EMBL Australia
Establishment Agreement
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AGREEMENT RELATING TO THE ESTABLISHMENT OF EMBL AUSTRALIA AND THE EMBL AUSTRALIA COUNCIL

THIS AGREEMENT is made [ ], 2008

BETWEEN

MONASH UNIVERSITY (ABN 12 377 614 012) a body corporate established under the Monash University Act 1958 (Vic), of Wellington Road, Clayton, Victoria, 3800 ("Monash")

AND

THE UNIVERSITY OF SYDNEY (ABN 15 211 513 464) a body corporate established under the University of Sydney Act 1989 (NSW), of Sydney, New South Wales 2006 ("USYD")

AND

COMMONWEALTH SCIENTIFIC AND INDUSTRIAL RESEARCH ORGANISATION (ABN 41 687 119 230) of Limestone Avenue, Campbell, ACT ("CSIRO")

AND

THE UNIVERSITY OF QUEENSLAND (ABN 63 942 912 684) a body corporate established under the University of Queensland Act 1998 (Qld), of Brisbane, Queensland 4072 ("UQ")

AND

THE UNIVERSITY OF WESTERN AUSTRALIA (ABN 378 8281 7280) a body corporate established under the University of Western Australia Act 1911 (WA), of 35 Stirling Highway, Crawley, Western Australia 6009 ("UWA")

Recitals

A. The Commonwealth of Australia through its former Department of Education, Science and Training (DEST) has entered into an Instrument of Cooperation with EMBL, wherein it is related that Australia will become an associate member of EMBL.

B. The first instalment of Australia’s associate membership entry fee was paid on 1 March 2008 by Monash on behalf of the Participants and DIISR, pursuant to an agreement made on 22 February 2008 between the Participants appointing Monash as agent to make the associate membership entry fee (funded by each of the Participants and DIISR) in accordance with the following payment 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

C. Monash was nominated by DIISR to act as the Lead Institution, to receive funding from DIISR for payment to EMBL, and for this purpose entered into the DIISR-Monash Deed of Agreement.

D. The DIISR-Monash Deed of Agreement also provides for Monash to be the Lead Institution (until such time as DIISR determines, in consultation with Monash, that another organisation will be the Lead Institution) and as such, to:

(a) send a representative to attend all meetings of the EMBL Council in Europe as an Australian delegate;

(b) 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;

(c) ensure that the development and implementation of collaborative activities with EMBL will, as far as possible, harmonise with the National Collaborative Research Initiative Strategy of the Commonwealth Government;

(d) ensure that any Membership Contracts signed between Monash and EMBL regarding collaborative activities with EMBL are consistent with the Instrument of Cooperation and with the Proposed Principles regarding Australian Associate Membership of EMBL;

(e) place online one or more web pages that communicate Monash’s activities as Lead Institution to Australia’s research community; and

(f) enable the Australian Government to make an informed and timely decision about whether or not to seek renewal of Australia’s associate membership with EMBL.

E. The parties enter into this agreement to establish EMBL Australia and the EMBL Australia Council as the governing body of EMBL Australia, in order to facilitate the development of collaborative activities, research activities concerning the establishment of EMBL Partner Laboratories and the funding of Faculty Development Programme teams.
Operative provisions

1. Definitions

1.1 Unless the contrary intention appears, all capitalised expressions used in this agreement have the same meaning as defined in the DIISR-Monash Deed of Agreement.

1.2 The following expressions have the meanings as follows:

Access and Pricing Policy means the policy developed and published by the EMBL Australia Council for access and pricing of access to the EMBL Australia Partner Laboratory Network and the Nodes.

Annual Business Plan means the annual business plan for the year in question that has been developed by the EMBL Australia Director under the direction of the EMBL Australia Council and approved by the Participants.

Background IP means Intellectual Property belonging to a Participant that the Participant makes available for the purposes of EMBL Australia.

Claims means all expenses, losses, damages, costs (including legal costs on a solicitor and own client basis and whether incurred by or awarded against the affected party), demands, claims, actions, suits and proceedings of whatsoever kind.

Commencement Date means the date upon which the last party to sign, signs this agreement.

DIIRD means the Victorian Government Department of Innovation, Industry and Regional Development.

DIIRD Funding agreement means the agreement entered into between DIIRD and Monash as the Lead Institution dated 30 May 2008 for the grant of funding as a contribution towards the costs of the establishment of a secretariat for EMBL Australia, a copy of which is attached as Annexure B.

DIISR means the Commonwealth of Australia represented by and acting through the Department of Innovation, Industry, Science and Research or any successor department having responsibility for the NCRIS Programme;

DIISR-Monash Deed of Agreement means the agreement entered into between DIISR and Monash as the Lead Institution dated 8 February 2008 for the grant of Commonwealth Government funds for associate membership of EMBL, a copy of which is attached as Annexure C;

EMBL means the European Molecular Biology Laboratory, a research organisation established in 1974, financially supported by twenty member
states, with five facilities located in Germany, France, Italy and the United Kingdom;

**EMBL Associate Membership Fee Agreement** means the agreement between the Participants described in recital B.

**EMBL Australia** means the collaboration between the Participants established by this agreement.

**EMBL Australia IP** means IP generated using funds in whole or in part obtained or sourced by or through the auspices of the EMBL Australia Council.

**EMBL Australia Partner Laboratory Network** means an EMBL Partner Laboratory to be established in Australia comprising a network of a Hub and Nodes.

**EMBL Australia Activities** means:

(a) the activities as contemplated under this Agreement; and

(b) liasing with EMBL.

**EMBL Australia Council** means the governing body established as such in accordance with clause 4.

**EMBL Australia Director** means the person appointed as such in accordance with clause 5.

**EMBL Australia Partner Laboratory Network Executive Group** means the group established in accordance with clause 4.24.

**EMBL Council** means the governing body of EMBL established in accordance with clause 4.

**Faculty Development Programme** means a programme to develop Australian faculty researchers by placing them in research groups in EMBL for 5 years and then in Australian research institutions for a further 4 years.

**Hub** means the headquarters of the EMBL Australia Partner Laboratory Network comprising laboratory facilities and researcher groups approved by EMBL and the Secretariat.

**Intellectual Property (or IP)** 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, together with any documentation relating to such rights and interests.

**Instrument of Cooperation** means the instrument entered into by the Commonwealth of Australia through its former Department of Education,
Science and Training (DEST) and EMBL for Australia to become an associate member of EMBL.

**Lead Institution** has the same meaning as in the DIISR-Monash Deed of Agreement.

**NH&MRC** means the National Health and Medical Research Council.

**Node** means a local laboratory approved by EMBL and the EMBL Australia Council as a part of the EMBL Australia Partner Laboratory Network.

**Participants** means the members of the EMBL Australia collaboration established by this agreement and in the first instance means the parties hereto.

**Proposed Principles regarding Australian Associate Membership of EMBL** means the document annexed hereto as Annexure A.

**Secretariat** means the administration division of EMBL Australia.

**Special Majority** has the meaning set out in clause 4.10.

2. **Monash as the Lead Institution**

   **Role as the Lead Institution**

2.1 Monash is the Lead Institution in relation to the establishment and operation of EMBL Australia, and as such Monash is:

   (a) the single legal entity for the purpose of the DIISR-Monash Deed of Agreement and for the purpose of entering into further government funding agreements;

   (b) responsible for complying with the terms of the DIISR-Monash Deed of Agreement and any other government funding agreements entered into for EMBL Australia;

   (c) responsible for receiving, holding and expending money for EMBL Australia; and

   (d) responsible for the Secretariat to support the EMBL Australia Council and the EMBL Australia Director (when appointed),

   and for the purpose of dealing with EMBL, all of these responsibilities will be undertaken with Monash as signatory but acting on behalf of the Participants in EMBL Australia.

2.2 As EMBL Australia, through the EMBL Australia Council, is assuming responsibility and accountability for EMBL-related activities in Australia and in Europe, Monash will only enter into any agreement or arrangement on behalf of EMBL Australia on the recommendation of the EMBL Australia Council, and on terms approved by the Participants.
Monash binding the Participants

2.3 Monash as the Lead Institution will enter into such agreements and contracts relating to the conduct of the EMBL Australia Activities as the EMBL Australia Council reasonably requires, subject to the Participants approving the terms and conditions of each document Monash is required to enter into (with such approval not to be unreasonably withheld).

Monash compliance with DIISR-Monash Deed of Agreement

2.4 Monash agrees to:

(a) use its best endeavours to comply with the DIISR-Monash Deed of Agreement and any other agreement entered into as the Lead Institution;

(b) provide to the EMBL Australia Council copies of all material correspondence including any notices given by any party under the DIISR-Monash Funding Deed or any other agreement entered into as the Lead Institution; and

(c) notify the other Participants immediately if it believes that it may be in breach of the DIISR-Monash Funding Deed or any other agreement entered into as the Lead Institution.

2.5 The Participants agree to provide Monash with any information or documentation in their possession relating to their participation in EMBL Australia which is reasonably required by Monash to comply with its reporting obligations under the DIIRD Funding Agreement.

2.6 Monash agrees that it will not amend or vary the DIISR-Monash Funding Deed or any other agreement entered into as the Lead Institution unless it has received the prior written consent of each of the other Participants and the EMBL Australia Council, such consent not to be unreasonably withheld.

3. Establishment of EMBL Australia

Structure of EMBL Australia and the relationship between the Participants

3.1 The Participants acknowledge and agree that:

(a) EMBL Australia is not a separate legal entity but is a contractual collaboration between the parties;

(b) the relationship between the Participants is one of collaborators and the collaboration is limited to the purposes and activities described in this agreement;
(c) the collaboration created under this agreement will operate under the names of the Participants, trading as EMBL Australia;

(d) subject to clause 11.2, the rights, duties, obligations and liabilities of the Participants will be several and not joint or joint and several; and

(e) except as otherwise expressly specified in this agreement, a Participant will not have any authority to act for, or to create or assume any responsibility or obligation on behalf of, any other Participant.

**Admission of new Participants**

3.2 The admission of new Participants and the terms of admission will be by unanimous resolution of the Participants and of the EMBL Australia Council.

3.3 Admission of new Participants is also subject to approval by DIISR and EMBL (if applicable); and

3.4 Every new Participant must sign a document under which it agrees to be bound by this agreement as varied by the terms of admission.

**Activities and Objectives of EMBL Australia**

3.5 The Participants agree to establish and operate EMBL Australia to carry out the EMBL Australia Activities.

3.6 The Participants will use their best endeavours not to cause Monash to be in breach of the provisions of the DIISR-Monash Funding Deed and the Instrument of Cooperation in carrying out the EMBL Australia Activities.

**Governance Excellence**

3.7 The Participants will strive for excellence in governance in managing EMBL Australia.

3.8 Participants are to declare any conflict of interest that they or any related party has in relation to EMBL Australia and the EMBL Australia Activities, and the onus will be upon the Participant declaring the conflict of interest to reach agreement with the other Participants as to how any conflicts of interest are to be managed.

3.9 Notwithstanding clause 3.7, the Participants agree that it will not be a conflict of interest for a member of the EMBL Australia Council who has been appointed as a member by a Participant to act in the best interests of his or her appointing Participant.
4. **EMBL Australia Council**

**EMBL Australia Council formation**

4.1 The Participants agree to form the EMBL Australia Council as a non-executive body to which the EMBL Australia Director reports, subject to the terms of the EMBL Australia Director’s employment agreement.

**EMBL Australia Council composition**

4.2 The EMBL Australia Council will be a representative committee of up to 18 members comprising:

(a) 10 being 2 appointees (one non-scientist and one scientist) appointed by each of the Participants;

(b) 2 being appointees appointed by DIISR who shall be observers only with no right to vote;

(c) 2 being appointed by EMBL;

(d) 3 or 4 suitably qualified scientists who are not employed by any Participant to be invited by the Participants (through Monash acting as the agent for the Participants in accordance with their unanimous recommendation) as independent members, with the letter of invitation to set out the terms of tenure as a member.

4.3 The total number of members in (a) above (and therefore the total overall number) could increase if new Participants are admitted and a term of their admission is to have representation on the EMBL Australia Council.

4.4 Each appointor under (a), (b) and (c) above (appointors) shall be entitled to replace either or both of their appointees by notice in writing to the Participants, DIISR and EMBL (as the case may require).

4.5 Each of the appointors may appoint an alternate for the EMBL Australia Council member appointed by it, to act for the appointed EMBL Australia Council member at any meeting the appointed EMBL Australia Council member cannot attend. Each of the appointors will endeavour in good faith to ensure continuity of attendance by the EMBL Australia Council member it appoints, and where an alternate must attend in his or her place, to ensure that the alternate is well briefed on the background and context of the EMBL Australia’s deliberations.

4.6 Each of the appointors shall be responsible for meeting the costs (including all out-of-pocket expenses) of its own appointees being members of the EMBL Australia Council.
Chair of EMBL Australia Council

4.7 The chair of the EMBL Australia Council (Chair) will be an independent scientist (ie not an employee or consultant of a Participant) of suitable international standing and could be one of the scientists referred to in clause 4.2 (d) above, and shall hold office for such period as the other members determine.

4.8 The Chair will have the role of ensuring procedural fairness in the operations of the EMBL Australia Council.

EMBL Australia Council Secretariat

4.9 The Secretariat function of the EMBL Australia Council will initially be the responsibility of Monash but in due course may be delegated to a Participant.

Special Majority vote

4.10 Where the EMBL Australia Council is required to make a decision by special majority, the decision will require 75% or more of the EMBL Australia Council members with voting rights (including any alternates) including all the members appointed by the Participants, to vote in favour of the decision, with each member having one vote (Special Majority). Unless a Special Majority or unanimous resolution is expressly required under this agreement, each decision of the EMBL Australia Council will be by simple majority requiring greater than 50% of the attending EMBL Australia Council members with voting rights (including any alternates) to vote in favour of the decision, with each member having one vote.

Meetings and proceedings

4.11 It is expected that the EMBL Australia Council will meet at least quarterly, and apart from the rules in clauses 4.10 and 4.11, the EMBL Australia Council will determine its own set of rules relating to its processes, meetings and proceedings.

Quorum

4.12 A quorum for an EMBL Australia Council meeting will be a majority of the EMBL Australia Council members, and must include at least one representative of each of the Participants, one representative of EMBL, and the Chair. If the required quorum is not present at a meeting, the meeting will be adjourned to the same time on the next business day.

Resolutions

4.13 Resolutions by the EMBL Australia Council may be made by circular electronic means (ie written resolution that is either faxed or scanned and emailed), or by the members attending at a duly convened meeting at which the members are either present in person or attending by
electronic means so long as they can hear and be heard by all the other members in attendance (by whatever means).

4.14 The EMBL Australia Council will regularly self-review its processes and proceedings and make such changes and adjustments as appears appropriate in order to improve the development of EMBL Australia.

