'Privacy Act' means the *Privacy Act 1988*;

'Privacy Commissioner' means the Office of the Privacy Commissioner established under the Privacy Act and includes any other entity that may, from time to time, perform the functions of that Office;

'Program' means the part of Our operations specified in item B of Schedule 1 under which We are able to give the Funding to You;

'Program Delegate' means the person for the time being performing the duties of the office of the Department specified in item BB.1 of Schedule 2 or any other person specified by the Secretary and notified in writing to You;

'Project' means the activity described in item B of Schedule 1, and includes the provision of Project Material specified in that item;

'Project Material' means:

- (a) all of the Reports required under this agreement;
- (b) any information that You are required to provide to Us under this agreement; and
- (c) all publicity material regarding the Project that is issued by You.

'Records' includes documents, information and data stored by any means and all copies and extracts of the same;

'Report' means Project Material that is provided to Us for reporting purposes on matters including the use of the Funding, whether or not the requirements specified in item B of schedule 1 have been achieved, progress reports and evaluations of the Project or obligations of this agreement, as stipulated in item G of Schedule 1;

'Secretary' means a person for the time being performing the duties of the office of Secretary to the Department and includes a person designated in writing by the Secretary to exercise any of the Secretary's powers under this agreement;

'Us', 'We' and **'Our'** includes the Commonwealth's officers, delegates, employees and agents, and Our successors;

'You' and **'Your'** includes, where the context admits, Your officers, employees, agents and subcontractors and Your successors;

'Your Confidential Information' means information that is described in item CC of Schedule 2.

31.2 In this agreement, unless the contrary intention appears:

- (a) words in the singular include the plural and vice versa;
- (b) words importing a gender include the other gender;
- (c) a reference to a person includes a partnership and a body whether corporate or otherwise;
- (d) clause headings or words in bold format are inserted for convenience only, and have no effect in limiting or extending the language of provisions;
- (e) all references to dollars are to Australian dollars;
- (f) unless stated otherwise, a reference to legislation is to legislation of the Commonwealth, as amended from time to time;

- (g) 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; and
- (h) where a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning.

31.2 The schedules (and annexures and documents incorporated by reference, if any) form part of this agreement.

31.3 In the event of any conflict or inconsistency between any part of:

- (a) the terms and conditions contained in the clauses of this agreement;
- (b) the schedules
- (c) the annexures, if any;
- (d) documents incorporated by reference, if any,

then the material mentioned in any one of paragraphs (a) to (d) above has precedence over material mentioned in a subsequent paragraph, to the extent of any conflict or inconsistency.

Schedule 1 Your Obligations

A. Term of agreement (clause 1)

- (a) The Completion Date for this agreement will be 28 February 2015, or at such time as We determine, in consultation with You, that another organisation shall be the Lead Institution.

B. Project (clause 2)

B.1 Background

National Collaborative Research Infrastructure Strategy (NCRIS)

- (a) NCRIS is an Australian Government Program extending from 2005-6 to 2010-11 which aims to provide researchers with major research facilities, supporting infrastructure and networks necessary for world-class research.
- (b) Some key principles underpinning NCRIS are that:
- (i) Australia's investment in research infrastructure should be planned and developed with the aim of maximising the contributions of the research and development system to economic development, national security, social wellbeing and environmental sustainability;
 - (ii) Infrastructure resources should be focussed in areas where Australia is, or has the potential to be, world-class (in both discovery and application driven research), and to provide international leadership;
 - (iii) Major infrastructure should be developed on a collaborative, national, non-exclusive basis;
 - (iv) There should be as few barriers as possible to accessing major infrastructure for those undertaking meritorious research;
 - (v) The Strategy should seek to enable the fuller participation of Australian researchers in the international research system.

Australia's associate membership of EMBL

- (c) The European Molecular Biology Laboratory (EMBL) is a research organisation financially supported by twenty member states. It has five facilities located in Germany, France, Italy and the United Kingdom.
- (d) For a period of seven years from 1 March 2008 Australia will be an associate member of EMBL. The terms and conditions of associate membership are set out in an Instrument of Cooperation between the Australian Government and EMBL ('the Instrument'), and in other documents referred to by the Instrument, including the '*Proposed Principles regarding Australian Associate Membership of EMBL*' document.
- (e) Australia's associate membership of EMBL will support the NCRIS principles by enabling the fuller participation of Australian researchers in the international research system, and by providing improved access by meritorious researchers to major infrastructure in areas where Australia is world-class.

