



Australian Government

**Department of Innovation
Industry, Science and Research**

Funding Agreement

between the

COMMONWEALTH OF AUSTRALIA

as represented by the

**Department of Innovation, Industry, Science and
Research**

and

University of Melbourne

ABN 84 002 705 224

regarding funding for

***the eResearch Collaboration Infrastructure Project
for the Education Investment Fund***

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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 74 599 608 295) ('Department' or 'DIISR')

AND

UNIVERSITY OF MELBOURNE (ABN 84 002 705 224) a Higher Education Institution of Parkville Victoria 3010 ('You', or 'Your' as further defined in clause 33.1).

Note: this agreement uses a number of words which are defined in the glossary in clause 33.1. Defined terms start with a capital letter, e.g., Asset.

Purpose

- A. We and the Department of Education, Employment and Workplace Relations (DEEWR) jointly operate a Program, the Education Investment Fund ('the **Program**' or '**EIF**') which is one of the three Nation-building Funds established by the *Nation-building Funds Act 2008*. We are responsible for administering the research aspects of the EIF which include, but are not limited to, entering into funding agreements for approved, predominantly research projects.

The Program is mentioned in Outcome 2 of the Department's Portfolio Budget Statements for the 2009-10 financial year as one of several programs contributing to the generation, utilisation and awareness of science and research knowledge through investing in research infrastructure to support innovation and provide access to the best facilities for the greatest number of researchers.

- B. You are committed to helping achieve the objectives of the Program through Your conduct of the Project to establish research infrastructure.
- C. As a result of this commitment, We agree to support the Project by providing Funding to You, subject to the terms and conditions of this agreement.
- 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. You agree to accept the Funding on the terms and conditions set out in this agreement.

1 Term of Agreement

- 1.1 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:
- (a) at the times and in the manner specified in item C of schedule 1;
 - (b) within the Project Period; and
 - (c) in accordance with this agreement (and any applicable Guidelines), diligently, effectively and to a high professional standard.

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- 2.2 The Funding must be expended by You only for the Project.
- 2.3 Where an Asset is wholly purchased or created with the Funds, You must not accept funding for the purchase or creation of that Asset under any other program of Ours, whether that program is administered by this Department or by any other Commonwealth agency.
- 2.4 Where an Asset is partly purchased or created with the Funds, You must not accept funding for the purchase or creation of that portion of the Asset under any other program of Ours, whether that program is administered by this Department or by another Commonwealth agency.
- 2.5 If, contrary to clause 2.3 or 2.4, You receive funding for any Asset under any other program of Ours, You must immediately notify Us, of such funding, including the amount that You have received.
- 2.6 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, if any, specified in item E of schedule 1), We will provide You with the Funding at the times 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:
 - (a) You have not performed Your obligations under this agreement; or
 - (b) You have outstanding or unacquitted money under any arrangement (whether contractual or statutory) with Us; or
 - (c) contrary to clause 2.3 or 2.4, You receive any funding for any Asset under any other program of Ours, in particular, We may withhold or suspend that part of the payment equal to the amount of the other funding.
- 3.3 If We exercise Our rights under clause 3.2, You must continue to perform Your obligations under this agreement as determined by Us acting reasonably. We will consult with You before determining which of Your obligations must be continued in such circumstances.
- 3.4 Without limiting clause 3.2, if, contrary to clause 2.3 or 2.4, You receive funding for any Asset under any other program of Ours, We may reduce the Funding by the amount of the funding You have received under that other program, or take any other action permitted under this agreement.
- 3.5 Unless otherwise indicated, You agree to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this agreement.

- 3.6 Unless otherwise indicated, any consideration for a supply made under this agreement is exclusive of any GST imposed on the supply.
- 3.7 If one party (the supplier) makes a taxable supply to the other party (the recipient) under this agreement, on receipt of a tax invoice from the supplier, the recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.
- 3.8 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.

4 Management of Funding

- 4.1 You must:
 - (a) 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;
 - (b) if specified in item F of schedule 1, this must be an account which is:
 - i. established solely to account for and administer Funding provided by Us to You under this agreement; and
 - ii. separate from Your other operational accounts;
 - (c) 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;
 - (d) identify the receipt and expenditure of the Funds separately within Your accounting Records so that at all times the Funds are identifiable and ascertainable.
- 4.2 You must keep financial Records relating to the Project to enable:
 - (a) all income and expenditure related to the Project to be identified in Your accounts;
 - (b) the preparation of financial statements in accordance with Australian Accounting Standards; and
 - (c) the audit of those Records in accordance with Australian Auditing Standards.
- 4.3 You must not use the Funds:
 - (a) as security to obtain, or comply with, any form of loan, credit, payment or other interest; or
 - (b) for the preparation of, or in the course of, any litigation.
- 4.4 You must spend the Funds only in accordance with the budget set out in item C.3 of schedule 1, unless you have obtained Our prior written approval.

5 Repayment of Funding

- 5.1 If:
 - (a) at any time, an overpayment occurs, including where an invoice is found to have been incorrectly rendered after payment; or
 - (b) at the Completion Date some or all of the Funding has not been:
 - i. spent in accordance with this agreement; or
 - ii. 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 An overpayment may be recovered from You, including by offsetting that overpayment against any amount subsequently due to You under this agreement.
- 5.3 If an overpayment is not repaid to Us, Interest is payable on the amount after the expiry of the 20 business days notice referred to in clause 5.1, until the amount is paid in full.
- 5.4 Any amount owed to Us under clause 5.1 and any Interest owed under clause 5.3, is recoverable by Us as a debt due to Us by You without further proof of the debt by Us.
- 5.5 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 You must, in all publications, promotional and advertising materials, public announcements and activities by You or on Your behalf in relation to the Project acknowledge the financial and other support You have received from Us, in the manner set out in item G of schedule 1.
- 6.2 We reserve the right to publicise and report on the awarding of Funding to You, including the amount of the Funds given to You and the title and a brief description of the Project.
- 6.3 You must invite the Minister and/or any other person nominated by the Minister to take part in any significant promotional event held by You or any subcontractor. This may include allowing the Minister or any other person nominated by the Minister to speak at, or play any role (including an integral role) in the relevant promotional event.