Role and responsibilities of the EMBL Australia Council

4.15 Subject to the limitations on the EMBL Australia Council’s powers set out below and any other reservations of powers or required approvals set out elsewhere in this agreement, the EMBL Australia Council is responsible for EMBL Australia, including:

**Plans, budgets and reports**

(a) approving an indicative plan for the realisation of the EMBL Australia program;

(b) adopting the central budget (after approval by the Participants);

(c) approving provisional estimate of expenditure for the following years;

(d) approving the annual report presented by the Director with or without change as required the EMBL Australia Council;

**Funding, promotion and relationships**

(f) developing proposals for funding of EMBL Australia and the EMBL Australia Activities from relevant government departments and statutory bodies such as DIISR, DJIRD, NH&MRC and the ARC;

(g) overseeing the promotion and fundraising of EMBL Australia, and its government relations;

(h) providing advice on the EMBL – Australia relationship, to the Ministers of DIISR and other bodies/institutions as required;

(i) reviewing the EMBL-Australia relationship and advise the Commonwealth Government on the continuation of Australia’s membership;

**Partner Laboratory Network and Scientific**

(j) approving and overseeing the creation and operating of the EMBL Australia Partner Laboratory Network within Australia (subject to EMBL approval);

(k) setting up the EMBL Australia Partner Laboratory Network Executive Group;
(l) determining policy in scientific, technical and administrative matters for EMBL Australia and the EMBL Australia Partner Laboratory Network;

(m) making rules for:
   (i) the establishment and ongoing supervision or overseeing of the EMBL Australia Partner Laboratory Network;
   (ii) intellectual property matters;
   (iii) EMBL Australia-related scientific matters;

(n) approving any scientific programme and related works plan and funding for it.

Liaison and relations with EMBL

(o) overseeing coordination and liaison with EMBL regarding issues such as intellectual property rights, the Faculty Development Programme and PhD partnership arrangements with Australian universities;

(p) overseeing the relationship of EMBL Australia with EMBL Council;

(q) ensuring there is appropriate representation for Australia at each EMBL Council meeting;

EMBL Australia Director

(r) providing guidelines for the EMBL Australia Director;

Special Majority decisions

(s) making (by Special Majority) decisions on key appointments – eg EMBL Australia Director, faculty positions;

(t) making (by Special Majority) decisions on key IP matters (eg dealing with IP infringement, patent prosecution);

(u) making (by Special Majority) any change in strategic direction or business plan; and

(v) approving (by Special Majority) the Annual Business Plan for EMBL Australia.

Limitations on the powers of the EMBL Australia Council

4.16 Except as expressly set out in this agreement, the EMBL Australia Council does not have any authority or power to act for, or create or assume any responsibility or obligation on behalf of, or to waive or modify the rights of, any Participant. In particular, without limiting the
generality of the foregoing, the EMBL Australia Council does not have power to:

(a) dispose of, encumber or license the whole or a substantial part of EMBL Australia assets except in the ordinary course of carrying out the EMBL Australia Activities in accordance with the Annual Business Plan;

(b) incur any debts on behalf of EMBL Australia or any Participant exceeding the ability to satisfy that debt from EMBL Australia funds which are then committed to satisfy such debt;

(c) compromise or release any debt due separately to any Participant;

(d) make decisions on extending the Term or on early termination of this agreement;

(e) make decisions on any variation to this agreement;

4.17 Notwithstanding any other provision of this Agreement, members of the EMBL Australia Council have no power to bind any of the Participants to any contract, agreement, debt or liability howsoever otherwise.

Employment or engagement of personnel for EMBL Australia

4.18 The EMBL Australia Council will be responsible for identifying and deciding upon requirements for employment or engagement of personnel for EMBL Australia.

4.19 Subject to the availability of funding, the Participants will endeavour to meet the reasonable requirements of the EMBL Australia Council for employment or engagement of personnel.

Reporting by EMBL Australia Council

4.20 The EMBL Australia Council will report to the Participants, DIISR and EMBL:

(a) formally, by providing a report in writing on the activities of the EMBL Australia Council and the EMBL Australia Director during the previous reporting period on a quarterly basis, and by providing additional information at the reasonable request of a Participant; and

(b) informally, through open communication between each of the appointors and the individuals that appointor has appointed to the EMBL Australia Council.

EMBL Australia Council sub committees and advisory groups

4.21 The EMBL Australia Council may form sub committees and advisory groups as required from time to time to make non binding recommendations to the EMBL Australia Council.
4.22 The composition and roles of and sub committees and advisory groups will be determined by the EMBL Australia Council, but in any event cannot exceed the powers of the EMBL Australia Council. The sub committees and advisory groups may include representatives that are not on the EMBL Australia Council.

**EMBL Australia Scientific Advisory Committee**

4.23 The EMBL Australia Council will constitute a scientific advisory committee (EMBL Australia Scientific Advisory Committee) that:

(a) consists of a number of internationally recognised experts;
(b) is funded from the central budget;
(c) reports to the EMBL Australia Council and advises on broad scientific directions;
(d) advises the EMBL Australia Director;
(e) performs periodic performance assessment reviews on the EMBL Australia Laboratory Network;
(f) helps ensure scientific excellence of EMBL Australia and Europe research groups;
(g) is a mirror of and has cross-representation from EMBL’s Scientific Advisory Committee; and
(h) shall adopt its own rules of procedure.

**EMBL Australia Partner Laboratory Network Executive Group**

4.24 The EMBL Australia Council will oversee the appointment of the EMBL Australia Partner Laboratory Network Executive Group, which will be chaired by the EMBL Australia Director and will include the heads of the EMBL Australia Partner Laboratory Network hub and the Nodes, senior managers of core facilities and key administrative staff.

4.25 The EMBL Australia Partner Laboratory Network Executive Group will be funded from the EMBL Australia central budget and will have the following responsibilities:

(a) assisting the EMBL Australia Director, the EMBL Australia Council and the EMBL Australia Scientific Advisory Committee in coordinating EMBL Australia Activities;
(b) facilitating the interactions and collaborations between Australian institutions and EMBL;
(c) developing and implementing selection processes (jointly with EMBL); and
(d) providing general support to the EMBL Australia Director and the EMBL Australia Council as required from time to time.
5. **EMBL Australia Director**

### Selection of EMBL Australia Director

5.1 The EMBL Australia Council will decide when it is necessary to appoint the EMBL Australia Director. Up until the time the EMBL Australia Director is appointed, Monash as the Lead Institution, will ensure that the role of the EMBL Australia Director is performed by one of its members of staff.

5.2 Subject to the limitations on the EMBL Australia Council's powers set out above and any other reservations of powers or required approvals set out elsewhere in this agreement the EMBL Australia Council will decide (by Special Majority) upon the process for selecting and appointing the EMBL Australia Director, and will identify the entity to be the employer and the terms and conditions of employment.

5.3 The EMBL Australia Council will decide when it is necessary to terminate the appointment of the EMBL Australia Director, subject to the employment policies of the EMBL Australia Director's employer.

### Role of the EMBL Australia Director when appointed

5.4 The EMBL Australia Director's role will be to provide the highest level of leadership and management for EMBL Australia, including management of the EMBL Australia Activities, and the operations and public image of EMBL Australia.

### Functions of EMBL Australia Director

5.5 The EMBL Australia Director will exercise the following functions:

(a) managing the EMBL Australia Activities and the implementation of the Annual Business Plan on a day to day basis, subject to his or her overall direction by the EMBL Australia Council;

(b) as appropriate, liaising with Participants, DIISR and EMBL on all aspects of EMBL Australia;

(c) preparing an Annual Business Plan and a quarterly report to be submitted to the EMBL Australia Council for endorsement and approval;

(d) preparing any reports required by DIISR, the EMBL Australia Council or EMBL;

(e) monitoring the performance of EMBL Australia, the Partner Laboratory and the Nodes against the strategic targets and key performance indicators set out in the Annual Business Plan;
monitoring performance and compliance with the DIISR-Monash Funding Deed and with any agreements relating to the EMBL Australia Partner Laboratory Network;

developing policies for approval by the EMBL Australia Council as appropriate;

maintaining records and accounts;

making recommendations to the EMBL Australia Council for expenditure on the EMBL Australia Activities and operating arrangements for carrying out the EMBL Australia Activities;

making recommendations to the EMBL Australia Council on any matter which has a significant impact on the future of EMBL Australia, including going forward after a renewal of Australia’s associate membership of EMBL;

working with the Participants to establish collaborative meetings of the Participants in connection with the establishment of the EMBL Australia Partner Laboratory Network;

reviewing and commenting on copies of draft publications;

promoting the role of EMBL Australia in providing access for Australian researchers to the EMBL Australia Partner Laboratory Network and to EMBL facilities under the direction of the EMBL Australia Council; and

other duties as directed by the EMBL Australia Council subject to the terms of the EMBL Australia Director’s employment agreement.

Limitation on the powers of the EMBL Australia Director

5.6 Except as expressly set out in this agreement, the EMBL Australia Director does not have any authority or power to act for, or create or assume any responsibility or obligation on behalf of, or to waive or modify the rights of, any Participant.

Reporting by the EMBL Australia Director

5.7 The EMBL Australia Director will report to the EMBL Australia Council at each EMBL Australia Council meeting in relation to:

(a) the financial status of EMBL Australia (including details of all money received or spent since the last EMBL Australia Council meeting and the current balance of EMBL Australia’s accounts); and
(b) the performance of EMBL Australia against the strategic targets and key performance indicators set out in the Annual Business Plan for EMBL Australia.

6. Funding of EMBL Australia Activities

6.1 The Participants acknowledge that the EMBL Australia Activities will require funding, and in particular funding for:

(a) the Faculty Development Programme for EMBL Australia;
(b) the EMBL Australia Partner Laboratory Network;
(c) the Secretariat;
(d) renewal fees for Australia’s associate membership of EMBL (if renewal is decided upon); and
(e) any other activities as approved by the EMBL Australia Council from time to time.

6.2 The Participants have agreed to share in the payment of the fee for the initial period of Australia’s associate membership of EMBL under the EMBL Associate Membership Fee Agreement. Apart from this commitment, the Participants are under no obligation to provide further funding for the EMBL Australia Activities or renewal of Australia’s associate membership.

6.3 The establishment and operation of EMBL Australia and the EMBL Australia Council will be funded through funds contributed by third parties from time to time, save that a Participant may decide, with the approval of the EMBL Australia Council, to fund its own research groups within the EMBL Australia Partner Laboratory Network.

6.4 The Participants acknowledge that Monash has or will receive funds for the purposes of the establishment of EMBL Australia and the EMBL Australia Council, to date as follows, specifically for the activities of the EMBL Australia secretariat, to contribute to Monash complying with its obligations under the DIISR-Monash Funding Deed:

(a) $100,000 from DIISR; and
(b) $75,000 from DIIRD.

6.5 It is anticipated that further funding for EMBL Australia will be the subject of funding proposals developed by the EMBL Australia Council.

Management of EMBL Australia funds

6.6 Monash will establish and maintain a separate cost centre account within its financial system for receiving all funds obtained for the
purposes of EMBL Australia and the EMBL Australia Activities. All such amounts will be used in accordance with the Annual Business Plan (or in the initial phases, as agreed in writing by the Participants).

6.7 Monash must pay all approved expenses of EMBL Australia from this account.

6.8 In relation to the account:

(a) Monash must provide a report detailing all amounts received and expended and a balance to the EMBL Australia Director on a quarterly basis; and

(b) Monash must only spend money from this account in accordance with the provisions of the annual business plan (or as otherwise approved by the EMBL Australia Council).

7. Ownership of and access to assets

**EMBL Australia Assets**

7.1 If any assets are acquired for EMBL Australia or the EMBL Australia Activities, such assets will be held by Monash on behalf of the Participants and will be used, accessed and dealt with as agreed between the Participants after consultation with the EMBL Australia Council. Monash will maintain a register of all EMBL Australia assets.

7.2 The EMBL Australia assets will be owned by the Participants as tenants in common, with each Participant being entitled to a proportion to be determined by agreement in writing if the need arises that reflects the value of its contribution up to the time of the determination, as a percentage of the value of the contributions of all of the Participants up to that time.

**Participant Assets**

7.3 Participant assets will be those assets located within the Hub or the Nodes and will remain vested in the Participant at whose premises the assets are located.

7.4 Each Participant acknowledges that Participant assets may be made available for use as part of the EMBL Australia Partner Laboratory Network only for the Term, on terms and conditions to be agreed.

8. Location of EMBL Australia Activities

**EMBL Australia Partner Laboratory Network**

8.1 The EMBL Australia Partner Laboratory Network will be established as a collegiate structure of a Hub and Nodes, subject to funding being available.
Hub

8.2 Monash will (subject to EMBL Australia Council and EMBL approval) be the Hub of the EMBL Australia Partner Laboratory Network.

Nodes

8.3 Subject to the establishment of the Hub pursuant to clause 8.2, the Nodes will be established at the University of Queensland, the University of Western Australia, the University of Sydney and CSIRO, as approved by the EMBL Australia Council and EMBL.

Access

8.7 Access to facilities within the EMBL Australia Partner Laboratory Network will be similar to the access that is provided within EMBL, namely subject to availability of the facility and in accordance with agreement between the host of the facility and the host of the researcher's own facility.

9. Intellectual Property

Background IP

9.1 Subject only to clause 9.2, nothing in this Agreement assigns or grants (or requires the assignment or grant of) any rights in relation to any Participant’s Background IP.

9.2 Each Participant hereby grants to each other Participant a royalty-free, non-exclusive licence to use its Background IP only for the purpose of conducting the EMBL Australia Activities (subject to any restrictions or conditions notified by that Participant) during the Term.

Intellectual property created or developed using EMBL Australia Partner Laboratory Network

9.3 The Participants agree that IP created or developed by a Participant or its employees or contractors or by two or more Participants (or their employees or contractors) using the EMBL Australia Partner Laboratory Network will be owned by that Participant or by those Participants as tenants in common in shares according to the relative contributions (as the case may be), whether or not such IP is EMBL Australia IP.

9.4 The Participants agree that a proportion of the proceeds from any commercialisation of any EMBL Australia IP will be applied to further the purposes of EMBL Australia. The EMBL Australia Council will decide the proportion and the mechanism for such application, which will be decided on a case by case basis, depending on such matters as the sources of contributions in funding and background IP, to the creation of the EMBL Australia IP.
10. Reporting and accounts

10.1 The annual business plan for EMBL Australia must be prepared by the EMBL Australia Director, under the direction of the EMBL Australia Council.

10.2 The EMBL Australia Director must keep records and produce reports concerning EMBL Australia, the EMBL Australia Activities, the financial performance of EMBL Australia and such policy matters as may be specified by the EMBL Australia Council, in such format, containing such content and according to such timetable as may be specified by the EMBL Australia Council and as required under the DIISR-Monash Funding Deed and any other funding agreement relating to EMBL Australia. All reports to be submitted under the DIISR-Monash Funding Deed and any other funding agreement entered into by Monash must be approved by the EMBL Australia Council and by Monash, before submission.

Copies of reports and Annual Business Plan and maintenance of records

10.3 The EMBL Australia Director will provide each member of the EMBL Australia Council with a copy of the annual business plan and any reports prepared for EMBL Australia.

10.4 Records and accounts that will facilitate an audit must be maintained and held by Monash as the Lead Institution.

10.5 Any Participant or its auditors may inspect the EMBL Australia accounts and records on reasonable notice given to Monash as the Lead Institution. Any third party or its auditors entitled under the terms of any agreement with a Participant may inspect those records they have a right of access to on reasonable notice subject to giving a confidentiality undertaking reasonably acceptable to Monash.

Accounts and audit

10.6 Accounts must be tabled at a meeting of EMBL Australia Council within 60 days after the financial year end.

10.7 Accounts will be audited by Monash’s internal auditors. Accounts will be audited in accordance with any requirements under the DIISR-Monash Funding Deed and any other funding agreement.