Associate Membership Fee

- (f) An associate membership fee of five million euros is payable to EMBL. The Commonwealth (through NCRIS), Monash University, the University of Western Australia, the Commonwealth Scientific and Industrial Research Organisation (CSIRO), the University of Queensland and the University of Sydney ('the Fee Contributors')

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have collectively agreed to pay this fee in the proportions, and according to the schedule, shown in Table 1 below:

Table 1 – Associate membership fee payment schedule dates and amounts

	2007/08	2008/09	2009/10	Total
NCRIS	AUD 3,000,000	0.00	0.00	AUD 3,000,000
Monash University	314,500 euros	314,500 euros	314,500 euros	943,500 euros
University of Western Australia	207,300 euros	207,300 euros	207,300 euros	621,900 euros
CSIRO	AUD 400,000	AUD 300,000	AUD 300,000	AUD 1,000,000
University of Sydney	152,400 euros	152,400 euros	152,400 euros	457,200 euros
University of Queensland	152,400 euros	152,400 euros	152,400 euros	457,200 euros
Total (euros)	3,000,000	1,000,000	1,000,000	5,000,000

Lead Institution

- (g) The Instrument states that an Australian Institution nominated by the Australian Government (“the Lead Institution”) may enter into contracts to govern the legal rights and obligations relating to associate membership (“Membership Contracts”). The Instrument also states that the Lead Institution will pay the associate membership fee amounts to EMBL and that Australian participation in collaborative activities with EMBL occurring under the Instrument will be administered by the Lead Institution.

EMBL Council

- (h) Australia will have observer status on the EMBL Council and will participate in EMBL Council meetings through the presence of up to two delegates.

Renewal of associate membership

- (i) Renewal of the associate membership for periods beyond 28 February 2015 will be dependent upon mutual consent between EMBL and the Australian Government. It will require a formal written request to the EMBL Council by the Australian Government no later than 1 September 2013, and unanimous approval by the EMBL Council.

B.2 Project Description

Lead Institution

- (a) You will be the Lead Institution referred to in the Instrument, from the Date of this Agreement until the Completion Date, or until such time as We determine, in consultation with You, that another organisation shall be the Lead Institution.
- (b) Your actions as Lead Institution will occur subject to the terms of the *Agreement relating to the establishment of EMBL Australia and the EMBL Australia Council*.

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Associate Membership Fee

- (c) Using the Funding, Your Contributions and the Contributions of other Fee Contributors in the proportions identified in Table 1 at item B.1, You must pay EMBL the Fee in three instalments in accordance with the following schedule:

First payment: Three (3) million euros, by 1 March 2008

Second payment: One (1) million euros, by 1 March 2009

Final payment: One (1) million euros, by 1 March 2010

You will not be required to pay the Fee to the extent that You do not receive the Funding or the Contributions of other Fee Contributors.

- (d) You must enter into a legal binding agreement with each of the other Fee Contributors within 1 month of the Date of this Agreement, and through each agreement ensure that the Fee Contributor provides to You their relevant Fee Contributions in accordance with the schedule indicated at Table 2 below:

Table 2

	Amount Payable in 2007/2008	Amount Payable in 2008/2009	Amount Payable in 2009/2010	Total Amounts Payable
University of Western Australia	207,300 euros	207,300 euros	207,300 euros	621,900 euros
CSIRO	AUD 400,000	AUD 300,000	AUD 300,000	AUD 1,000,000
University of Sydney	152,400 euros	152,400 euros	152,400 euros	457,200 euros
University of Queensland	152,400 euros	152,400 euros	152,400 euros	457,200 euros
Due Date of Contributions provided by other Fee Contributors to You	7 February 2008	1 December 2008	1 December 2009	

- (e) You must agree and must ensure that the University of Western Australia, the University of Queensland and the University of Sydney agree, under your agreements with these other Fee Contributors, to cover on a pro-rata basis any discrepancy between the total annual Contributions of the Fee Contributors expressed in Australian dollars and the total annual associate membership fee expressed in euros, as set out in Table 1 at item B.1.
- (f) You must inform us in writing when You have received the 2007/2008, 2008/2009 and 2009/2010 Contributions from the other Fee Contributors in the amounts identified at Table 2.