7 Subcontracting

- 7.1 You must not, without Our prior written approval, subcontract the performance of any obligations under this agreement. In giving Our approval, We may impose terms and conditions as We think fit.

(a) You are only required to seek our Approval under clause 7.1 when the value of the subcontract is greater than \$500,000.
- 7.2 The subcontractors and Project Participants We have approved at the Date of this Agreement, and any terms and conditions relating to their use, are identified in item H of schedule 1.
- 7.3 You are fully responsible for the performance of Your obligations under this agreement, even if You may subcontract some or all of Your obligations.

- 7.4 Despite any approval given by Us under clause 7.1, You are responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for ensuring that the work meets the requirements of this agreement.
- 7.5 We may revoke Our approval of a subcontractor on any reasonable ground by giving written notice to You. On receipt of the notice You must, at Your own cost, promptly cease using that subcontractor and, if requested by Us, arrange their replacement with personnel or another subcontractor acceptable to Us.
- 7.6 If We withdraw Our approval of a subcontractor, You remain liable under this agreement for the past acts or omissions of Your subcontractors as if they were current subcontractors.
- 7.7 You must not enter into a subcontract under this agreement with a subcontractor named by the Director of the Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with the *Equal Opportunity for Women in the Workplace Act 1999*.

8 Specified Personnel

- 8.1 You must ensure that the Specified Personnel, if any, listed in item I of schedule 1 undertake activities on the Project in accordance with the terms of this agreement.
- 8.2 Where Specified Personnel are unable to undertake activities on the Project, You must notify Us immediately. You must, if requested by Us, provide replacement personnel acceptable to Us without additional payment and at the earliest reasonable opportunity.
- 8.3 We may give notice on reasonable grounds related to performance of the Project requiring You to remove personnel (including Specified Personnel) from work on the Project. You must, at Your own cost, promptly arrange for the removal of the personnel from work on the Project and their replacement with personnel acceptable to Us.
- 8.4 If You are unable to provide acceptable replacement personnel, We may terminate this agreement under clause 28.

9 Assets

- 9.1 You must ensure that the Funding is not used to purchase or create any Asset, or any portion of an Asset, apart from those detailed in item J of schedule 1, without Our prior written approval.
- 9.2 Assets are owned in accordance with Item J.1 of schedule 1.
- 9.3 For each Asset, you must ensure that during the Project Period and for a period of at least three (3) years following the Commissioning Date for that Asset You must ensure that the owner of that Asset:

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- (a) uses the Asset in accordance with this agreement and for the purposes of the Project;
- (b) does not encumber or dispose of the Asset, or deal with or use the Asset, other than in accordance with this clause 9, without Our prior written approval;
- (c) safeguards the Asset against theft, loss, damage, or unauthorised use;
- (d) maintains the Asset in good working order;
- (e) maintains all appropriate insurances for the Asset to their full replacement value, and provides satisfactory evidence of this on request from Us;
- (f) if required by law, maintains registration and licensing of the Asset;
- (g) is fully responsible for, and bears all risks relating to, the use or disposal of the Asset;
- (h) if specified in item J of schedule 1, includes the Asset on an Assets register. You must:
 - i. maintain the register in the form and containing the details as described in item J of schedule 1; and
 - ii. provide Us with a copy of the register, as and when requested.

9.4 We may require You to pay to Us a proportion of the market value of an Asset which is equal to the proportion that Our contribution bears to the purchase of the Asset:

- (a) if You or the owner of the Asset sells or otherwise disposes of the Asset during the Project Period (which must be with Our prior written consent and subject to any conditions We may impose);
- (b) if We reduce the scope of this agreement under clause 27 and the Asset is not required for the continuation of work referred to in clause 27.2(c); or
- (c) on termination of this agreement before the end of the period specified in item D of schedule 1.

9.5 If You fail to make payment as required by clause 9.4, within 20 business days of receiving written notice from Us:

- (a) You must pay Us the Interest on the amount from the date it was due, for the period it remains unpaid; and
- (b) the amount and Interest are recoverable by Us as a debt due to Us by You.

9.6 If any Asset is lost, damaged or destroyed, You must, unless We first agree otherwise in writing, ensure that the owner of the Asset reinstates the Asset, including use of the proceeds of insurance, and this clause 9 continues to apply to the reinstated Asset. Any surplus from the proceeds of the insurance must be notified to Us and used and accounted for as Funding under this agreement.

9.7 We may require the owner of an Asset to deal with the Asset as agreed in writing with Us:

- (a) if We reduce the scope of this agreement under clause 27; or
- (b) on termination of this agreement before the end of the period specified in item D of schedule 1.

9.8 On the Completion Date or the earlier termination of the Project We may, at Our sole discretion, require by direction in writing that the owner of an Asset makes the Asset available for use pursuant to any subsequent agreement supporting the Project.

10 Insurance

- 10.1 You must, for as long as any obligations remain in connection with the Project, have insurance as specified in item K of schedule 1.
- 10.2 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.

11 Liaison and Monitoring

- 11.1 You must:
- (a) liaise with and provide information to the Program Delegate, or a person nominated by the Program Delegate, as reasonably required by the Program Delegate;
 - (b) comply with all reasonable requests, directions, or monitoring requirements received from the Program Delegate; and
 - (c) liaise and cooperate with and assist Us in any review or other evaluation that We undertake during the term of this agreement and two years after the Completion Date.