11. Liability and indemnity

11.1 Each Participant (Indemnifier) must indemnify each other Participant (Indemnified Party) against all Claims that the Indemnified Party may sustain or incur as a result of acts or omissions of an Authorised Person where those acts or omissions were authorised under, and carried out strictly in accordance with, this agreement such that the liability of
each Participant for such acts or omissions is to be shared equally by all the Participants (including the Indemnified Party and the Indemnifier). For the purposes of this clause 11.1, the term Authorised Person means a Participant, a member of the EMBL Australia Council or staff allocated to EMBL Australia including the EMBL Australia Director. ( 

11.2 Subject to clauses 11.1 and 11.3, each Participant (Indemnifier) must indemnify each other Participant (Indemnified Party) against all Claims that the Indemnified Party may sustain or incur as a result of any loss of or damage to any property or injury to or death of any person caused by any negligent act or omission of the Indemnifier or its officers and employees.

11.3 The Indemnifier’s liability under clause 11.2 shall be reduced proportionately to the extent that any negligent act or omission of the Indemnified Party, its officers, servants and agents contributed to the relevant loss or liability.

11.5 Each Participant agrees to use all reasonable endeavours to mitigate the effects of any Claim in respect of which it is indemnified under this clause.

11.6 Each Participant must notify each other Participant promptly if it becomes aware of any Claim that may give rise to liability under clauses 11.2 or 11.3.

12. Confidential Information

Definition

12.1 Confidential Information of a Participant (Disclosing Participant) means all information:

(a) treated by the Disclosing Participant as confidential; and

(b) disclosed by the Disclosing Participant to another Participant or of which another Participant becomes aware, whether before or after the date of this agreement,

except information that:

(c) the other Participant creates (whether alone or jointly with another Participant or any third person) independently of the Confidential Information of Disclosing Participant; or

(d) is public knowledge (other than as a result of a breach of confidentiality by the other Participant or any of its permitted disclosees).

12.2 Information:
(a) created by one or more Participants (whether alone or jointly
with any third person); or

(b) received by one or more Participants,

in connection with EMBL Australia is deemed to be Confidential
Information of each Participant, except information that is public
knowledge (otherwise than as a result of a breach of confidentiality by a
Participant or any of its permitted discloses), including by way of
example, the terms of this agreement.

12.3 Each Participant (Recipient):

(a) may use Confidential Information of a Disclosing Participant
only for the purposes of EMBL Australia; and

(b) must keep confidential all Confidential Information of each
Disclosing Participant except:

(i) for disclosures permitted under clause 12.4; and

(ii) to the extent (if any) the Recipient is required by law to
disclose any Confidential Information.

(c) must, if it receives a request under Freedom of Information
legislation to provide Confidential Information:

(i) advise the Disclosing Participant of the request, and any
applicable rights to claim that the Confidential
Information is exempt under that legislation; and

(ii) allow the Disclosing Participant such time as is
reasonable under the circumstances to consider its
position under that legislation and make such
submission, application or legal challenge as the
Disclosing Participant thinks fit.

12.4 A Recipient may disclose Confidential Information of a Disclosing
Participant to its officers and employees who require it for the purposes
of EMBL Australia on a need to know basis only and subject to such
directors and employees having first been directed by the Recipient to
keep confidential all Confidential Information of the Disclosing
Participant and the Recipient must ensure that any such officers and
employees comply with those directions.

12.5 If persons other than the Recipient’s officers and employees need to
know Confidential Information for the purposes of EMBL Australia
then the Recipient may, with the written approval of the Disclosing
Party, disclose the Confidential Information to such persons provided
they have first agreed in writing with the Recipient to comply with
substantially the same obligations in respect of Confidential Information
of the Disclosing Participant as those imposed on the Recipient under
this clause 12, and the Recipient must ensure that any such persons comply with those obligations.

12.6 A Recipient must promptly notify the Disclosing Party immediately there is a suspected breach of the confidentiality obligations under this clause 12 or the obligations of any disclosee pursuant to clause 12.4 or 12.5.

12.7 Notwithstanding any other provision in this clause 12, the obligations on each party under this clause 12 will not be taken to have been breached to the extent that Confidential Information of the other party:

(a) is disclosed by a party to its advisers or employees solely in order to comply with obligations, or to exercise rights, under this agreement;

(b) is disclosed to a party’s internal management personnel, solely to enable effective management or auditing of activities related to this agreement;

(e) is disclosed by the Commonwealth to the responsible Minister;

(f) is disclosed by the Commonwealth, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;

(g) is shared by the Commonwealth within DIISR, or with another agency, where this serves the Commonwealth’s legitimate interests;

(h) is disclosed by the Commonwealth to the Auditor General, Ombudsman or Privacy Commissioner; or

(i) is required by law, to be disclosed.

13. Publication and publicity

Publication of individual work using EMBL Australia facilities

13.1 Subject to clause 12 and this clause 13, nothing in this Agreement is intended to restrict the rights (if any) of any Participant or other user to publish the results of any work conducted by it using the EMBL Australia Partner Laboratory Network.

Publication of work relating to EMBL Australia Activities

13.2 Before publishing any information relating to the EMBL Australia Activities, the Participant proposing to make the publication (Requesting Participant) must provide the EMBL Australia Director
with a copy of the draft publication, consult with the EMBL Australia Director and take into account and act in accordance with any reasonable comments or objections that the EMBL Australia Director may have.

**Press releases and publicity**

13.3 None of the Participants (whether acting in respect of EMBL Australia or separately) may make or authorise a press release or other public statement relating to EMBL Australia unless all of the Participants have approved, so as to allow for coordination and agreement as to the content and timing of such release in compliance with their respective communications policy.

**Use of Participants Names**

13.4 Each Participant must not:

(a) use the name of any other Participant or EMBL (or any acronym or abbreviation of that name); or

(b) use any registered or unregistered trade mark of any other Participant or EMBL,

in connection with this agreement without the prior written consent of the relevant Participant or EMBL respectively (which consent may be withheld in the grantor's sole discretion or granted subject to conditions, which must be complied with).

**Acknowledgements**

13.5 All publications, media releases, publicity materials, web sites, correspondence and stationery of EMBL Australia must:

(a) carry the logos of all of the Participants in a form agreed in writing by the Participants;

(b) carry the logo of EMBL in a form agreed to in writing by EMBL;

(c) include a statement acknowledging the funding and contribution of DIISR to the extent required under the DIISR Funding Deed and as required by any other funding agreement.

**14. Term**

**Term of agreement**

14.1 This agreement shall commence on the Commencement Date and end when Australia ceases to be an associate member of EMBL or when this agreement is replaced with the consent of all the Participants (**Term**).

14.2 The Participants acknowledge that Australia's associate membership of EMBL became operational for an initial period of seven (7) years,
commencing 1 March 2008 and ceasing on 28 February 2015 (unless the associate membership is terminated earlier).

Renewal of Australia’s associate membership

14.3 Renewal of Australia’s associate membership of EMBL for further periods will be dependent upon agreement by EMBL and by the Australian Government. It will require a formal written request to the EMBL Council by the Australian Government no later than 1 September 2013 (or such replacement date specified by the Australian Government), and unanimous approval by the EMBL Council.

Review by EMBL Australia Council

14.4 The EMBL Australia Council must review the relationship between Australia and EMBL in respect of Australia’s associate membership in time to make a recommendation to the Participants before 1 March 2013 (or such replacement date specified by the Australian Government).

14.5 The EMBL Council must inform the Participants of how it intends to conduct the review in time for DIISR being informed by 1 September 2012 (or such replacement date specified by the Australian Government).

14.6 No less than six months before 1 March 2013, the Participants must meet to determine whether to continue their involvement in EMBL Australia under this agreement after the end of the initial period ending on 28 February 2015 (or such replacement date specified by the Australian Government).

14.7 The EMBL Australia Director and the EMBL Australia Council will present a recommendation to the Participants for their consideration.

14.8 The EMBL Australia Director will be responsible for conveying the recommendation to DIISR and any other relevant funding body.

15. Termination

15.1 This agreement will terminate immediately if:

(a) either the Australian Government or EMBL terminates Australia’s associate membership of EMBL; or

(b) the Participants unanimously agree in writing to terminate this agreement (subject to the terms of the DIISR-Monash Funding Deed and any other relevant funding agreement).

Consequences of termination

15.2 Upon termination of this agreement or at the end of the Term the Participants agree to meet as soon as possible to determine how to wind
up EMBL Australia and deal with any EMBL Australia facilities and
assets and staff, including winding up the rights of access and use of the
EMBL Australia Partner Laboratory Network.

15.3 Continued use of any Participant’s Background IP will be determined
by agreement between the owner and the user.

16. Expulsion or retirement of a Participant

Expulsion from EMBL Australia

16.1 A Participant may be expelled from EMBL Australia by agreement of all of
the other Participants, if that Participant:

(a) fails, after receiving two reminders at least 14 days apart prior
to the due date and two reminders at least 14 days apart after
the due date, to make any part of that Participant’s contribution
to Australia’s associate membership fee when it is due in
accordance with the EMBL Australia Associate Membership
Fee Agreement;

(b) breaches a material provision of this agreement and fails to
remedy that breach within 60 days after receiving notice from
all other Participants requiring it to do so; or

(c) becomes insolvent.

Retirement from EMBL Australia

16.2 No Participant may retire except with 12 months’ written notice to the
other Participants and the written consent of DIISR.

16.2 Retirement will not absolve the Participants of its obligations under the
EMBL Australia Associate Membership Fee Agreement to contribute to
Australia’s associate membership fee, or any other obligations for the
calendar or financial year under the current Annual Business Plan.

16.3 Monash may only retire from EMBL Australia by:

(a) giving 12 months written notice to the other Participants; and

(b) obtaining the written consent of DIISR and DIIRD and any other
funding body to the DIISR-Monash Funding Deed, the DIIRD
Funding Deed and any other Node Agreement (as applicable)
being assigned to one of the other Participants; and

(c) assigning and applicable agreements specified in paragraph (b)
above to one of the other Participants.

Consequences of expulsion or retirement

16.4 If a Participant is expelled or retires from EMBL Australia, it must:

(a) assign all of its right, title and interest (if any) in EMBL
Australia assets to the remaining Participants as tenants in
common in proportions to be determined by agreement between the remaining Participants;

(b) in the case of Monash, obtain the written consent respectively of DIIHR and and of any other funding body (as applicable) to the DIIHR-Monash Deed of Agreement and other funding agreements being assigned to one of the other Participants and assign the said agreements to that Participant.

16.5 The retirement of a Participant from EMBL Australia, will not affect that Participant’s rights to use the other Participants’ Background IP and EMBL Australia IP under the licences granted to it in clause 9.

16.6 Expulsion or retirement of a Participant is without prejudice to any accrued rights or remedies any other Participant may have.

16.7 The retirement or expulsion of a Participant will not affect the licence to use its Background IP granted by it under clause 9 to the other Participants.

17. GST

17.1 Unless otherwise indicated, all consideration for any supply made under this agreement is exclusive of any GST imposed on the supply.

17.2 Subject to this clause, if one party (supplier) makes a taxable supply under this agreement to the other party (recipient), the recipient on receipt of a tax invoice form the supplier must pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.

17.3 No party may claim or retain from the other party any amount in relation to a supply made under this agreement for which the first party can obtain an input tax credit or decreasing adjustment.

17.4 Words or expressions used in this clause 17 which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning in this clause.

18. Notices

18.1 A notice, demand, consent, approval or communication under this agreement (Notice) must be in writing, in English and signed by a person duly authorised by the sender, and either hand delivered or sent by prepaid post or facsimile to the recipient's address set out in Schedule 1.

18.2 A Notice given in accordance with clause 18.1 is taken to be received:

(a) if hand delivered, on delivery;
(b) if sent by prepaid post, on the second business day after the
date of posting (or on the seventh business day after the date of
posting if posted to or from a place outside Australia);

(c) if sent by facsimile transmission, when the sender’s facsimile
machine generates a message confirming successful
transmission.

19. Dispute Resolution

19.1 Subject to clause 19.3, the parties agree not to commence any legal
proceedings in respect of any dispute arising under this agreement,
which cannot be resolved by informal discussion, until the procedure
provided by this clause 19 has been used.

19.2 The parties agree that any dispute arising during the course of this
agreement is dealt with as follows:

(a) the party claiming that there is a dispute will send the other
party a written notice setting out the nature of the dispute;
(b) the parties will try to resolve the dispute through direct
negotiation by persons who they have given authority to resolve
the dispute;
(c) the parties have 10 business days from the receipt of the notice
to reach a resolution or to agree that the dispute is to be
submitted to mediation or some alternative dispute resolution
procedure; and

if:

A. there is no resolution of the dispute;
B. there is no agreement on submission of the dispute to
mediation or some alternative dispute resolution
procedure; or
C. there is a submission to mediation or some other form of
alternative dispute resolution procedure, but there is no
resolution within 15 business days of the submission, or
extended time as the parties may agree in writing before
the expiration of the 15 business days,

then, either party may commence legal proceedings.

19.3 This clause 19 does not apply if either party commences legal
proceedings for urgent interlocutory relief.

19.4 Despite the existence of a dispute, both parties must (unless requested
in writing by the other party not to do so) continue to perform
obligations under this agreement.
20. **General**

*Rights and obligations several and not joint or joint and several*

20.1 The rights, obligations and liabilities of each party under this agreement are individual and not joint or joint and several, except to the extent that this agreement expressly provides otherwise.

*No partnership or agency*

20.2 Nothing expressed or implied in this agreement is intended to create a partnership between the parties, or except as expressly otherwise provided in this agreement, establish any party as an agent, trustee, employer or representative of the other parties. Except as otherwise expressly provided in this agreement, a party has no authority to bind any other party, or to act for, or to incur any obligation or assume any responsibility on behalf of, any other party.

*Amendments to agreement*

20.3 This agreement, including any part of any of its schedules, may be varied only in writing signed by all of the Participants.

*Assignment*

20.4 A Participant may only assign this agreement or a right under this agreement with the prior written consent of all of the other Participants.

*Subcontracting*

20.5 A Participant may not subcontract to any person the performance of any of its obligations under this agreement without the written approval of the other Participants, which must not be unreasonably withheld. A Participant that is permitted to subcontract under this clause remains responsible for the performance of its obligations so subcontracted.

*Survival of clauses*

20.6 Any indemnity and any obligation of confidence under this agreement is independent and survives termination of this agreement. Clauses 9.5, 11, 12, 13.4 15.2 and 15.3 survive the termination of this agreement. Any other provision by its nature intended to survive termination of this agreement survives termination of this agreement.

*Counterparts*

20.7 This agreement may be executed in any number of counterparts. All executed counterparts taken together constitute one document.
Further action

20.8 Each Participant must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this agreement and any transaction contemplated by it.

Severability

20.9 A provision or part of a provision of this agreement that is void, illegal or unenforceable may be severed from this agreement and the remaining terms or parts of the terms of this agreement continue in force.

Governing law

20.20 This agreement is governed by the laws of Victoria, Australia and the parties submit to the non-exclusive jurisdiction of the courts of Victoria, Australia.

Waiver

20.21 A Participant does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the Participant giving the waiver.

Compliance with Agreements

20.22 The other Participants shall use reasonable endeavours not to do anything to cause Monash to be in breach of any agreement entered into by Monash as the Lead Institution (including without limitation the DJIRD Funding Agreement and the DIISR-Monash Deed of Agreement and any variation thereto), and each of them agrees to fully cooperate with Monash by complying with all reasonable requests made by Monash as may be necessary for Monash to fulfil its obligations under such agreements, including with regard to the reporting requirements.