Reimbursement of the Fee

- (g) Should Australia's associate membership be terminated by the Australian Government or by EMBL before 28 February 2015 then You must request from EMBL that EMBL reimburse pro-rata, the Fee. If this reimbursement is received from EMBL You must then refund to the Fee Contributors their Contributions to the Fee on a pro-rata basis.

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Attendance at EMBL Council meetings

- (h) You may send a representative to attend all meetings of the EMBL Council in Europe as an Australian delegate. We will select a second Australian delegate, who will be Australia's Head of Delegation.

Collaborative Activities with EMBL

- (i) As Lead Institution You will be responsible for the development and implementation of collaborative research activities occurring between Australian institutions and EMBL, specifically those concerning the establishment of EMBL Partner Laboratories within Australia, and the provision of funding by Australia to EMBL for Faculty Development Program teams, as set out in the Instrument and associated documents.
- (j) Given the substantial contribution made to the Fee by Us through the NCRIS Program, Your development and implementation of collaborative activities with EMBL must, so far as is possible, harmonise with the NCRIS Principles listed in item B.1(b) of this schedule.

Implementing Arrangements under the Instrument

- (k) You must ensure that any Membership Contracts signed between You and EMBL regarding collaborative activities with EMBL are consistent with the Instrument and with the *Proposed Principles regarding Australian Associate Membership of EMBL* document.

Informing Australia's research community

- (l) From 1 March 2009 onwards You must place online one or more web pages that communicate Your activities, as Lead Institution, to Australia's research community. These pages must:
- {i} make publicly available (unless You gain Our approval to keep these confidential):
 - o the signed Instrument of Cooperation and the documents to which it refers;
 - o any Membership Contracts formed between You and EMBL;
 - o this agreement, plus agreements signed with the other Fee Contributors in respect of them providing to You their Fee Contributions;
 - o Your annual EMBL Reports (see item I).
 - {ii} state the dates of upcoming EMBL Council meetings, so far as these are known to You;
 - {iii} inform Australian researchers and students about how they may become involved in collaborative activities with EMBL;
 - {iv} state the locations and contact details for any EMBL Partner Laboratories that have been established in Australia.

Evaluation of the associate membership during 2012-13

- (m) To enable the Australian Government to make an informed and timely decision regarding whether or not to seek renewal of Australia's associate membership beyond 28 February 2015, You must review the relationship between Australia and EMBL in respect of Australia's associate membership by **1 March 2013**.
- (n) You must inform Us of how You intend to conduct the review by **1 September 2012**

C. Project Period (clause 2)

The Project commences on the Date of this Agreement and must be completed by the Completion Date.

D. Invoice Requirements (clause 3)

Invoices forwarded by You must be correctly addressed and include the:

- a. title of Project;
- b. Your name and ABN;
- c. name of Program Delegate;
- d. agreement number or date of execution;
- e. fees and expenses to be invoiced; and
- f. bank account details for payment of the invoice by electronic funds transfer.

Where the invoice relates to a taxable supply made under this agreement the invoice must comply with the requirements for a tax invoice, as defined in the GST Act.

E. Acknowledgement and Publication (clause 6)

Unless directed by Us otherwise, You must ensure that all publications, promotional material and activities relating to the Project issued or conducted by You contain the following acknowledgement: *"This Project is supported by the Australian Government."*

F. Insurance (clause 7)

You must maintain:

- a. workers' compensation insurance for an amount required by the relevant State or Territory legislation;
- b. public liability insurance for \$10,000,000 (ten million dollars) or more per claim.

G. Reporting (clause 9)

G.1 You must provide Us with a report ('the Annual EMBL Report' or 'Report') for each year of the initial term of the associate membership. This Report must include the following:

- (i) the names of Australian attendees at meetings of the EMBL Council and any decisions made by the EMBL Council, which are of consequence for Australia;