12 Reporting

- 12.1 You must provide to Us Reports at the times and in the manner stated in item L of schedule 1 of Your progress in undertaking the Project.
- 12.2 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;
 - (c) an audit statement that the Funding was expended for the Project and in accordance with this agreement.
- 12.3 The certificate referred to in clause 12.2(a) and the audits referred to in clause 12.2(b) and (c) must:
- (a) contain the details, if any, described in item L of schedule 1;
 - (b) be provided to the Program Delegate within one month (or other period specified in item L of schedule 1) of the end of the Project Period; and
 - (c) at the other times specified in item L of schedule 1, if any.
- 12.4 The certificate referred to in clause 12.2(a) must be provided by the person specified in item L of schedule 1 or, if no person is specified, by Your Vice-Chancellor and President, chief internal auditor or board member.
- 12.5 Subject to clause 12.6, the audits referred to in clause 12.2(b) and (c) must:
- (a) comply with the Australian Auditing Standards; and
 - (b) be carried out by a person who is:
 - i. 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

- ii. not a principal, member, shareholder, officer or employee of You (Your holding company or a subsidiary of You or Your holding company).

12.6 If You are audited by the Auditor-General or a State or Territory Auditor-General:

- (a) for the entire term of this agreement; and
- (b) 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 12.2, You may provide Us with:

- i. a detailed statement of income and expenditure for 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
- ii. a statement that the Funding was expended for the Project and in accordance with this agreement.

12.7 The statements referred to in clause 12.6(i) and (ii) must

- (a) be certified by:
 - i. Your Chief Financial Officer and
 - ii. the senior executive officer employed by You who has primary responsibility for managing Your audit functions; and
- (b) be delivered at the times and in the manner specified in clause 12.3.

13 Commonwealth Material

13.1 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 M of schedule 1.

13.2 You must keep safely and maintain Commonwealth Material You have been given for the purposes of this agreement.

13.3 You may retain or destroy all Commonwealth Material remaining in Your possession at the end of this agreement, unless otherwise specified in item M or item O of schedule 1.

14 Project Material

14.1 Subject to this clause 14, ownership and Intellectual Property Rights in Project Material vest immediately in You.

14.2 You grant to Us a permanent, irrevocable, free, world wide, non-exclusive licence (including a right of sub licence) to use, reproduce, adapt and exploit the Reports and Annual Business Plans for any non-commercial purpose.

- 14.3 If a third party has Intellectual Property Rights in existing Material incorporated or supplied with Reports or Annual Business Plans, You must arrange for the grant to Us of a licence in the same terms as set out in clause 14.2.
- 14.4 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 14.
- 14.5 You warrant that You are entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in the Reports and Annual Business Plans in accordance with this clause 14;
- 14.6 If You have any moral rights in the Reports or the Annual Business Plans, You consent to the performance of the Specified Acts by Us or any person licensed by Us to use, reproduce, adapt and exploit the Reports and the Annual Business Plans.
- 14.7 You agree:
- (a) to include in each Report and Annual Business Plan the names of all persons having moral rights (as defined in the *Copyright Act 1968*) in the Report or Annual Business Plan (the 'Authors');
 - (b) to use reasonable endeavours to obtain from each Author (other than You) of any Report or Annual Business Plan, a written consent to the performance of the Specified Acts (whether occurring before or after the consent is given) by Us or any person licensed by Us to use, reproduce, adapt and exploit the applicable Report or Annual Business Plan;
 - (c) upon request, to provide the executed original of each consent to Us; and
 - (d) To notify Us of any Author (and the Author's employer, if any) from whom You are unable to obtain consent.
- 14.8 If requested by Us, You must provide Us with a copy of the Project Material in the form requested by Us.

15 Disclosure of Information

- 15.1 Subject to clause 15.5,
- (a) You must not, without Our prior written approval, disclose any of Our Confidential Information to a third party; and
 - (b) We must not, without Your prior written approval, disclose any of Your Confidential Information to a third party.
- 15.2 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.
- 15.3 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.
- 15.4 If You receive a request under clause 15.3, You must promptly arrange for all undertakings to be given.

- 15.5 The obligations on the parties under this clause 15 will not be breached if information:
- (a) is disclosed by Us to the responsible Minister;
 - (b) is disclosed by Us, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - (c) is authorised or required by law to be disclosed; or
 - (d) is in the public domain otherwise than due to a breach of this clause 15.
- 15.6 Nothing in this clause 15 limits Your obligations under clause 16 or clause 18.

16 Protection of Personal Information

- 16.1 You agree:
- (a) to comply with the Information Privacy Principles 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 the Privacy Act; and
 - (b) to deal with Personal Information received, created or held by You for the purposes of this agreement only to fulfil Your obligations under this agreement and in accordance with any conditions or restrictions specified in item P of schedule 1.
- 16.2 An act done or a practice engaged in by You or a subcontractor to meet (directly or indirectly) an obligation under this agreement:
- (a) is authorised by this clause 16 for the purposes of sub-sections 6A(2) and 6B(2) of the Privacy Act even if the act or practice is inconsistent with a National Privacy Principle or an approved privacy code (as defined in the Privacy Act) that applies to You or the subcontractor; but
 - (b) is subject to the other obligations in this agreement including this clause 16.
- 16.3 In this clause 16, "received" includes "collected".

17 Records

- 17.1 You must make full and accurate Records of the conduct of the Project including progress against the Milestones (if any), the receipt and use of Funding, the acquisition of Assets and the creation of Intellectual Property Rights in Project Material.
- 17.2 Subject to Your obligations under clause 16, Records must be retained by You for 7 years after the end of the Project Period.

18 Access to Premises and Records

- 18.1 You must at all reasonable times give the Auditor-General, the Privacy Commissioner, the Program Delegate, or any person authorised in writing by the Secretary:
- (a) reasonable access to:
 - i. Your employees;
 - ii. premises occupied by You;
 - iii. Material; and

- (b) reasonable assistance to:
 - i. inspect the performance of the Project;
 - ii. to locate and inspect Material;
 - iii. make copies of Material and remove those copies, relevant to the Project.

18.2 The rights referred to in clause 18.1 are subject to:

- (a) the provision of reasonable prior notice to You; and
- (b) Your reasonable security procedures.

18.3 If a matter is being investigated which, in the opinion of any person authorised in writing by the Secretary, may involve an actual or apprehended breach of the law, clause 18.2(a) will not apply.

18.4 The requirement for access specified in clause 18.1 does not in any way reduce Your responsibility to perform Your obligations under this agreement.