20.23 The rights, duties and obligations of the parties under this agreement shall in every case be several and not joint or joint and several.

Non-merger

20.24 The rights and obligations of the Participants under this agreement do not merge on completion of any transaction contemplated by this agreement.
EXECUTED as an agreement.

SIGNED for and on behalf of
MONASH UNIVERSITY
by: [Name]
(print name)
Deputy Vice Chancellor (Research)
(position)
Date: 31 Oct '08

SIGNED for and on behalf of
UQ
by: [Name]
(print name)
(position)
Date: [Date]

SIGNED for and on behalf of
USYD
by: [Name]
(print name)
(position)
Date: [Date]
EXECUTED as an agreement

SIGNED for and on behalf of
MONASH UNIVERSITY
by:

(print name)

(position)

Date:________________________

SIGNED for and on behalf of
UQ
by:

(print name)

(position)

Date:________________________

SIGNED for and on behalf of
USYD
by:

(print name)

(position)

Date:________________________
EXECUTED as an agreement

SIGNED for and on behalf of  
MONASH UNIVERSITY  
by: 
(print name)  
(position)  
Date:.........................

SIGNED for and on behalf of  
UQ  
by: 
(print name)  
(position)  
Date:.........................

SIGNED for and on behalf of  
USYD  
by:  
(print name)  
(position)  
Date:2/1/2018
SIGNED for and on behalf of
UWA
by:

Professor Doug McEachern
Deputy Vice-Chancellor (Research & Innovation)
The University of Western Australia
(print name)
(position)

Date: 14 OCT 2008

SIGNED for and on behalf of
CSIRO
by:

(print name)
(position)

Date:
SIGNED for and on behalf of
UWA
by:

(print name)

(position)

Date:

SIGNED for and on behalf of
CSIRO
by: MEG KILLEN
by: MEGAN FISHER

(print name)

(position)

Date: 10/11/08
SCHEDULE 1

Contact details:

Monash:

Deputy Vice Chancellor (Research)
Monash University VIC 3800
Telephone: (03) 9905 9301
Facsimile: (03) 9905 5011

UQ:

Deputy Vice Chancellor (Research)
The University of Queensland
Brisbane QLD 4072
Telephone: (07) 3365 1111
Facsimile: (07)

USYD

Deputy Vice Chancellor (Research)
The University of Sydney
NSW 2006
Telephone: (02) 9351 2222
Facsimile: (02) 9351 3111

UWA

Deputy Vice Chancellor (Research)
The University of Western Australia
35 Stirling Highway
Crawley WA 6009
Telephone: (08) 6488 6000
Facsimile: (08) 6488 1380

CSIRO

Executive Director, Science Strategy & Investment
Riverside Corporate Park
5 Julius Avenue NORTH RYDE NSW 2113
Telephone: (02) 9490 8468
Facsimile: (02) 9490 8207
EMBL AUSTRALIA

Deed of Accession and Variation dated 2011

Parties:

MONASH UNIVERSITY (ABN 12 377 614 012) a body corporate continued in existence under the Monash University Act 2009 (Vic), of Wellington Road, Clayton, Victoria, 3800 ("Monash")

AND

THE UNIVERSITY OF SYDNEY (ABN 15 211 513 464) a body corporate established under the University of Sydney Act 1989 (NSW), of Sydney, New South Wales 2006 ("USYD")

AND

COMMONWEALTH SCIENTIFIC AND INDUSTRIAL RESEARCH ORGANISATION (ABN 41 687 119 230) of Limestone Avenue, Campbell, ACT ("CSIRO")

AND

THE UNIVERSITY OF QUEENSLAND (ABN 63 942 912 684) a body corporate established under the University of Queensland Act 1998 (Qld), of Brisbane, Queensland 4072 ("UQ")

AND

THE UNIVERSITY OF WESTERN AUSTRALIA (ABN 378 8281 7280) a body corporate established under the University of Western Australia Act 1911 (WA), of 35 Stirling Highway, Crawley, Western Australia 6009 ("UWA")

(the above five parties being hereinafter referred to as "the Existing Participants")

AND

THE UNIVERSITY OF MELBOURNE (ABN 84 002 705 224) a body corporate continued in existence under the University of Melbourne Act 2009 (Vic), of Melbourne, Victoria 3010 ("UM")

AND

THE UNIVERSITY OF ADELAIDE (ABN 61 249 878 937) a body corporate continued in existence under the University of Adelaide Act 1971 (SA), of North Adelaide, South Australia 5005 ("UA")

AND

AUSTRALIAN NATIONAL UNIVERSITY (ABN 52 234 063 906) a body corporate continued in existence under the Australian National University Act 1991 (Cwth), of Canberra, ACT 0200 ("ANU")

THE UNIVERSITY OF NEW SOUTH WALES (ABN 57 195 873 179) a body corporate established under the University of New South Wales Act 1989 (NSW), of Kensington, New South Wales 2052 ("UNSW")

(the above four parties being hereinafter referred to as "the New Participants")
Recitals:

A. The Existing Participants are parties to the EMBL Australia Establishment Agreement.

B. The New Participants wish to be admitted to EMBL Australia.

C. Pursuant to clauses 3.2 and 3.3 of the EMBL Australia Establishment Agreement the admission of new Participants and the terms of admission will be by unanimous resolution of the Existing Participants and of the EMBL Australia Council, and subject to approval by DIISR and EMBL (if applicable).

D. The Existing Participants and the EMBL Australia Council have unanimously approved the admission of the New Participants to EMBL Australia and each of DIISR and EMBL has approved such admission.

E. The parties have therefore agreed that the New Participants will accede to the EMBL Australia Establishment Agreement and be admitted to EMBL Australia on the terms set out in this deed.

The parties agree as follows:

1. Definitions

In this deed (including the recitals), terms defined in the EMBL Australia Establishment Agreement have the same meaning when used in this deed and unless the subject matter or context otherwise requires, the following words and expressions have the following meanings:

Accession Date means the date set out first above being the date of signing of the last party to sign this deed.

EMBL Australia Establishment Agreement means the agreement relating to the establishment of EMBL Australia and the EMBL Australia Council dated 21 November 2008 between the Existing Participants.

Existing Participants means Monash, USYD, CSIRO, UQ and UWA.

New Participants means UM, UA, ANU and UNSW.

2. Consideration

This deed is entered into in consideration of the parties incurring obligations and giving rights under this deed.

3. Accession of New Participants

Each Existing Participant agrees that each of the New Participants with effect from the Accession Date:

3.1 is admitted to EMBL Australia as a Participant;

3.2 becomes a party to the EMBL Australia Establishment Agreement; and

3.3 is entitled to all of the same rights and benefits under the EMBL Australia Establishment Agreement as each Existing Participant.
4. **New Participants Bound by EMBL Australia Establishment Agreement**

4.1 Each of the New Participants confirms that it has been supplied with and read a copy of the EMBL Australia Establishment Agreement.

4.2 Each of the New Participants covenants with the other parties to this deed to observe, perform and be bound by all the terms of the EMBL Australia Establishment Agreement to the intent and effect that each New Participant shall be deemed to be a party to the EMBL Australia Establishment Agreement and a member of EMBL Australia with effect from the Accession Date.

4.3 For the avoidance of doubt, rights and obligations of the Existing Participants under the EMBL Australia Establishment Agreement, accruing in the period before the Accession Date are not affected by this deed.

5. **Variation**

The parties agree that clause 4.2 of the EMBL Australia Establishment Agreement is hereby varied by increasing the maximum number of members of the EMBL Australia Council from 18 to 26, and the number 10 in paragraph (a) of clause 4.2 is increased to 18.

6. **General**

6.1 Costs - Unless specifically stated to the contrary, each party must meet all costs and expenses required to comply with its respective obligations under this deed.

6.2 Assignment - No party may assign or otherwise deal with any right or obligation under this deed without the prior written consent of the other parties.

6.3 Governing law - This deed is governed by and shall be construed in accordance with the laws of the State of Victoria.

6.4 Variation - Any variation to this deed must be in writing and signed by all the parties.

6.5 Legal relationship - The parties acknowledge that the relationship between them is not one of employment, agency, partnership, trust or joint venture.

6.6 Counterparts - This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this deed, all of which taken together constitute one deed.

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**EXECUTED as a deed.**

**Executed as a deed for and on behalf of Monash University by its duly authorised officers:**

**Signature**

**Vice-Chancellor and President**

**Title**

**Date:** 24-3-2011

---

**Signature**

**Professor Maxwell L King**

**Deputy Vice-Chancellor (Research)**

**Title**

**Monash University**

**Date:** 30-3-2011
The COMMON SEAL of THE UNIVERSITY OF SYDNEY was hereunto affixed in pursuance of an authority given by the Senate in accordance with the University of Sydney Act 1989 (as amended) by

VICE-CHANCELLOR

in the presence of:

Name of witness Signature of witness

REGISTRAR

in the presence of:

Name of witness Signature of witness

Signed for and on behalf of CSIRO by its duly authorised officer in the presence of:

Signature

Signature of Witness

Name of Witness in full

Signed for and on behalf of The University of Queensland by its duly authorised officer in the presence of:

Signature

Signature of Witness

Name of Witness in full
Signed for and on behalf of The University of Sydney by its duly authorised officer in the presence of:

Signature

Signature of Witness

Name of Witness in full

Signed for and on behalf of CSIRO by its duly authorised officer in the presence of:

Signature

Signature of Witness

Name of Witness in full

Signed for and on behalf of The University of Queensland by its duly authorised officer in the presence of:

Signature

Signature of Witness

Name of Witness in full

Signed for and on behalf of The University of Western Australia by its duly authorised officer in the presence of:

Signature

Signature of Witness

Name of Witness in full

Date: 31-3-2011

Signature

Date:
Signed for and on behalf of The University of Sydney by its duly authorised officer in the presence of:

Signature

Signature of Witness

Name of Witness in full

Date:

Signed for and on behalf of CSIRO by its duly authorised officer in the presence of:

Signature

Signature of Witness

Name of Witness in full

Date:

Signed for and on behalf of The University of Queensland by its duly authorised officer in the presence of:

Signature

Signature of Witness

Name of Witness in full

Date: 15-02-2011

Signed for and on behalf of The University of Western Australia by its duly authorised officer in the presence of:

Signature

Signature of Witness

Name of Witness in full

Date:
Signed for and on behalf of The University of Sydney by its duly authorised officer in the presence of:

Signature

Signature of Witness

Name of Witness in full

Date:

Signed for and on behalf of CSIRO by its duly authorised officer in the presence of:

Signature

Signature of Witness

Name of Witness in full

Date:

Signed for and on behalf of The University of Queensland by its duly authorised officer in the presence of:

Signature

Signature of Witness

Name of Witness in full

Date:

Signed for and on behalf of The University of Western Australia by its duly authorised officer in the presence of:

Signature

Signature of Witness

BERNADETTE FERNS
EA to DVC (Research)
The University of Western Australia

Name of Witness in full

Date: 31 MAR 2011

Professor Robyn Owens
Deputy Vice-Chancellor (Research)
The University of Western Australia
Signed Sealed and Delivered for and on behalf of The University of Melbourne pursuant to Statute 1.5.6 of The University of Melbourne Statutes by:

Dr Christopher Stewardson
University Secretary

Print name of Authorised Officer

Authorised Officer

Print name of Authorised Officer

Dated: 21.2.2011

Signature

Signature of Witness

Name of Witness in full

Dated:

Signature

Signature of Witness

Name of Witness in full

Dated:

Signature

Signature of Witness

Name of Witness in full

Dated:
Signed Sealed and Delivered for and on behalf of The University of Melbourne pursuant to Statute 1.5.6 of The University of Melbourne Statutes by:

Authorised Officer

Print name of Authorised Officer

Authorised Officer

Print name of Authorised Officer

Dated:

Signature

Professor Mike Brooks
DEPUTY VICE-CHAIRMAN AND VICE-PRESIDENT (RESEARCH)

Dated: 18 March 2011

Signature of Witness

Name of Witness in full

Signed for and on behalf of Australian National University by its duly authorised officer in the presence of:

Signature

Dated:

Name of Witness in full

Signed for and on behalf of The University of New South Wales by its duly authorised officer in the presence of:

Signature

Dated:

Name of Witness in full
Signed Sealed and Delivered for and on behalf of The University of Melbourne pursuant to Statute 1.5.6 of The University of Melbourne Statutes by:

Authorised Officer

Print name of Authorised Officer

Signed for and on behalf of The University of Adelaide by its duly authorised officer in the presence of:

Signature of Witness

Name of Witness in full

Signed for and on behalf of Australian National University by its duly authorised officer in the presence of:

Signature of Witness

Name of Witness in full

Signed for and on behalf of The University of New South Wales by its duly authorised officer in the presence of:

Signature of Witness

Name of Witness in full

Authorised Officer

Print name of Authorised Officer

Dated:

Signature

Dated:

Director, College of Medicine, Biology & Environment

Dated: 7 Apr 11

Signature

Dated:
Signed Sealed and Delivered: for and on behalf of The University of Melbourne pursuant to Statute I.5.6 of The University of Melbourne Statutes by:

Authorised Officer

Print name of Authorised Officer

Dated:

Signed: for and on behalf of The University of Adelaide by its duly authorised officer in the presence of:

Signature of Witness

Name of Witness in full

Dated:

Signed: for and on behalf of Australian National University by its duly authorised officer in the presence of:

Signature of Witness

Name of Witness in full

Dated:

Signed: for and on behalf of The University of New South Wales by its duly authorised officer in the presence of:

Signature of Witness

Name of Witness in full

Dated: 15 March 2011
Appendix 1

Proposed principles regarding Australian Associate Membership of EMBL

Australia will become an Associate Member of the European Molecular Biology Laboratory (EMBL) pursuant to Article IV(2) of the Agreement Establishing the European Molecular Biology Laboratory 1974 (EMBL Agreement) and the Council document concerning involvement of non-member states in the EMBL (EMBL/Fin.Com/2003 17E). Associate membership of the EMBL will encourage and facilitate interaction between the Australian molecular biology community and EMBL and, more broadly, the exchange of scientists between EMBL Member States and Australia through new links created by a greater integration of Australian and European research.

Entry Fee and duration

As a new Associate Member, Australia will pay the Associate Membership fee, a total of 5 Million Euros, in accordance with a payment schedule that will be specified in the proposed Instrument of Cooperation, consideration of the investment in laboratory infrastructure made by the Member States over the 32 years of the EMBL's existence, and for infrastructure improvements that will facilitate the operation of the groups sponsored by Australia at the EMBL (Associate Membership Fee). This payment will secure Associate Membership for an initial period of seven years. Extension of Associate Membership, and the conditions of extension, will be dependent upon mutual consent between Australia and the Director General of EMBL. Any extension is subject to approval by the EMBL Council.

Upon the signing of an Instrument of Cooperation between the Commonwealth Government of Australia and EMBL, following the EMBL Council decision pursuant to Article IV(2) of the EMBL Agreement and Australia's payment of the first instalment of Australia's Associate Membership Fee in accordance with the payment schedule to be detailed in the Instrument of Cooperation, EMBL and Australia jointly consider that Australia's EMBL Associate Membership will become fully operational between the dates that will be specified (indicatively from 1 January 2008 until 31 December 2014).