19 Indemnity

19.1 You agree to indemnify Us against any:

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

as a result of:

- i. 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;
- ii. any material breach by You or any of Your employees, agents, or subcontractors of obligations or warranties under this agreement;
- iii. any use or disclosure by You, Your officers, employees, agents or subcontractors of Personal Information held or controlled in connection with this agreement; or
- iv. the use by Us of the Reports or Annual Business Plans, including any claims by third parties about the ownership or right to use Intellectual Property Rights (including moral rights) in Project Material.

19.2 Your liability to indemnify Us under this clause 19 will be reduced proportionately to the extent that any fault on Our part contributed to the relevant loss, damage, expense, or liability.

19.3 Our right to be indemnified under this clause 19 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.

19.4 In this clause 19, "fault" means any negligent or unlawful act or omission or wilful misconduct.

20 Conflict of Interest

- 20.1 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.
- 20.2 If during the term of this agreement, a Conflict arises, or is likely to arise, You must:
 - (a) immediately notify Us in writing of that Conflict and of the steps You propose to take to resolve or otherwise deal with the Conflict;
 - (b) make full disclosure to Us of all relevant information relating to the Conflict; and
 - (c) take steps as We may, if We choose to, reasonably require to resolve or otherwise deal with that Conflict.
- 20.3 If You fail to notify Us under this clause 20, or are unable or unwilling to resolve or deal with the Conflict as required, We may terminate this agreement under clause 28.

21 Negation of Employment, Partnership and Agency

- 21.1 You will not, by virtue of this agreement, be or for any purpose be deemed to be Our employees, partners or agents.
- 21.2 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.

22 Entire Agreement, Variation and Severance

- 22.1 This agreement records the entire agreement between the parties in relation to its subject matter.
- 22.2 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.
- 22.3 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.

23 Waiver

- 23.1 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.
- 23.2 A waiver by either party of any rights does not prevent the further exercise of any right.
- 23.3 Waiver of any provision of, or right under, this agreement:

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in the written waiver.

23.4 In this clause 23, 'rights' means rights or remedies provided by this agreement or at law.

24 Assignment and Novation

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

24.2 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.

25 Incorporation

25.1 If You are a body corporate, You warrant that Your constitution is not inconsistent with this agreement.

25.2 You must notify Us if You intend to amend Your constitution in a way which affects Your ability to comply with this agreement.

25.3 If You alter Your constitution in a way which affects Your ability to comply with this agreement, We may terminate this agreement under clause 28.

26 Dispute Resolution

26.1 Subject to clause 26.3, 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 26 has been used.

26.2 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:

- i. there is no resolution of the dispute;
- ii. there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
- iii. 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.

26.3 This clause 26 does not apply if:

- (a) either party commences legal proceedings for urgent interlocutory relief;
- (b) action is taken by Us under clauses 5, 18, 27 or 28; or
- (c) an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the law by You.

26.4 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.

27 Termination With Costs and Reduction

27.1 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:

- (a) payments under the payment provisions of this agreement that were due before the effective date of termination; and
- (b) subject to clauses 27.3 and 27.4, any reasonable costs incurred by You and directly attributable to the termination or partial termination of this agreement.

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

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

27.3 If there is a reduction in scope of the obligations under this agreement, Our liability to pay any part of the Funding will, in the absence of agreement to the contrary, abate proportionately to the reduction in the obligations under this agreement.

27.4 We will not be liable to pay compensation for loss of prospective profits for a termination or reduction in scope under this clause 27 or loss of any benefits that would have been conferred on You had the termination or reduction not occurred.

28 Termination For Default

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

- (a) We are satisfied that any statement made in the Interim Project Plan, or Final Project Plan, was incorrect, incomplete, false or misleading in a way which may have affected:
 - i. the terms and conditions of this agreement; or
 - ii. action taken by Us under this agreement;
- (b) You fail to fulfil, or are in material breach of any of Your obligations under this agreement (including but not limited to Your obligations under clauses 12, 20 and 25, and achievement of the Milestones), and You do not rectify the omission or breach within 20 business days (or such longer period of time as We and You may agree) of receiving a notice in writing from Us to do so;

- (c) You are unable to pay all Your debts when they become due;
- (d) if You are an incorporated body:
 - i. You fail to comply with a statutory demand within the meaning of section 459F of the *Corporations Act 2001*;
 - ii. 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;
 - iii. 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
 - iv. notice is served on You or proceedings are taken to cancel Your incorporation or registration or to dissolve You as a legal entity;
- (e) if You are an individual, You become bankrupt or enter into a scheme of arrangement with creditors; or
- (f) You cease to carry on a business relevant to the performance of the Project.

28.2 Termination under clause 28.1 does not affect the other accrued rights of the parties as at the date of termination.

29 Compliance With Laws and Our Policies

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

- (a) all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or local authority; and
- (b) any of Our policies notified by Us to You in writing,

including those listed in item Q of schedule 1.

29.2 In particular, You must ensure that through the conduct of the Project, You and all users of the facilities related to the Project strictly observe and comply in every respect with all applicable Commonwealth, State and Territory legislation relating to biological, ethical or radiation safeguards and all ethics, codes and guidelines adopted by the National Health and Medical Research Council, the Office of the Gene Technology Regulator and all other relevant regulatory agencies operating in Australia, being legislation, codes and guidelines in force at any time and from time to time during the term of this agreement.

29.3 Subject to clause 29.5, You must nominate to Us one or more higher education institution(s) or Commonwealth or State research organisations with a relevant ethics committee constituted in accordance with the legislation, codes and guidelines referred to in clause 29.2, to oversee all ethical clearances which may be required under that legislation, codes and guidelines.

29.4 If more than one ethics committee is nominated, You must indicate the respective areas of responsibility in such a way as to ensure no activity of the Project is overseen by more than one ethics committee.

- 29.5 Clause 29.3 only applies if You do not already have an ethics committee constituted in accordance with the legislation, ethics codes and guidelines referred to in clause 29.2.
- 29.6 When conducting or permitting the conduct of research pursuant to the field of research undertaken at facilities related to the Project which involves the use of ionising radiation, You must ensure that persons performing procedures involving ionising radiation are appropriately trained and hold a relevant current licence from the appropriate State authority.
- 29.7 Whenever reasonably required by Us, You must promptly furnish to Us written evidence of compliance with the requirements of clauses 29.2, 29.3, 29.4 and 29.6.
- 29.8 The National Code of Practice for the Construction Industry, in accordance with the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, reissued August 2009, applies to this project. In clauses 29.8 to 29.14:
- (a) **'the Code'** means the National Code of Practice for the Construction Industry, which can be downloaded from www.deewr.gov.au/building;
 - (b) **'the Implementation Guidelines'** means the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, August 2009. The guidelines can be downloaded from www.deewr.gov.au/building;
 - (c) **'the Project Parties'** means all contractors, subcontractors, suppliers, consultants and employees including those listed in item H.1, who perform on-site work in relation to the Project.
- 29.9 Where the Funding specifically relates to building and construction activity, subject to the thresholds specified in the Implementation Guidelines, You must comply and ensure that the Project Parties comply with the Code and the Implementation Guidelines.
- 29.10 The Implementation Guidelines require You to ensure that:
- (a) all requests for tender, expressions of interest, submissions and invitations to join Common Use Arrangements in relation to the Project made by You, or any of the Project Parties, contain the commitment to apply the Code and the Implementation Guidelines as set out in the model tender documents, which can be downloaded from <http://www.deewr.gov.au/WorkplaceRelations/Policies/BuildingandConstruction/Pages/ModelTender.aspx>; and
 - (b) all contracts entered into in relation to the Project by You, or any of the Project Parties, contain the commitment to apply the Code and the Implementation Guidelines as set out in the model contract clauses in the document referred to in clause 29.10(a).
- 29.11 You must maintain adequate records of Your compliance, and that of each of the Project Parties, with the Code and the Implementation Guidelines. You must permit Us and those authorised by Us, including a person occupying a position in the Office

of the Australian Building and Construction Commissioner, full access to Your premises and records, and those of the Project Parties, to:

- (a) inspect any work, material, machinery, appliance, article or facility;
- (b) inspect and copy any record relevant to the Project and Works governed by this agreement; and
- (c) interview any person;

as is necessary to monitor compliance with the Code and the Implementation Guidelines.

Additionally, You undertake that You and each of the Project Parties will agree to a request from Us, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, to produce a specified document within a specified period, being not less than 14 days, in person, by fax or by post.

29.12 We and those authorised by Us may publish or otherwise disclose information in relation to compliance by You and the Project Parties with the Code and the Implementation Guidelines. You must obtain the consent of the Project Parties to the publication or disclosure of information under this clause.

29.13 While acknowledging that value for money is the core principle underpinning decisions on Government procurement, when assessing tenders You may preference contractors, subcontractors and consultants that have a demonstrated commitment to:

- (a) adding and/or retaining trainees and apprentices;
- (b) increasing the participation of women in all aspects of the industry; or
- (c) promoting employment and training opportunities for Indigenous Australians in regions where significant indigenous populations exist.

29.14 You must not appoint a contractor, subcontractor or consultant in relation to the Project where:

- (a) the appointment would constitute a breach of a sanction imposed by the Minister for Employment and Workplace Relations; or
- (b) the contractor, subcontractor or consultant has had a judicial decision against them relating to employee entitlements, not including decisions under appeal, and has not paid the claim.

29.15 In clauses 29.14 to 29.15:

- (a) BCII Act means the *Building and Construction Industry Improvement Act 2005*; and
- (b) Building Work has the meaning given to it by section 5 of the BCII Act; and
- (c) Scheme means the Australian Government Building and Construction OHS Accreditation Scheme established by the BCII Act.

29.16 Subject to the exclusions specified in the Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005, You must ensure that all of Your subcontracts valued at \$3 million or more and requiring Building Work related to the Project:

- (a) are notified to the Office of the Federal Safety Commissioner at the earliest possible opportunity; and

- (b) contains a requirement that the contractor:
 - i. is accredited under the Scheme;
 - ii. maintains Scheme accreditation for the life of the contract; and
 - iii. must comply with all conditions of the Scheme accreditation.

30 Applicable Law and Jurisdiction

- 30.1 The laws of the Australian Capital Territory apply to the interpretation of this agreement.
- 30.2 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.

31 Notices

- 31.1 A party giving notice under this agreement must do so in writing or by Electronic Communication:
 - (a) if given by You, marked for the attention of the Program Delegate specified in item BB of schedule 2; or
 - (b) if given by Us, marked for the attention of the person specified in item R of schedule 1,and hand delivered or sent by pre-paid post or Electronic Communication to the address specified in the schedule.
- 31.2 A notice given under clause 31.1 is taken to be received:
 - (a) if hand delivered, on delivery;
 - (b) if sent by pre-paid post, 5 business days after the date of posting; or
 - (c) 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.

32 Survival of Clauses

- 32.1 These clauses survive the expiration or earlier termination of this agreement: 4, 5, 9, 11, 12, 13, 14, 15, 16, 17, 18 and 19.
- 32.2 Clauses 6 and 18 apply during this agreement and for 7 years from the end of this agreement.

33 Interpretation

- 33.1 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*;
 - '**Annual Business Plan**' means documents as stipulated in item L of schedule 1, and described in Attachment B;
 - '**Annual Report**' means documents to be provided to Us on an annual basis as stipulated in item L of schedule 1, and described in Attachment C;

'Asset' means any item of tangible property purchased or created in whole or in part with the Funds which has a value of over \$50,000 inclusive of GST;

'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 made by the Auditing and Assurance Standards Board created by section 227A of the *Australian Securities and Investments Commission Act 2001* (Cth);

'Commissioning Date' means the date on which an Asset has been installed and certified by You as fully operational;

'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:

- (a) the date specified in item A of schedule 1;
- (b) if no date is specified, the day after You have done all that You are required to do under this agreement to Our satisfaction; or
- (c) if this Agreement is terminated, the date of termination;

'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;

'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;

'Early Commencement Activities' are those activities that you may propose to Us for early commencement during the Interim Project Planning Period.