Governance

Australia will have observer status on the EMBL Council and will participate in the EMBL Council meetings. The Australian Government will nominate up to two Council delegates.

Australian scientists will be eligible to participate on the Scientific Advisory Committee, selected according to normal procedure (Article VIII of the EMBL Agreement).

Associate Member Faculty

EMBL may incorporate into its Units, at any of the five sites as appropriate and feasible, two faculty positions (Group Leader or Team Leader), selected jointly by Australia and EMBL, for 3-5 years, including a research group for each position (2 PhD students, 1 postdoctoral fellow, 1 technical assistant or engineer) (Australian Research Group). Up to two such Australian Research Groups may be present simultaneously at EMBL for 3-5 years, for a total of 14 group-years during the initial period of the Associate Membership. These Groups can be located at any of the five EMBL sites. The total costs for these Australian Research Groups will be covered by the Associate Member. In addition to these Australian recruits, additional Australian group or team leaders may be recruited to EMBL within the period of the agreement by normal procedure. Independent of the number of Australian group or team leaders at EMBL at any point during the agreement, Australia will support only the first two.

Training of Australian PhD students and postdoctoral fellows at EMBL is available, with the Associate Member covering the costs.

Additional training activities, visits and exchanges of personnel can also be mutually negotiated, funded by the sending party, on a cost basis, subject to availability of space and facilities.
Scientific collaborations will be funded equitably, by external grants of funds that may be available to one or both parties. All issues related to intellectual property rights will be clarified in bilateral agreements between the partners involved before the beginning of a project.

The Associate Member may seek advice from EMBL, for instance in the development of core facilities and research infrastructures. EMBL may also seek similar advice from Australia in fields such as medical epidemiology or stem cell research where Australian research is strong. Costs will be covered by the party requesting help.

The selection of participants to the Associate Member Faculty Development Programme will be mutually determined by the Australian Government's Minister for Education, Science and Training (or the Minister's delegate) and the EMBL, in the manner that will be jointly decided in the proposed Instrument of Cooperation.

**Partner Laboratories**

The Associate Member may wish to establish one or more EMBL partner laboratories, whose activities are complementary to those of EMBL, within Australian research institutes or universities. All costs for setting up and operating the partner laboratory will be carried by the Associate Member. If more than one partner laboratory is to be set up, the Associate Member will ascertain that strong institutional links exist between the partner labs and will nominate a headquarter partner laboratory or a partner laboratory steering committee which will be the main point of contact for and exchange with the EMBL.

**Arrangements for Collaboration**

For each collaboration project covered by Australia's EMBL Associate Membership, the EMBL will enter into a contract with each proposed participant, Australian Research Group or Partnership Laboratory to specify the terms of the collaboration. Such contracts will be consistent with Australia's EMBL Associate Membership.

**Amicable Resolution**

The EMBL and Australia will seek amicable resolution of any difference in understanding which may arise in relation to Australia's EMBL Associate Membership.
AGREEMENT

STATE OF VICTORIA

and

MONASH UNIVERSITY

State Government Funds as a contribution towards establishment of a Secretariat

for

European Molecular Biology Laboratory (EMBL) Australia
This Grant Agreement is made on the 3rd day of March 2008.

BETWEEN

GAVIN JENNINGS in his capacity as Minister for Innovation, ("the Minister") for and on behalf of the State of Victoria ("the State") and through its Department of Innovation, Industry and Regional Development ("Department") of level 35, 121 Exhibition Street, Melbourne, Victoria 3000

AND

MONASH UNIVERSITY [ABN 12 377 614 012] a body politic and corporate established pursuant to the Monash University Act 1958, having as its principal office at Administration Building, Wellington Road, Clayton, Victoria, Australia, ("Monash")

WHEREAS

A. The Minister may make payment from monies appropriated by Parliament for the purpose of the economic development of Victoria and the development of Victoria’s science, technology and innovation base.

B. Monash has established the Australian Regenerative Medicine Institute (ARMI) and ARMI was accepted as the headquarters for EMBL Australia, following Australia becoming the first Associate Member of EMBL in March 2008.

C. Monash has applied for funding assistance and the Minister desires to make available a Grant upon the terms and conditions set out below in order to assist Monash in pursuing its objectives and for the purposes of part funding the establishment of a Secretariat for EMBL Australia.

D. Further Monash is to ensure the implementation of the stages and key objectives for the Secretariat for EMBL Australia as set out in the Program Plan in order to further develop ARMI as the hub of the EMBL Australia Partner Laboratory network.

E. This Agreement is legally binding upon Monash and the Crown in right of the State of Victoria.

IT IS HEREBY AGREED:

1 DEFINITIONS

For the purposes of this Agreement -

a) “Agreement” or “Grant Agreement” means this agreement;

b) “Approved” wherever used means approved by the Department or wherever appropriate the Minister’s Delegate;
c) “Audit Opinion” means an audit opinion prepared in accordance with clause 14;

d) “Board” means the committee of management of Monash that oversees the implementation of the Program;

e) “Compliance Date” and “Date for Compliance” means the date specified in the Agreement for the completion of a specified task or submission of specified documentation;

f) “Department” means the Department of Innovation, Industry and Regional Development, and its successor Government departments and all references to the Department shall be read and construed as references to the Crown in Right of the State of Victoria;

g) “EMBL” means the European Molecular Biology Laboratory;

h) “Evidence” means evidence to the satisfaction of the Department;

i) “EMBL Australia” means the coordinating body established to support the Australia-Europe relationship under the EMBL Associate Membership (comprised of a number of partner organisations).

j) “Grant” and “Grant funds” means the funds provided under this Agreement;

k) “Grant Period” means the period from the date of execution of this Agreement until 30 June 2009;

l) “GST”, “Tax Invoice”, “Recipient Created Tax Invoice” and “Taxable Supply” where used in this Agreement have the same meaning as in A New Tax System (Goods and Services Tax) Act 1999 (Cth). Further, for the purposes of this Agreement “Taxable Supply” means the obligations of Monash under the terms of this Agreement;

m) “Intellectual Property” means all types of Intellectual Property Rights whether registered or not, including patents, trade marks, copyright, designs and the right to keep confidential information confidential and wherever referred to “Intellectual Property Rights” includes the proceeds of the realisation of Intellectual Property;

n) “Minister’s Delegate” means the person or persons authorised by the Minister to act on the Minister’s behalf from time to time;

o) “Performance Report” means a report as described in clause 13.1(a);

p) “Person” includes body corporate and references to an individual or person includes a corporation, partnership, joint venture, association, governments, local government authorities and agencies;
q) “Program” means the program of agreed stages and key objectives for the EMBL Australia Secretariat committed to by Monash as set out in the Program Plan, and include but are not limited to all activities which are specified in the Program Plan including the appointment and commencement of operations to ensure a fully operational Secretariat for EMBL Australia within the agreed timelines and financial commitments;

r) “Program Milestones” means achievement of specific activities wherever outlined in the Program Plan and includes the milestones listed in Schedule Three;

s) “Program Plan” means a document outlining and providing a framework for the Program activities and budget and as revised further in accordance with clause 7;

t) “Secretariat” means suitably qualified personnel employed by Monash in order to provide appropriate resources to EMBL Australia;

u) “Stakeholders” means separate entities or interested and or aligned Persons to Monash who have some shared interests in the Secretariat’s objectives and whose interests need to be accommodated and managed by Monash.

In addition, unless the context requires otherwise, wherever used:

aa) words importing a gender include any other gender and words in the singular include the plural and vice versa;

bb) a cross reference to a clause number is a reference to all its sub-clauses;

c) references to a party to this Agreement includes the executors, administrators, successors and permitted assigns of that party;

d) clause headings are for convenience of reference only and have no effect in limiting or extending the language of the provisions to which they refer;

e) if a word is defined other parts of speech and grammatical forms have corresponding meanings; and

ff) if a party to this Agreement consists of more than one person those persons shall be jointly and severally bound under this Agreement.

2. OBLIGATIONS OF GRANT RECIPIENT

2.1 Monash will act as the focal point for all communications between the Department and partner organisations of EMBL Australia.

2.2 Monash will promptly distribute to the Secretariat copies of all communications from the Department which pertain to the Secretariat.
2.3 Monash will provide the Department with the documents as set out in the Grant Agreement at the times prescribed and Monash will ensure that all participating parties provide it with such assistance as is reasonably required to prepare such documents.

2.4 Monash will account for all revenue and expenditure relating to the Program, whether derived from Government funds or otherwise, separately from other funds managed by it.

2.5 Monash is to account for implementing and maintaining compliance with the Program and shall have sole responsibility for all actions and the performance of all Persons authorised by Monash to undertake the Program and activities of the Secretariat.

2.6 As Monash is the only signatory party to this Agreement then—
(a) Monash acknowledges that it has the full responsibility for the delivery of and compliance with all obligations under the Agreement;
(b) Monash shall ensure the Secretariat assists it to comply with its obligations as lead party under the Grant Agreement; and
(c) all payments of Grant monies shall be made to Monash (in full satisfaction of the Department’s obligation under this Agreement) and Monash shall be responsible for ensuring that monies are appropriately applied to the Program and distributed to the Secretariat as appropriate to apply to the Program.

3 GRANT

Subject to the conditions set out in this Agreement, grant funds not exceeding $75,000 exclusive of GST will be advanced to Monash to assist the Secretariat to undertake the Program.

4 PAYMENT

4.1 Grant instalments shall be advanced in accordance with Schedule Three within 30 days of the provision of a Tax Invoice, the documentation and evidence specified in this clause and the documentation for the relevant period for each instalment as specified in Schedule Three.

4.2 Without limiting clause 4.1 all Grant instalments are conditional upon the Department being satisfied that Monash has complied with all of its obligations under this Agreement, including:

- signing of the Grant Agreement;
- receipt of evidence that the Secretariat has been established and is fully operational;
- receipt of a Program Plan to the satisfaction of the Department and which is approved by EMBL Australia;
• the Department being satisfied that the Secretariat has complied with clause 7 in respect of the updating and review of the Program Plan; and

• achievement of all relevant Program Milestones;

• evidence that the Program has been conducted in accordance with and in compliance with all aspects of the Approved Program Plan; and

• evidence that all Grant funds have been applied towards the Program.

4.3 The Minister’s Delegate may, in their absolute discretion, extend the Compliance Dates stipulated in this Agreement.

5 GST

Each payment under this Agreement shall be increased by an amount equal to any GST payable with respect to the taxable supply for which the payment is made provided that with each relevant claim for payment, Monash submits a Tax Invoice, unless the parties have agreed in writing to have issued a Recipient Created Tax Invoice. The total amount of moneys paid under this Agreement will be increased to include the total amount of GST payable.

6 PROGRAM PERFORMANCE AND MAINTENANCE OF ACTIVITIES AND ASSETS

6.1 Monash must ensure that it undertakes to maintain the Secretariat and the Program and, wherever reasonably necessary, must ensure steps are in place to make available additional funding as well as the Grant funds to enable the maintenance of such activities of the Secretariat in Victoria for the Grant Period. The Department will not be held responsible for any losses or cost over-runs incurred in relation to any components of the Secretariat, its objectives and the Program.

6.2 Monash must ensure the Secretariat achieves the performance measures with respect to the Program as set out in the Approved Program Plan. In the event that the Secretariat is unable to achieve the performance measures or considers that it will not be able to achieve them, Monash shall promptly provide evidence that it has used its best endeavours to comply. The Department shall consider such evidence and exercise its discretion whether or not to withhold, suspend, cancel or terminate any payment or payments due or to fall due in accordance with this Agreement.

7 APPROVED PROGRAM PLAN

7.1 Monash must develop and update a Program Plan outlining and providing a framework for the proposed activities and budget for the
Secretariat and the Program in accordance with this clause and to the satisfaction of the Minister’s Delegate.

7.2 Monash must review and update the Approved Program Plan as required to take account of any material changes in circumstances. If the Minister’s Delegate is not satisfied with the revised Program Plan, the Department may withhold Grant payments.

7.3 The Program Plan, including all revisions, must conform with any criteria or advice provided by the Department and, wherever possible, include reference to each and every item set out in as follows:

a) a strategic overview of the Program outlining the strategic aims, objectives and benefits that will be achieved for Victoria and Australia;

b) details of performance measures and Program Milestones to assess the effectiveness and efficiency of the implementation of the Program and outcomes as described in the Program Plan;

c) details of the proposed ongoing agreed stages and activities for the Program including work plans, the staff expertise, infrastructure and other resources for the Grant Period and how these each contribute to the stated Program objectives and planned outcomes;

d) details of how Monash intends to manage existing and new Intellectual Property Rights arising from the Program including details of how those rights will be allocated, as well as details of what action the Secretariat takes to protect Intellectual Property;

e) details of the marketing objectives and activities of the Secretariat together with details of the arrangements between Monash and relevant Stakeholders in regard to the outcomes of the Program;

f) details of the risks to the Program and the strategies for managing and mitigating those risks;

g) detailed financial projections on a six monthly basis as set out in this Agreement (Performance Reports) for each of the financial years from the date of commencement of operations until the Program’s conclusion for the operations of the Secretariat for the Grant Period including cash flows (with detailed revenue raising activities), profit and loss and balance sheet for the Program; and

h) details of the strategies of Monash to sustain international collaborations and activities of the Secretariat after all grant funding has been paid.
7.4 The Minister’s Delegate may approve variations to timelines within
Schedule 3 with Monash following approval of the Program Plan.

8 IMPLEMENTATION OF THE APPROVED PROGRAM PLAN

Monash must provide evidence when specified under this Agreement, or as
otherwise required by the Department, that it has taken its best endeavours to
ensure the Secretariat has:

a) adhered to specified timelines for the establishment and management of
the Program activities of the Secretariat through the Program Plan; and

b) professionally managed and continue to meet any other reasonable
requirements of the Department.

9 NO FURTHER FUNDING

Nothing in this Agreement implies that the Department shall provide funding
for the Program or the Secretariat beyond that specifically provided for under
this Agreement and Monash must at all times secure funding from other
sources to fully fund the Program and the Secretariat to the extent not funded
by the Grant funds.

10 GOVERNANCE AND MEMBERSHIP

Monash must ensure that, to the Department’s satisfaction, the facilities of the
Secretariat and the outcomes of the Program are made available to support the
Program objectives and whenever called upon, Monash will report to the
Department on the access arrangements upon request by the Department. The
Secretariat must also provide ongoing opportunities for the inclusion and
participation of relevant Stakeholders from EMBL Australia in this Program.

11 PUBLICITY AND PROMOTION

11.1 The Department may at any time publicise and promote the benefits
accruing to the Secretariat, and the State as a result of the provision of
the Grant. The Department may include the name of Monash as the
recipient of Grant funds, the Secretariat and the amount of the Grant in
its Annual Report. The Department reserves the right to issue a
mutually agreeable press release announcing the Government’s
investment in the Secretariat as well as these ongoing benefits.

11.2 Monash agrees that it shall not (and where applicable shall ensure the
Secretariat shall not) publicise such an activity, or issue any publicity
regarding the Grant funding prior to the release by the Department
unless otherwise agreed in writing by the Department.