'EIF' means Education Investment Fund;

'EIF Advisory Board' means the Advisory Board established under subsection 170(1) of the *NBF Act*;

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

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

'Final Project Plan' means the Final Project Plan to be provided to Us on the date specified at Item L.3 of Schedule 1;

'Final Report' means the document to be provided to Us as stipulated in item L of schedule 1, and described in Attachment C;

'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*;

'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;

'Interest' means interest calculated at an interest rate equal to the general interest charge rate for a day pursuant to section 8AAD of the *Taxation Administration Act 1953*, on a daily compounding basis;

'Interim Project Plan' means the Project Plan at Attachment A of this agreement;

'Interim Project Planning Period' means the period during which the Interim Project Plan takes effect. It is the period from execution of this agreement until the date the Final Project Plan is agreed to by Us.

'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;

'Milestone' means a stage of completion of the Project set out in item C of schedule 1;

'Milestone Reports' means documents to be provided to Us as set out in item L of schedule 1, and described in Attachment C;

'NBF Act' means the *Nation-building Funds Act 2008*;

'Our Confidential Information' means information that:

- (a) is described in Item O of schedule 1;
- (b) We identify, by notice in writing to You after the Date of this Agreement, as confidential information for the purposes of this agreement; or
- (c) You know or ought to know is confidential to Us;

'Payment Milestone Report' is a report which must be submitted to us as described in Item L.4 of Schedule 1.

'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 of schedule 2 or any other person specified by the Secretary and notified in writing to You;

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

'Project Material' means all Material:

- (a) brought into existence for the purpose of performing this agreement including the Material specified in item N of Schedule 1;
- (b) incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (a); or

(c) copied or derived from Material referred to in paragraphs (a) or (b);

‘Project Period’ means

- (a) the period specified in item D of schedule 1 during which the Project must be completed; or
- (a) if this agreement is terminated early, the period ending on the day on which the agreement terminates;

‘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 Milestones have been achieved, progress reports and evaluations of the Project or obligations of this agreement, as stipulated in item L 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;

‘Specified Acts’ means any of the following acts or omissions by or on behalf of Us:

- (b) using, reproducing, adapting or exploiting all or any part of the Project Material, with or without attribution of authorship;
- (c) supplementing the Project Material with any other Material;
- (d) using the Project Material in a different context to that originally envisaged,

but does not include false attribution of authorship;

‘Specified Personnel’ means the personnel (whether Your employees or subcontractors), or people with specific skills, specified in item I of schedule 1 as personnel required to undertake the Project or any part of the work constituting the Project;

‘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.

33.2 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.

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

33.4 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.

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

SCHEDULE 1: Your Obligations

A. Term of agreement (clause 1)

A.1 The Completion Date for this agreement is 31 March 2014.

B. Program and Legislation (clause 2)

B.1 We and DEEWR operate the Program known as the Education Investment Fund (EIF) legislated under the *Nation-building Funds Act 2008* and the *Nation-building Funds (Consequential Amendments) Act 2008*.

The role of the EIF is to build a modern, productive, internationally competitive Australian economy by supporting world-leading, strategically focussed infrastructure investments that will transform Australian tertiary education and research.

The main purpose of the research component of the EIF is to fund the creation or development of research infrastructure.

More information about EIF can be found at
<http://www.deewr.gov.au/HigherEducation/EIF/Pages/default.aspx>

C. Project (clause 2)

C.1 Project Objectives

The Project Objectives are set out in Section 1.2 of the Interim Project Plan at **Attachment A**.

The Milestones to be achieved by You during the Interim Project Planning Period are specified in section 6.3 of the Interim Project Plan at **Attachment A**. The Milestones to be achieved by you after the Interim Project Planning Period will be subsequently detailed in the Final Project Plan, and each Annual Business Plan described in **Attachment B**.

C.2 Project description including Project Material

In conducting the Project, You will:

- Use the EIF Funds for the creation or development of infrastructure;
- Provide Information and Communication Technology (ICT) infrastructure that creates new information centric research capabilities that significantly simplifies the combining of instruments, data, computing, and analysis applications and enables the development of research workflows based on access to multiple resources.
- Establish, operate, and provide access to the eResearch Collaboration Infrastructure that will deliver the above research infrastructure;

- Equip the Project with the relevant Assets listed in J.1.

Expected benefits include:

- enhanced research collaboration and research outcomes through seamless connectivity of research instruments, analysis systems and data resources

You must:

- i. ensure that the Interim Project Plan at **Attachment A** and the Final Project Plan are implemented;
- ii. ensure that the subcontractors and other participant organisations provide the resources and perform the activities required by this agreement; and
- iii. provide Us with the Final Project Plan, Annual Business Plans and Reports required by this agreement.

The Project is further described in the Interim Project Plan at **Attachment A**.

C.3 Budget

Table 1 outlines the EIF Funding that will be applied to the Project. You are not to provide Funding to any subcontractor until You have entered into a binding subcontract with that party that complies with clause 7 of this agreement and addresses the conditions of approval in item H of this schedule. A suggested allocation of amounts You will pay to each facility and subcontractor should be shown in the Final Project Plan.

The EIF Funding may be applied to the Project elements as described in the Interim Project Plan at **Attachment A**.

During the Interim Project Planning Period you may use the funding for the purposes of carrying out activities in accordance with the Interim Project Plan. During this period you may recommend additional activities to Us as Early Commencement Activities. These activities should be proposed in the Draft Final Project Plan and must be approved by Us in writing. Early Commencement Activities considered will be activities that do not propose to allocate more than a total of 5% of the overall Project budget.

You may use the EIF Funding towards the costs specified in this item C.3 that you, or the subcontractors, have incurred prior to the date of this agreement if We determine in Our sole opinion that such prior expenditure was for the activities set out in Attachment A and is not inconsistent with any of the requirements of this agreement.