11.3 Subject to the preceding provision, Monash shall ensure the Secretariat
shall acknowledge the receipt of Grant funds in all publicity regarding
the Program. Monash is to provide the Department or any other
agency of the State of Victoria nominated by the Department,
recognition as a major funding contributor, with prominent written acknowledgment and display of appropriate agency logos wherever appropriate in all advertising relating to the funded activities. All signage and logo display is to be carried out in accordance with instructions and or guidelines issued from time to time by the Department.

12 APPLICATION OF GRANT FUNDS AND EXCESS FUNDS

12.1 The Grant must be spent in a manner consistent with the Program and the Approved Program Plan or as otherwise agreed in writing by the Department.

12.2 Should Monash not expend or commit all of the funds provided under this Agreement on the Program in accordance with the Approved Program Plan, Monash must ensure the refund of these amounts to the Department within 30 days of the due date of the Final Report unless otherwise agreed in writing by the Department.

12.3 The Department may withhold or suspend Grant payments in the event that at the due date for an instalment, Monash notifies that the Secretariat has not expended previously received Grant funds on the Program in accordance with the Approved Program Plan and has available such Grant funds to carry forward into the next quarter.

13 WRITTEN REPORTS

13.1 Monash, on behalf of the Secretariat, undertakes to provide details for each of the requisite reports and documentation, as set out in this Agreement, as follows:

a) Six Monthly Performance Reports

Six monthly Performance Reports are to be provided to the Department within 60 days of the end date of each relevant period set out in Schedule Three, and must be prepared in the form of the template as set out in Schedule Two (or such other form approved in writing by the Department) and must be signed by the Chief Operating Officer of Monash.

In each case, the Performance Report and associated documentation (purchase orders, invoices, meeting documentation) is to provide evidence that can be used to independently verify expenditure of the Grant funds, as well as details in or attached to the template of the following:

* detailed information as to measured progress and achievements by reference to the Program (as described in the Approved Program Plan for that period) and the outcomes of each activity for the
Program and Program Milestones, which shall be cross referenced to the performance measures, targets and the other projections set out in the Program Plan for that period;

- evidence of performance against budgets and other financial information as described in the Program Plan;

- a revised outlook for the Program and the budget; and

- details of any other revised provisions requested to the Program Plan.

If required, all financial records referred to in the Performance Report for all Grant funds expended to that date are to be made available for inspection by the Department or its authorised officers or agents.

b) Infrastructure Audit Updates

Whenever called upon to do so by or on behalf of the Department, Monash on behalf of the Secretariat undertakes to provide non-confidential information in an agreed format detailing facilities, personnel, capabilities and services for the Program for incorporation in a publicly accessible database on science and research infrastructure for Victoria.

c) Final Report

On or before the date set out in Schedule 3, Monash on behalf of the Secretariat is to ensure it produces and forwards the Final Report to the Department for the operations of the Secretariat and the Program for the Grant Period from the date of execution of this Agreement to 30 June 2009.

The Final Report is to detail evidence for these operations having particular regard to the outcomes, impacts and achievement of the Program and the enhancement of Victoria’s and Australia’s science, technology and innovation base.

d) Audit Opinion

Monash on behalf of the Secretariat is to obtain and forward an annual Audit Opinion prepared in accordance with clause 14. These must be provided on the dates set out in Schedule Three.

e) Post Grant Reports

Monash on behalf of the Secretariat is to ensure it produces and forwards Post Grant Reports.
These must be provided annually after the due date for the Final Report on the dates set out in Schedule 3. The Post Grant Reports must include details of the status and progress of the Program, any material changes to the Approved Program Plan and the future outlook for the Program, and any other information reasonably requested by the Department.

13.2 At the Department’s request, Monash on behalf of the Secretariat is to provide any additional oral or written information or documentation that explains and/or details further the six monthly Performance or Annual Reports throughout the Grant Period. Monash must respond in a timely manner to any such request, and if requested must provide a full and complete written response to the Department’s satisfaction within 7 days of any such request.

13.3 The Department may undertake a review of the performance of the Secretariat and use of Grant funds after the completion of the financial year 2008/2009. Monash on behalf of the Secretariat will participate in any such review and will cooperate with any requirements of the Department in this review.

14 **AUDIT OPINION**

14.1 The Audit Opinion is to be prepared at Monash’s cost in the form of Schedule One by a person who is not an officer or employee of the Secretariat and in either case who is:

a) a person who is registered as a company auditor under a law in force in the State; or

b) a member of the Institute of Chartered Accountants in Australia or of the CPA Australia.

15 **AUDIT AND INSPECTION**

15.1 The Department shall be entitled to audit the monies expended from the Grant upon the Program and inspect the records of separate agreements entered into for the Program and all other records of the operations of the Secretariat associated with the Grant and expended on the Program and for that purpose Monash on behalf of the Secretariat:

a) shall permit access to and the copying of the financial and other records, to the extent that they relate to the Grant or the Program, and shall ensure that it permits such access and copying of such records held by any person duly authorised by the Department;

b) shall answer all relevant enquires put to them by any person duly authorised by the Department;

c) shall assist any person duly authorised by the Department in the conduct of the audit or inspection relating to the Grant or the Program; and
d) shall permit any person duly authorised by the Department to inspect any relevant facilities and technologies and to assess service quality, quantity and ongoing costs.

15.2 Monash on behalf of the Secretariat undertakes that it will, if required, provide the Auditor-General of Victoria with access to accounting records and documentation in respect of the Grant and the Program.

16 COMPLIANCE WITH UNDERTAKINGS AND DETERIORATION IN FINANCIAL CIRCUMSTANCES

16.1 If Monash fails to comply with clauses 4–8 and 11-14 the Minister's Delegate may, in their absolute discretion, require Monash to refund such amount of the Grant previously advanced as it deems appropriate.

16.2 The Department may, in its absolute discretion, withhold, suspend, cancel or terminate any payment or payments due or to fall due under the Grant where the Department is of the reasonable opinion that Monash has;

a) been subjected to significant deterioration as to their financial circumstances or where they have become subject to an insolvency administration; or

b) whenever called upon in writing, have failed to address concerns as to the circumstances of significant deterioration of the budget for the Secretariat; or

c) whenever called upon in writing, have failed to address reasonable concerns as to the capacity of the Secretariat to deliver the Program and the Program Milestones; or

d) whenever called upon in writing have failed to comply, to the Department's reasonable satisfaction with some or all of their material obligations pursuant to this Agreement or

e) will not otherwise proceed to complete the Program.

16.3 For the purposes of these provisions, Monash shall be deemed to have become the subject of an insolvency administration, without limiting the generality thereof, where:

a) a receiver, receiver and manager, trustee or similar officer is appointed over all or any of the assets or undertakings of Monash;

b) a mortgagee takes possession either directly or by an agent over all or any of the assets or undertakings of Monash;

c) a liquidator or provisional liquidator is appointed; or

d) an administrator is appointed, a deed of company arrangement is entered into or any other composition or other arrangement is made with creditors.
16.4 Prior to taking any action under clauses 16.1 – 16.3, the Department will consult with Monash. The Department will provide a grace period of twenty (20) working days for Monash to remedy the breach (if it is capable of remedy or cure) or demonstrate, to the Department’s satisfaction, how the change in circumstances will not conflict with or diminish the capacity to comply with obligations under this Agreement prior to invoking the provisions set out in this clause.

16.5 Clauses in this Agreement providing the Department with rights or remedies add to and in no way derogate from the rights and remedies otherwise available to it.

17 NEGATION OF PARTNERSHIP AND AGENCY

Monash shall not, by virtue of this Agreement, or for any purpose, be deemed to be a partner or agent of the Department or as having any power or authority to bind or represent the Department.

18 ASSIGNMENT

This Agreement or any part thereof shall not be transferred or assigned without the prior written consent of the Department whose consent may be withheld at the absolute discretion of the Department.

19 SEVERANCE

If any provision of this Agreement is invalid or unenforceable, such provision shall be deemed deleted but only to the extent necessary and the remaining provisions of this Agreement shall remain in full force and effect.

20 COMPLIANCE AND LIABILITY

It is the responsibility of Monash on behalf of the Secretariat to carry out its obligations under this Agreement at its own risk and, in so doing, it shall comply with the provisions of any Statute, Regulations or local law and the requirements of any local authority with regard thereto.

21 INTELLECTUAL PROPERTY

21.1 Intellectual Property and copyright in all information, material and documents written, created or prepared in relation to this Program shall vest with Monash.

21.2 Monash shall where reasonably requested by the Department ensure there is in place licences to the Department to use and reproduce all reports and information provided to the Department in accordance with this Agreement.

21.3 Monash shall indemnify and at all times keep the Department and all officers, servants and agents of the State indemnified against any
action, claim, suit or demand, including a claim, suit or demand for or liability to pay compensation or damages and costs or expenses arising out of or in respect of any breach of any third party’s Intellectual Property Rights.

22 INSURANCE

22.1 Monash shall take out all appropriate insurances at an adequate level for the Program, including insurance covering the sites at which the Program is undertaken and all public liability and property loss and damage and shall be responsible for maintaining the cost of all such insurance.

22.2 Monash may act as its own insurer but only to the extent that it will be able to adequately meet its obligations under this Agreement.

23 ENTIRE AGREEMENT AND VARIATION

23.1 This Agreement constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, whether oral or written, between the parties with respect to the subject matter of this Agreement.

23.2 Any modification, alteration, change, variation or extension to any terms and conditions in this Agreement shall be made in writing signed by all parties to the Agreement.

24 WAIVER

No right or obligation under this Agreement shall be deemed to be waived except upon written acknowledgment signed by the party waiving the right or obligation in each instance.

25 STAMP DUTY

Monash shall pay any stamp duty and any other taxes or imposts which may be payable in connection with the Grant or this Grant Agreement.

26 CONFIDENTIALITY

26.1 Monash shall not disclose or permit the disclosure of any information relating to the Grant (including this Agreement), and will ensure that the Secretariat does not disclose such information except:

(a) to the Department;
(b) to the Australian Government
(c) where otherwise permitted under this Agreement;
(d) where the information disclosed is already in the public domain other than due to a breach of this Agreement;
26.2 The preceding clause shall survive the termination of this Agreement.

27 CESSATION OF EMPLOYMENT OF SECRETARIAT PERSONNEL

27.1 In the event that the Secretariat’s personnel cease to be employed by Monash during the Grant Period for any reason, the Department must be notified forthwith and Monash is to demonstrate that such an occurrence does not diminish the capacity to comply with obligations under this Agreement.

27.2 The Department shall be consulted in the process of appointing of any person to replace that appointment with a suitably qualified replacement within 3 months of the position being vacated. If the position has not been filled within the 3 month period, the Department reserves the right to withhold further payments until the engagement of a suitably qualified candidate.

28 EQUAL OPPORTUNITY, ANTI-DISCRIMINATION AND PRIVACY

Monash shall comply with the provisions of all Commonwealth and State privacy, anti-discrimination and equal opportunity legislation and codes.
GOVERNING LAW

This Agreement shall be governed by the Laws of the State of Victoria.

Signed by GAVIN JENNINGS,
MINISTER FOR INNOVATION,
FOR AND ON BEHALF OF
THE STATE OF VICTORIA,
in the presence of:

Witness (signature)

Witness (print name)

EXECUTED BY A DULY AUTHORISED OFFICER OF MONASH UNIVERSITY

Signed by a duly authorised officer for and on behalf of
MONASH UNIVERSITY ABN 12 377 614 012
in the presence of:

Witness (signature)

Witness (print name)

Professor Maxwell L King
Acting Deputy Vice-Chancellor
(Research)
Monash University
Schedule One

Audit Opinion

(To be prepared on the letterhead of the Accounting firm)

TO: The Minister for Innovation
c/- Department of Innovation, Industry and Regional Development
Level 35, 121 Exhibition St
Melbourne 3000.

[ESTABLISHMENT OF A SECRETARIAT]

This Audit Opinion is prepared for the purposes of the Grant Agreement entered into by the Parties and dated ..................... ("the Agreement").

Scope

We have conducted an independent audit in accordance with Australian Auditing Standards of the [attached ................ insert description of relevant document(s) audited – may be statement by Monash’s chief financial officer] provided to us which specifies an amount of ............... of expenditure on the Program. This in order to express an opinion on it for the purposes of the Agreement.

Our audit involved an examination, on a test basis, of evidence supporting the amount of expenditure incurred, including all Grant funds. This included an examination of the financial records and receipts, and an evaluation of the policies and procedures used to calculate the expenditure of the Program. These procedures have been undertaken to form an opinion as to whether the methodology used to calculate the expenditure is in accordance with the Agreement, and that the figures stated are true and fair.

This Audit Opinion expressed in this report has been formed on the above basis.

Audit Opinion

We confirm that in our opinion that expenditure of $..................... has been incurred on the Program in accordance with the terms of the Agreement.

.................................................. (Signed)

Name of the Accounting Firm

.................................................. Print Name:

Position:

Date:..................................
Schedule Two
MONITORING AND REPORTING TEMPLATE – PERFORMANCE REPORT TEMPLATE

A. SUMMARY
The Department requires a general overview and highlights of the impact of its funding for the Program and any issues that impact on its ongoing progress.

In addition to part B and C below, the Department seeks information that demonstrates how your Program continues progress towards its objectives and includes, but is not limited to:

- Ongoing recruitment details (i.e. wherever relevant expats returning, experts appointed, etc);
- Education and skills related activities;
- Development of exchange programs with key strategic locations;
- Workshop meetings held and outcomes;
- Network meetings held;
- Formation of EMBL Australia, the Partner Laboratory Network and other key activities;
- Links with prestigious national and international partners and Stakeholders;
- Nature and value of “deals” finalised (e.g. grants, commercial contracts, financial commitments from Stakeholders);
- Short layman’s descriptions of key developments, new technology applications and problems that have been solved through the Program activities;
- Media articles; and
- Awards and acknowledgements for the Program and people involved.

In addition to the Program Activity Highlights, please provide details of opportunities where the Department can publicise and promote the progress of the Program.

Part A information should not exceed more than two A4 pages and may from time to time be the basis for mutually agreed “publicity and promotion” in accordance with this Agreement.

Please detail your activities for the period in the following table

<table>
<thead>
<tr>
<th>Program Activity Highlights</th>
<th>Publicity and Promotion</th>
</tr>
</thead>
<tbody>
<tr>
<td>e.g. Infrastructure purchased</td>
<td>e.g. This infrastructure is the only kind in Victoria/Australia – will be used to assist with new cancer therapy</td>
</tr>
</tbody>
</table>

Please outline any issues that impact on the ability to deliver the Program and the objectives

Key Issues
### B. Performance Report

<table>
<thead>
<tr>
<th>Name of Grantee/ Program</th>
<th>Program Milestones/ Performance Indicators/ Activities Planned</th>
<th>For specified activities were planned Result Achieved/Not achieved</th>
<th>OUTLOOK</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>For each activity, list the planned milestones, performance measures and the dates scheduled for completion/achievement, as specified in the Program Plan.</td>
<td>Outline actual status of the activity for the period. Were milestones/ targets achieved or not achieved.</td>
<td>List any issues impacting the progress of planned activities or changes in milestones and dates. Outline the processes that will be undertaken to ensure that the unachieved milestones will be achieved in the coming period/s.</td>
</tr>
</tbody>
</table>

**Example**

Activity: Develop tender specifications for the procurement of a new electron microscope and finalise quotations.

- To finalise the tender specification brief and forward to Board for approval by 31 July 2007.
- To forward tender brief to suppliers and receive quotations by 20 August 2007.

- **Achieved:** Tender specification Brief finalised and approved by Board in mid August 2007 and copies of relevant documentation submitted to the Department.
- **Not Achieved:** Quotations finalised on 27 September 2007.

### C. Budget Report

<table>
<thead>
<tr>
<th>Budget Denotes planned expenditure as outlined in the Program Plan</th>
<th>Annual Budget ($)</th>
<th>Actual Year to Date Income ($)</th>
<th>Year to Date Expenditure ($)</th>
<th>Year to Date % Variance (provide explanation if &gt;10%)</th>
<th>Total Funds Unexpended To Date ($)</th>
<th>Planned Income for Next Period ($)</th>
<th>Budget Next Period Revise where appropriate ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>STI Allocated Funds</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Program Funds</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The contents of this report, including all attachments, are true and correct in every particular to the best of my knowledge after having made all due enquiries.

Signed*: __________________________________________ Date: __________________________

Name (print): ______________________________________ Witness (print): __________________________________

Position: __________________________________________ Qualification of Witness: ________________________

*The report must be signed by the Chief Executive Officer or Chairman of the Board, or other person approved by the Department.
## Schedule Three

**Program Milestones and Grant Payment Schedule**

All program milestones and estimates of grant instalments are for discussion purposes only. All details must be agreed to the Department’s satisfaction and estimates do not constitute any binding arrangement.

<table>
<thead>
<tr>
<th>Conditions to be satisfied by Monash on behalf of the Secretariat prior to Grant Instalment Payment</th>
<th>Planned Program Milestones</th>
<th>Grant Instalment</th>
<th>Compliance Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reports and Approved Program Plan.</td>
<td>Execution of Grant Agreement by both parties.</td>
<td>$45,000</td>
<td>Upon execution of the Grant Agreement by both parties.</td>
</tr>
<tr>
<td></td>
<td>Receipt of evidence that the Secretariat has been appointed and is fully operational.</td>
<td>Appointment of Secretariat and finalisation of Program Plan to the satisfaction of the Department.</td>
<td>15 December 2008</td>
</tr>
<tr>
<td></td>
<td>Receipt of Program Plan which is to be approved by the Department.</td>
<td>The key performance milestones for the Program will be negotiated following the submission of the Program Plan.</td>
<td></td>
</tr>
<tr>
<td>Receipt of:</td>
<td>Receipt of Six Monthly Performance Report for the period 1 July 2008 to 31 December 2008.</td>
<td>$15,000</td>
<td>1 March 2009</td>
</tr>
<tr>
<td></td>
<td>Receipt of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>the Final Report with details of the Program throughout the period of Grant funding to 30 June 2009;</td>
<td>$15,000</td>
<td>1 September 2009</td>
</tr>
<tr>
<td></td>
<td>the Audit Opinion for the period 1 July 2008 to 30 June 2009.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


Australian Government

Department of Innovation, Industry, Science and Research

Deed of Agreement

between the

COMMONWEALTH OF AUSTRALIA

as represented by the

Department of
Innovation, Industry, Science and Research

and

Monash University

regarding funding for

Australia’s associate membership of the
European Molecular Biology Laboratory

30 January, 2008
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Parties

COMMONWEALTH OF AUSTRALIA ('Commonwealth', 'Us', 'We' or 'Our'), represented by and acting through the Department of Innovation, Industry, Science and Research [ABN 51 452 193 160] ('Department')

AND

MONASH UNIVERSITY ('You', or 'Your'), a body politic and corporate established pursuant to the Monash University Act 1958 (VIC) of Wellington Road, Clayton, 3800, Victoria, Australia [ABN 12 377 614 012]

Note: this agreement uses a number of words which are defined in the glossary in clause 31. Defined terms start with a capital letter, eg, Asset.

Purpose

A. The Department operates a Program, the National Collaborative Research Infrastructure Strategy ('the Program' or 'NCRIS') which is providing $542 million over seven years to assist with the provision of major research facilities, supporting infrastructure and networks necessary for world-class research in Australia. The Program is mentioned in Outcome 5 of the former Department of Education, Science and Training's Portfolio Budget Statements for the 2007-08 financial year as one of several Programs contributing to the maintenance of Australia's strong science, research and innovation capacity. The Program is now operated by the Department of Innovation, Industry, Science and Research. It seeks to ensure that Australia receives the best possible return on its research infrastructure investment. A key focus of the Program is on encouraging collaboration and the effective use of research infrastructure.

B. For a period of seven years from 1 March 2008, Australia will be an associate member of the European Molecular Biology Laboratory (EMBL). This associate membership will allow Australian universities and research bodies to undertake collaborative research activities with EMBL and will allow mutual access to research facilities.

C. An associate membership fee (the Fee) of $5 million Euros is payable to EMBL. You are committed to helping achieve the Program, through Your conduct of the Project on behalf of all Australian universities and research bodies as the Lead Institution nominated by the Australian Government, by providing to EMBL in accordance with the terms and conditions set out in this agreement, the Fee amounts payable, and by developing and implementing collaborative arrangements that will occur between Australian institutions and EMBL.

D. We are required by law to ensure accountability for public money, and You are required to be accountable for all Funds provided by Us.

E. The purpose of this agreement is to set out the terms and conditions that apply to the Funding being provided by the Commonwealth for Australia's associate membership of EMBL.

F. You agree to accept the Funding as Lead Institution on behalf of Australian Universities and research bodies on the terms and conditions set out in this agreement.

30 January, 2008
1 Term of Agreement

This agreement commences on the Date of this Agreement and, unless terminated earlier, it expires on the Completion Date.

2 Project

2.1 You must carry out the Project:

(i) in the manner specified in item B.2 of Schedule 1;
(ii) within the Project Period; and
(iii) in accordance with this agreement: diligently, effectively and to a high professional standard.

2.2 You must have entered into legally binding agreements with each other Fee Contributor within 1 month of the Date of this Agreement, under which each other Fee Contributor must provide to You by the due dates the Fee amounts identified at item B.2 of schedule 1, failing which this Agreement shall automatically terminate on the expiration of the said period of 1 month and all Funding shall immediately be returned to the relevant Fee Contributor who provided any Contributions received, whereupon the parties shall be under no further obligations to each other.

2.3 Subject to clause 2.2, the Funding must be provided by You to EMBL only for the purpose of payment of the Fee

2.4 We are not responsible for the provision of additional money to meet any expenditure in excess of the Funds.

3 Funding

3.1 Subject to sufficient funds being available for the Program, and compliance by You with this agreement (including the invoicing requirements specified at item D of Schedule 1), We will provide You with the Funding at the time and in the manner specified in item AA of schedule 2.

3.2 Without limiting Our rights, We may withhold or suspend any payment in whole or in part if You have not performed Your obligations under this agreement.

4 Management of Funding

4.1 You must:

(i) ensure that the Funds are held in an account in Your name, and which You solely control, with a bank or credit union carrying on banking business in Australia;
(ii) on request from Us, provide Us and the authorised deposit-taking institution with an authority for Us to obtain all details relating to any use of the account; and
(iii) identify the receipt and expenditure of the Funds separately within Your accounting Records so that at all times the Funds are identifiable and ascertnable.

(iv) You must keep financial Records relating to the Project and to the receipt
and expenditure of the Funding to enable You to comply with Your obligations under this agreement.

4.2 The Funds must only be used for the purpose of providing the Funds to EMBL for payment of the Fee.

4.3 To avoid any doubt, You must not use the Funds:

(i) as security to obtain, or comply with, any form of loan, credit, payment or other interest; or
(ii) for the preparation of, or in the course of, any litigation.

4.4 You must ensure that any interest earned on the Funds is used for the purpose of developing Australian participation in collaborative activities with EMBL.

5 Repayment of Funding

5.1 If at any time during the term of this agreement including but not limited to at the Completion Date or earlier termination of this agreement, some or all of the Funding has not been:

A. spent in accordance with this agreement; or
B. acquitted to Our satisfaction,

then this amount must be repaid to Us within 20 business days of a written notice from Us, or dealt with as directed in writing by Us.

5.2 A repayment may be recovered from You, including by offsetting that amount against any amount subsequently due to You under any other arrangement between You and Us or between You and the Commonwealth generally.

5.3 Any amount owed to Us under clause 5.1 is recoverable by Us as a debt due to Us by You without further proof of the debt by Us.

5.4 An adjustment note must be provided to Us if required by the GST Act, including where You repay some or all of the Funding to Us.

6 Acknowledgment and Publicity

6.1 Unless directed by Us otherwise, You must ensure that Our financial support is acknowledged in all publications, promotional material and activities relating to the Project issued or conducted by You. Such acknowledgement must be in the manner set out in item E of schedule 1.

7 Insurance

7.1 You must, for as long as any obligations remain in connection with the Project, have insurance as specified in item F of Schedule 1.

7.2 When requested, You must provide Us, within 10 business days of the request, with evidence satisfactory to Us that You have complied with Your obligation to insure.

8 Liaison and Monitoring

8.1 You must:

30 January, 2008

Initials
(i) liaise with and provide information to the Program Delegate, or a person nominated by the Program Delegate, as reasonably required by the Program Delegate; and
(ii) comply with all reasonable requests, directions, or monitoring requirements received from the Program Delegate.

9 Reporting

9.1 You must provide to Us progress Reports at the times and in the manner stated in item G of Schedule 1 of Your progress in undertaking the Project.

9.2 You must provide Us with:

(a) a certificate that all Funding received was expended for the Project and in accordance with this agreement;
(b) an audited detailed statement of income and expenditure in respect of the Funding, which must include a definitive statement as to whether the financial accounts are true and fair, and a statement of the balance of Your account referred to in clause 4.1; and
(c) an audit statement that the Funding was expended for the Project and in accordance with this agreement.

9.3 The certificate referred to in clause 9.2(a) and the audits referred to in clause 9.2(b) and (c) must:

(a) contain the details, if any, described in item G of Schedule 1;
(b) be provided to the Program Delegate within one month of the date of payment to EMBL of the first instalment of the Fee; and
(c) at the other times specified in item G of Schedule 1, if any.

9.4 The certificate referred to in clause 9.2(a) must be provided by the person specified in item G of Schedule 1 or, if no person is specified, by Your chief financial officer, or chief internal auditor.

9.5 Subject to clause 9.6, the audits referred to in clause 9.2 (b) and (c) must:

(a) comply with the Australian Auditing Standards; and
(b) be carried out by a person who is:
   A. registered as a company auditor under the Corporations Act 2001, or a member of the Institute of Chartered Accountants in Australia, or of CPA Australia or the National Institute of Accountants; and
   B. not an officer or employee of You.

9.6 If You are audited by the Auditor-General or the Victorian Auditor-General:

(i) for the entire term of this agreement; and
(ii) the Funding is included in the income and expenditure which is subject to the audit,

then, instead of the certificate and audits referred to in clause 9.2 You may provide Us with:

A. a detailed statement of income and expenditure for the Funding, which must include a definitive statement as to whether the

30 January, 2008
financial accounts are true and fair, and a statement of the
balance of Your account referred to in clause 4.1; and

B. statement that the Funding was expended for the Project and in
accordance with this agreement.

9.7 The statements referred to in clause 9.6 A and B must
   (i) be certified by;
       A. Your chief financial officer; and
       B. the senior executive officer employed by You who has primary
       responsibility for managing Your audit functions; and

   (ii) be delivered at the times and in the manner specified in clause 9.3.

10 Commonwealth Material

10.1 Ownership of all Commonwealth Material, including Intellectual Property Rights in that
Material, remains vested at all times in Us but We grant You a licence to use, copy and
reproduce that Material only for the purposes of this agreement and in accordance with
any conditions or restrictions specified in item H of Schedule 1.

11 Project Material

11.1 Subject to this clause 11, ownership and Intellectual Property Rights in Project Material
vest immediately in You.

11.2 You grant to Us a permanent, irrevocable, free, worldwide, non-exclusive licence
(including a right of sublicence) to use, reproduce, adapt and exploit the Intellectual
Property Rights in Project Material for any purpose.

11.3 If a third party has Intellectual Property Rights in existing Material incorporated or
supplied with Project Material, You must arrange for the grant to Us of a licence in the
same terms as set out in clause 11.2.

11.4 You must, if requested by Us to do so, bring into existence, sign, execute or otherwise
deal with any document which may be necessary or desirable to give effect to this
clause 11.

12 Disclosure of Information

12.1 Subject to clause 12.5
   (i) You must not, without Our prior written approval, disclose any of Our
       Confidential Information to a third party; and
   (ii) We must not, without Your prior written approval, disclose any of Your
       Confidential Information to a third party.

12.2 In giving written approval to disclosure, a party may impose conditions as it thinks fit,
and the other party agrees to comply with the conditions.

30 January, 2008

Initials
12.3 We may at any time require You to arrange for any person engaged in, or in relation to, the performance or management of this agreement to give written undertakings, in a form required by Us, relating to the non-disclosure of Our Confidential Information.

12.4 If You receive a request under clause 12.3, You must promptly arrange for all undertakings to be given.

12.5 The obligations on the parties under this clause 12 will not be breached if information:

(i) is disclosed by Us to the responsible Minister;
(ii) is disclosed by Us, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
(iii) is authorised or required by law to be disclosed; or
(iv) is in the public domain otherwise than due to a breach of this clause 12.

12.6 Nothing in this clause 12 limits Your obligations under clause 13 or clause 15.

12.7 You acknowledge that We give no undertakings to keep confidential any information provided by You to Us under this agreement."

13 Protection of Personal Information

13.1 You agree to comply with the Information Privacy Principles contained in section 14 of the Privacy Act 1988 when doing any act or engaging in any practice in relation to Personal Information for the purposes of this agreement, as if You were an agency as defined in that Act.

14 Records

14.1 You must make full and accurate Records of the conduct of the Project including the receipt and use of Funding.

14.2 Records must be retained by You for 7 years after the Completion Date.

15 Access to Premises and Records

15.1 You must at all reasonable times give the Auditor-General, the Privacy Commissioner, the Program Delegate, a member of the National Investigations Unit in the Department on production of photo identification, or any person authorised in writing by the Secretary:

(i) reasonable access to:
   A. Your employees;
   B. premises occupied by You;
   C. Material; and

(ii) reasonable assistance to:
   A. inspect the performance of the Project;
   B. to locate and inspect Material;
   C. make copies of Material and remove those copies, relevant to the Project.

15.2 The rights referred to in clause 15.1 are subject to:

30 January, 2008

Initials
(i) the provision of reasonable prior notice to You; and
(ii) Your reasonable security procedures.

15.3 If a matter is being investigated which, in the opinion of a member of the National Investigations Unit in the Department, or any person authorised in writing by the Secretary, may involve an actual or apprehended breach of the law, clause 15.2(a) will not apply.

15.4 The requirement for access specified in clause 15.1 does not in any way reduce Your responsibility to perform Your obligations under this agreement.

16 Indemnity

16.1 You agree to indemnify Us against any:

(i) loss or liability incurred by Us;
(ii) loss of or damage to Our property; or
(iii) loss or expense incurred by Us in dealing with any claim against Us, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by Us,
arising from:

A. any act or omission by You, or any of Your employees, agents, or subcontractors in connection with this agreement, where there was fault on the part of the person whose conduct gave rise to that liability, loss, damage, or expense;
B. any breach by You or any of Your employees, agents, or subcontractors of obligations or warranties under this agreement;
C. any use or disclosure by You, Your officers, employees, agents or subcontractors of Personal Information held or controlled in connection with this agreement; or
D. the use by Us of the Project Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights (including moral rights) in Project Material.