Table 1: Summary of the EIF contributions to the Project (GST exclusive)

	2009-10	2010-11	2011-12	2012-13	TOTAL
	\$M	\$M	\$M	\$M	\$M
EIF cash contribution	\$23	\$0	\$12	\$12	\$47

You must ensure that all cash and in-kind contributions specified in the Interim Project Plan at Attachment A, and in the subsequent Final Project Plan are provided by each participant organisation.

D. Project Period (clause 2)

D.1 The Project commences on the Date of this Agreement and must be completed by 30 June 2013.

E. Invoice Requirements (clause 3)

E.1 Invoices forwarded by You must be correctly addressed and include the:

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

E.2 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. The date for payment is 30 days after delivery of a correctly rendered invoice to the Commonwealth.

F. Separate Bank Accounts (clause 4)

F.1 Not applicable

G. Acknowledgement and Publication (clause 6)

G.1 In all of Your, or Your subcontractors', signage, relevant publications, promotional materials, activities and statements, You or your subcontractors must acknowledge that the Project is an initiative of the Australian Government being conducted as part of the Super Science Initiative and financed from the Education Investment Fund.

H. Subcontractors (clause 7)

H.1 The subcontractors listed in the table below are approved to undertake work on the Project. If subcontractors are not known before signing of this agreement, names and ABNs must be provided in writing to Us and agreed by Us before their work can commence.

H.2

Name of Subcontractor	Activity
No subcontractors have been agreed at the date of this agreement	1. A written subcontract must be entered into which requires each subcontractor to execute all relevant activities specified in the Interim Project Plan and the Final Project Plan and binds each subcontractor to

	<p>conditions that are consistent with the following conditions of this Agreement, more particularly, Clause 6 [Acknowledgement and Publicity] Clause 9 [Assets] Clause 10 [Insurance] Clause 11 [Liaison and Monitoring] Clause 14 [Project Material] Clause 15 [Disclosure of Information] Clause 16 [Protection of Personal Information] Clause 17 [Records] Clause 18 [Access to Premises and Records] Clause 20 [Conflict of Interest] Clause 21 [Negation of Employment, Partnership and Agency] Clause 27 [Termination with Costs and Reduction] Clause 28 [Termination for Default]; and Clause 29 [Compliance with Laws and Our Policies].</p>
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H.3 All persons invited to express an interest in Australian Government construction projects or projects which the Australian Government contributes funding (including this Program) must be informed of the application of the National Code of Practice for the Construction Industry to the project. Advertisements calling for expressions of interest, requests for tender, submissions, invitations to join Common Use Arrangements must incorporate the following statement (see Item Q of schedule 1):

The National Code of Practice for the Construction Industry, in accordance with the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, reissued August 2009, applies to this project.

I. Specified Personnel (clause 8)

I.1 The following Specified Personnel are required to undertake the work set out below

Skills Required	Name, if applicable	Details of Work
Independent, strategic leadership and oversight experience.		Chair of the Board
Strategic leadership, experience managing an ICT or research organisation		Project Director

J. Assets (clause 9)

J.1 The Assets that are to be acquired or created as part of the Project, are as yet unknown. As Assets are acquired during the course of the project, You will be required to notify us, in accordance with Clause 9 of this agreement.

J.2 You must maintain an Asset register identifying each Asset and showing the owner, location and value of each Asset.

K. Insurance (clause 10)

K.1 You must maintain:

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

- per claim; and
(c) public liability insurance for \$10,000,000 (ten million dollars) or more per claim.

L. Reporting and Annual Business Plans (clause 12)

- L.1 You must provide regular reports that are acceptable to Us as described below.
- L.2 Additional reporting may be required to meet wider Government objectives. We will endeavour to give You as much notice as we can of these reporting requirements.
- L.3 The content of each Annual Business Plan is set out in Attachment B which you must provide in a format agreed by Us. You must provide the following plans to Us on the due dates set out below:

Details of Project Plans, Implementation Plans and Annual Business Plans	Due Date
Draft Final Project Plan	30 December 2010
Final Project Plan (including Milestone Report 3, and 2011-12 Implementation Details)	31 March 2011
Annual Business Plan 1 (including Milestone Report 11)	31 March 2012

We will consider each Annual Business Plan, and in consultation with the Australian eResearch Infrastructure Council (AeRIC) approve the Annual Business Plan or commence negotiations on changes to the content of the EIF Annual Business Plan either (1) by 15 May in the year the Annual Business Plan is lodged, or (2) within forty-five (45) days of the lodgement of the Annual Business Plan with Us, whichever is the later.

- L.4 You must provide Payment Milestone Reports, Milestone Reports, Annual Reports and a Final Report that are acceptable to Us. The content of Milestone Reports, Annual Reports and the Final Report is set out in **Attachment C** which you must provide in a format agreed by Us. The Program Delegate may also at his or her discretion, chose to consult AeRIC on Payment Milestone Reports. The Reports must be provided to Us on the due dates set out below:

Details of Report	Due Date
Payment Milestone Report 1: National Servers Program Implementation Plan	Date of this agreement
Milestone Report 1	30 September 2010
Milestone Report 2 and Draft Final Project Plan	30 December 2010
Final Project Plan (including Milestone Report 3 and 2011-12 Implementation Details)	31 March 2011
Milestone Report 4	30 June 2011
Annual Report 1 including Milestone Report 5	30 September 2011
Milestone Report 6	31 December 2011
Payment Milestone Report 2 (advice re sub-contracts in place)	30 January 2012
Milestone Report 7	31 March 2012
Milestone Report 8	30 June 2012
Payment Milestone Report 3 (advice re Cloud Core commissioned)	30 July 2012
Annual Report 2 including Milestone Report 9	30 September 2012
Milestone Report 10	31 December 2012

Milestone Report 11	31 March 2013
Milestone Report 12	30 June 2013
Final Report (including Milestone Report 13)	30 September 2013

M. Commonwealth Material (clause 13)

M.1 Not applicable.