16.2 Your liability to indemnify Us under this clause 16 will be reduced proportionately to the extent that any fault on Our part contributed to the relevant loss, damage, expense, or liability.

16.3 Our right to be indemnified under this clause 16 is in addition to, and not exclusive of, any other right, power, or remedy provided by law, but We are not entitled to be compensated in excess of the amount of the relevant loss, damage, expense or liability.

16.4 In this clause 16, “fault” means any negligent or unlawful act or omission or wilful misconduct.

17 Conflict of Interest

17.1 You warrant that, to the best of Your knowledge after making reasonable inquiries, at the Date of this Agreement no Conflict exists or is likely to arise in the performance of Your obligations under this agreement.

17.2 If during the term of this agreement, a Conflict arises, or is likely to arise, You must:

30 January, 2008

Initials QW

AA
(i) immediately notify Us in writing of that Conflict and of the steps You propose to take to resolve or otherwise deal with the Conflict;
(ii) make full disclosure to Us of all relevant information relating to the Conflict; and
(iii) take steps as We may, if We choose to, reasonably require to resolve or otherwise deal with that Conflict.

17.3 If You fail to notify Us under this clause 17 or are unable or unwilling to resolve or deal with the Conflict as required, We may terminate this agreement under clause 25.

18 Negation of Employment, Partnership and Agency

18.1 You will not, by virtue of this agreement, be or for any purpose be deemed to be Our employees, partners or agents.

18.2 You must not represent Yourself, and must ensure that Your employees, partners, agents or sub-contractors do not represent themselves, as being Our employees, partners or agents.

19 Entire Agreement, Variation and Severance

19.1 This agreement records the entire agreement between the parties in relation to its subject matter.

19.2 Except for action We are expressly authorised to take elsewhere in this agreement, no variation of this agreement is binding unless it is agreed in writing and signed by the parties.

19.3 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, or restrict the operation of, any other provision.

20 Waiver

20.1 If either party does not exercise (or delays in exercising) any rights under this agreement, that failure or delay does not operate as a waiver of those rights.

20.2 A waiver by either party of any rights does not prevent the further exercise of any right.

20.3 Waiver of any provision of, or right under, this agreement:
   (i) must be in writing signed by the party entitled to the benefit of that provision or right; and
   (ii) is effective only to the extent set out in the written waiver.

20.4 In this clause 20 ‘rights’ means rights or remedies provided by this agreement or at law.

21 Assignment and Novation

21.1 You must not assign Your rights under this agreement without prior written approval from Us.

21.2 You agree not to negotiate with any other person to enter into an arrangement that will require novation of this agreement without first consulting Us.

30 January, 2008

Initials
22 Incorporation

22.1 If You are a body corporate, You warrant that Your establishing legislation is not inconsistent with this agreement.

22.2 You must notify Us if it is intended to amend Your establishing legislation in a way which affects Your ability to comply with this agreement.

22.3 If You alter Your constitution in a way which affects Your ability to comply with this agreement, We may terminate this agreement under clause 25.

23 Dispute Resolution

23.1 Subject to clause 23.3, the parties agree not to commence any legal proceedings in respect of any dispute arising under this agreement, which cannot be resolved by informal discussion, until the procedure provided by this clause 23 has been used.

23.2 The parties agree that any dispute arising during the course of this agreement is dealt with as follows:

   (i) the party claiming that there is a dispute will send the other party a written notice setting out the nature of the dispute;
   (ii) the parties will try to resolve the dispute though direct negotiation by persons who they have given authority to resolve the dispute;
   (iii) the parties have 10 business days from the receipt of the notice to reach a resolution or to agree that the dispute is to be submitted to mediation or some alternative dispute resolution procedure; and

if:

   A. there is no resolution of the dispute;
   B. there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
   C. there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 business days of the submission, or extended time as the parties may agree in writing before the expiration of the 15 business days,

then, either party may commence legal proceedings.

23.3 This clause 23 does not apply if:

   (i) either party commences legal proceedings for urgent interlocutory relief;
   (ii) action is taken by Us under clauses 5, 15, 24 or 25; or
   (iii) an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the law by You.

23.4 Despite the existence of a dispute, both parties must (unless requested in writing by the other party not to do so) continue to perform obligations under this agreement.

30 January, 2008

Initials
24 Termination With Costs and Reduction

24.1 We may, at any time by written notice to You, terminate this agreement in whole or reduce the scope of this agreement without prejudice to the rights, liabilities, or obligations of either party accruing prior to the date of termination. If this agreement is terminated or reduced in scope we will only be liable for:

(i) payments under the payment provisions of this agreement that were due before the effective date of termination; and
(ii) subject to clause 24.3 any reasonable costs incurred by You and directly attributable to the termination or partial termination of this agreement.

24.2 Upon receipt of a notice of termination or reduction in scope You must:

(i) stop work as specified in the notice;
(ii) take all available steps to minimise loss resulting from that termination and to protect Commonwealth Material and Project Material; and
(iii) continue work on any part of the Project not affected by the notice.

24.3 We will not be liable to pay compensation for loss of prospective profits for a termination or reduction in scope under this clause 24 or loss of any benefits that would have been conferred on You had the termination or reduction not occurred.

25 Termination For Default

25.1 We may immediately terminate this agreement by giving written notice to You of the termination if:

(i) We are satisfied that any statement made in Your application for Funding is incorrect, incomplete, false or misleading in a way which may have affected:
   A. the original decision to approve the Funding;
   B. the terms and conditions of this agreement; or
   C. action taken by Us under this agreement;

(ii) You fail to fulfil, or are in breach of any of Your obligations under this agreement (including but not limited to Your obligations under clauses 6, 17 and 22), and You do not rectify the omission or breach within 10 business days of receiving a notice in writing from Us to do so;

(iii) You are unable to pay all Your debts when they become due;

(iv) if You are an incorporated body:
   A. You fail to comply with a statutory demand within the meaning of section 439F of the Corporations Act 2001;
   B. proceedings are initiated to obtain an order for Your winding up or any shareholder, member or director convenes a meeting to consider a resolution for Your winding up;
   C. You come under one of the forms of external administration referred to in Chapter 5 of the Corporations Act 2001 or equivalent provisions in other legislation, or an order has been made to place You under external administration; or
   D. notice is served on You or proceedings are taken to cancel Your incorporation or registration or to dissolve You as a legal entity;

(v) You cease to carry on a business relevant to the performance of the Project.

30 January, 2008
26 Compliance With Laws and Our Policies

26.1 You must, in carrying out Your obligations under this agreement, comply with:

(i) all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or local authority; and

(ii) any of Our policies notified by Us to You in writing, including those listed in item J of Schedule 1.

27 Applicable Law and Jurisdiction

27.1 The laws of the Australian Capital Territory apply to the interpretation of this agreement.

27.2 The parties agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect to any dispute under this agreement.

28 Notices

28.1 A party giving notice under this agreement must do so in writing or by Electronic Communication:

(i) if given by You, marked for the attention of the Program Delegate specified in item BB of schedule 2 or

(ii) if given by Us, marked for the attention of the person specified in item K of Schedule 1; and

hand delivered or sent by pre-paid post or Electronic Communication to the address specified in the schedule.

28.2 A notice given under clause 28.1 is taken to be received:

(i) if hand delivered, on delivery;

(ii) if sent by pre-paid post, 5 business days after the date of posting; or

(iii) if sent by Electronic Communication, at the time that would be the time of receipt under the Electronic Transactions Act 1999 if a notice was being given under a law of the Commonwealth.

29 GST

29.1 The parties have relied on GSTR 2006/11 for no GST being payable by reason of this agreement.

29.2 Unless otherwise indicated, all consideration for any supply made under this agreement is exclusive of any GST imposed on the supply.

29.3 Subject to this clause, if one party (supplier) makes a taxable supply under this agreement to the other party (recipient), the recipient on receipt of a tax invoice from the supplier must pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.

29.4 No party may claim or retain from the other party any amount in relation to a supply made under this agreement for which the first party can obtain an input tax credit or decreasing adjustment.

30 January, 2008

Initials
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;

‘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

30 January, 2008

Initials AA
document 2903 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 A 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,'

'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:

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

30 January, 2008
Australia, the Commonwealth Scientific and Industrial Research Organisation (CSIRO), the University of Queensland and the University of Sydney ("the Fee Contributors") have collectively agreed to pay this fee in the proportions, and according to the schedule, shown in Table 1 below:

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

**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) 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.

(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.

*Associate Membership Fee*

(d) 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.

(e) 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**

<table>
<thead>
<tr>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>University of Western Australia</td>
<td>euros 207,300</td>
<td>euros 207,300</td>
<td>euros 207,300</td>
<td>euros 621,900</td>
</tr>
<tr>
<td>CSIRO</td>
<td>AUD 400,000</td>
<td>AUD 300,000</td>
<td>AUD 300,000</td>
<td>AUD 1,000,000</td>
</tr>
<tr>
<td>University of Sydney</td>
<td>euros 152,400</td>
<td>euros 152,400</td>
<td>euros 152,400</td>
<td>euros 457,200</td>
</tr>
<tr>
<td>University of Queensland</td>
<td>euros 152,400</td>
<td>euros 152,400</td>
<td>euros 152,400</td>
<td>euros 457,200</td>
</tr>
<tr>
<td><strong>Dued Date</strong></td>
<td><strong>7 February 2008</strong></td>
<td><strong>1 December 2008</strong></td>
<td><strong>1 December 2009</strong></td>
<td></td>
</tr>
</tbody>
</table>

(c) 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.

(d) You must inform us in writing when You have received the 2007/2008, 2008/2009 and 30 January, 2008

Initials
2009/2010 Contributions from the other Fee Contributors in the amounts identified at Table 2.

**Reimbursement of the Fee**

(b) 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.

**Attendance at EMBL Council meetings**

(i) You must 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.

(b) 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**

(b) 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 Pre-negotiated Principles regarding Australian Associate Membership of EMBL document.

**Informing Australia’s research community**

(i) 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 confidentially):
       - the signed Instrument of Cooperation and the documents to which it refers;
       - any Membership Contracts formed between You and EMBL;
       - this agreement, plus agreements signed with the other Fee Contributions in respect of them providing to You their Fee Contributions;
       - Your annual EMBL Reports (see item 1).
   (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.

30 January, 2008
Evaluation of the associate membership during 2012-13

(i) 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.

(ii) 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;

30 January, 2008

Initials
(iii) an overview of any Membership Contracts formed between You and EMBL during the previous 12 months;

(iv) new collaborative activities occurring under the associate membership and the conclusion of previously initiated activities and their final outcomes;

(v) how Your work as Lead Institution has benefited Australia’s research community in accordance with the NCRIS Principles;

(vi) any matters that might influence an eventual decision by the Australian Government to renew the associate membership beyond 28 February 2015.

G.2 If some of Your activities as Lead Institution during the previous twelve months are confidential then these activities should not be incorporated in the Annual EMBL Report. Instead, a note must be made in the Report that confidential details have been omitted.


G.4 You must provide the certificate and audits referred to in clause 10.2 and in accordance with clause 10.3 to the Delegate within one month of the date of payment to EMBL or the first installment of the Fee.

H. Commonwealth Material (clause 10)

Nil.

I. Our Confidential Information (clause 12)

Not applicable.

J. Compliance with Laws and Policies (clause 26)

J.1 You acknowledge that:

(a) You may have obligations under the Equal Opportunity for Women in the Workplace Act 1999 and You must comply with those obligations;

(b) Chapter 7 of the Criminal Code provides for offences which attract substantial penalties, including theft of Commonwealth property and other property offences, obtaining property or financial advantage by deception, offences involving fraudulent conduct, bribery, forgery and falsification of documents;

(c) giving false or misleading information is a serious offence under the Criminal Code;

(d) the publication or communication of any fact or document by a person which has come to their knowledge or into their possession or custody by virtue of the performance of this agreement (other than a person to whom You are authorised to publish or disclose that fact or document) may be an offence under section 70 of the Crimes Act 1914, punishment for which may be a maximum of two years imprisonment;

30 January, 2008

Initials
(vi) in respect of data, including personal information, held in connection with this agreement, any unauthorised and intentional access, destruction, alteration, addition or impairment to access or usefulness of the data stored in any computer in the course of performing this agreement is an offence under Part 10.7 of the Criminal Code which may attract a substantial penalty, including imprisonment;

(vi) You are aware of the provisions of section 79 of the Crimes Act 1914 relating to official secrets;

(g) You are aware of Your obligations under Part 4 of the Charter of United Nations Act 1945 and the Charter of United Nations (Terrorism and Dealing with Assets) Regulations 2002;


(h) You may be subject to the provisions of the Trade Practices Act 1974 and the Archives Act 1983.

J.2. You must:

(a) when using Our premises or facilities (including information systems), comply with Our reasonable directions and procedures relating to occupational health and safety and security;

(b) ensure that any person who will have access to official secrets within the meaning of section 79 of the Crimes Act 1914 signs an acknowledgement that he or she is aware of the provisions of that section;

(c) when dealing with Your employees, You must comply with the Workplace Relations Act 1996, and obligations under relevant occupational health and safety laws.

K. Notices (clause 28)
The person who can accept notices for You is:

Name: Silvio Tiwani
Office Address: Australian Regenerative Medicine Institute, Monash University, Victoria 3800 Australia
Postal Address: Building 75, Monash University, Victoria 3800 Australia
Fax: 03 9902 0193
Phone: 03 9905 9918
Email: silvio.tiwani@amri.monash.edu.au

30 January, 2008

Initials AA
Schedule 2  Our Obligations

AA. Funding (clause 3)
AA.1 The total Funding that We will provide to You for the Project is $3 million exclusive of GST (if any) which is payable.
AA.2 The date for payment is not more than 14 days after delivery of a correctly rendered invoice to Us, in accordance with Item D of schedule I, that has been issued on or after the date of Our receipt of Your written confirmation that You have received the 2007/2008 Contributions from the other Fee Contributors.

BB. Program Delegate (clauses 8 and 28)
BB.1 The Program Delegate is:
- Name: Ms Jessie Borthwick
- Office Address: Level 1, 17 Mort Street, Canberra City, ACT
- Postal Address: Head of Division, Science and Research Division, Loc 310, GPO Box 9880, Canberra City, 2601
- Phone: 02 6240 8991
- Fax: 02 6123 5365
- Email: jessie.borthwick@dest.gov.au

CC. Your Confidential Information (clause 12)
CC.1 Not applicable

30 January, 2008
THIS AGREEMENT is executed as a DEED and made on the 8th day of February

SIGNED SEALED AND DELIVERED for and on behalf of
THE COMMONWEALTH OF AUSTRALIA by Jessie Burdwick
the Head of Division of Science and Research Division of the Department of Innovation, Industry, Science and Research

In the Presence of:

[Signature]

WITNESS

Alex Amin
Public Servant
Full name and occupation or profession of witness (Please print)

SIGNED SEALED AND DELIVERED for and on behalf of
MONASH UNIVERSITY by Edwina Cecily Cornish
Deputy Vice-Chancellor & President (Research)

Signature who by signing certifies that they have the authority to do so

In the Presence of:

[Signature]

WITNESS

Juliane Wautrup, University Solicitor
Full name and occupation or profession of witness (Please print)

30 January, 2005