N. Project Material (clause 14)

N.1 Project Material means all Material brought into existence for the purpose of performing this agreement, including:

- (a) the agreed Interim and Final Project Plans;
- (b) all Annual Business Plans and all Reports, including Milestone Reports, Annual Reports and the Final Report.

O. Our Confidential Information (clause 15)

O.1 Not applicable.

P. Protection of Personal Information (clause 16)

P.1 No additional obligations.

Q. Compliance with Laws and Policies (clause 29)

Q.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;
- (e) in respect of data, including personal information, held in connection with this agreement, any unauthorised and intentional access, destruction, alteration, addition or impediment 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;
- (f) 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) Note: more information about the Charter of United Nations Act and the Charter of United Nations (Terrorism and Dealing with Assets) Regulations is available at http://www.dfat.gov.au/icat/UNSC_financial_sanctions.html; and
- (i) You may be subject to the provisions of the *Trade Practices Act 1974* and the *Archives Act 1983*.

Q.2 You must:

- (a) when using Our premises or facilities (including information systems), comply with Our reasonable directions and procedures relating to occupational health, safety.
- (b) ensure that person who will have access to official secrets within the meaning of section 79 of the Crimes Act 1914 signs an acknowledgment that he or she is aware of the provisions of that section.
- (c) when dealing with Your employees, You must comply with Our policies on employment, including the Fair Work Act 2009, and obligations under relevant occupational health and safety laws.

National Code of Practice for the Construction Industry

Q.3 In this section:

- (a) **‘the Code’** means the National Code of Practice for the Construction Industry, which can be downloaded from <http://deewr.gov.au/building>;
- (b) **‘the Implementation Guidelines’** means the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, August 2009. The Guidelines can be downloaded from <http://deewr.gov.au/building>;
- (c) **‘the Project Parties’** means all contractors, subcontractors, suppliers, consultants and employees, including those listed in item H.2, who perform on-site work in relation to the Project;
- (d) **‘Code Monitoring Group’** has the same meaning as is given to that term in the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, August 2009, available at <http://deewr.gov.au/building>.

Q.4 Construction activity is defined in the Code as including all organised activities concerned with demolition, building, landscaping, maintenance, civil engineering, process engineering, mining (excluding mining operations) and heavy engineering. Activity which falls within the scope of construction activity also includes building refurbishment or fit out, installation of building security systems, fire protection systems, air-conditioning systems, computer and communication cabling and building and construction of landscapes. The Code also covers material supply contracts where the supplied material is integral to the construction project.

Q.5 Where the Funding specifically relates to building and construction activity, subject to the thresholds specified in the Implementation Guidelines, You must comply and ensure that the Project Parties comply with the Code and the Implementation Guidelines.

- Q.6 The Code and Implementation Guidelines also apply to all construction activity indirectly funded by the Department through grant and other programs where:
- (a) the value of the Australian Government contribution to a project is at least \$5m and represents at least 50% of the total construction project value; or
 - (b) the Australian Government contribution to a project is \$10m or more, irrespective of the proportion of Australian Government funding.

Where the Funding results in construction and building activity, subject to the financial thresholds specified in the Implementation Guidelines, You must comply and ensure that the Project Parties comply with the Code and the Implementation Guidelines.

- Q.7 The Implementation Guidelines help Commonwealth agencies interpret and implement aspects of the Code. It is important that you familiarise yourself with the Code and Implementation Guidelines as there are other obligations which must be complied with, e.g., reporting requirements. More information can be found at <http://deewr.gov.au/building>.

- Q.8 The Implementation Guidelines require You to ensure that:

- (a) all requests for tender, expressions of interest, submissions and invitations to join Common Use Arrangements in relation to the Project made by You, or any of the Project Parties, contain the commitment to apply the Code and the Implementation Guidelines as set out in the model tender documents, which can be downloaded from <http://www.deewr.gov.au/WorkplaceRelations/Policies/BuildingandConstruction/Pages/ModelTender.aspx>; and
- (b) all contracts entered into in relation to the Project by You, or any of the Project Parties, contain the commitment to apply the Code and Implementation Guidelines as set out in the model contract clauses.

- Q.9 You must maintain adequate records of Your compliance, and that of each of the Project Parties, with the Code and the Implementation Guidelines. You must permit Us and those authorised by Us, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, full access to Your premises and records, and those of the Project Parties, to:

- (a) inspect any work, material, machinery, appliance, article or facility;
- (b) inspect and copy any record relevant to the Project and works governed by this agreement; and
- (c) interview any person;

as is necessary to monitor compliance with the Code and the Implementation Guidelines.

- Q.10 Additionally, You undertake that You, and each of the Project Parties, will agree to a request from Us, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, to produce a specified document within a specified period, being not less than 14 days, in person, by fax or

by post.

- Q.11 We and those authorised by Us may publish or otherwise disclose information in relation to compliance by You and the Project Parties with the Code and the Implementation Guidelines. You must obtain the consent of the Project Parties to the publication or disclosure of information under this clause.
- Q.12 While acknowledging that value for money is the core principle underpinning decisions on Government procurement, when assessing tenders You may preference contractors, subcontractors and consultants that have a demonstrated commitment to:
- (a) adding and/or retaining trainees and apprentices;
 - (b) increasing the participation of women in all aspects of the industry; or
 - (c) promoting employment and training opportunities for Indigenous Australians in regions where significant indigenous populations exist.
- Q.13 You must not appoint a contractor, subcontractor or consultant in relation to the Project where:
- (a) the appointment would constitute a breach of a sanction imposed by the Minister for Employment and Workplace Relations; or
 - (b) the contractor, subcontractor or consultant has had a judicial decision against them relating to employee entitlements, not including decisions under appeal, and has not paid the claim.

Australian Government Building and Construction OHS Accreditation Scheme (the Scheme)

- Q.14 From 1 October 2007 only persons who are accredited under the Scheme are able to contract for building work that is "indirectly funded" by the Australian Government where:
- (a) the value of the Australian Government contribution to the project is at least \$5 million and represents at least 50 per cent of the total construction project value; or
 - (b) the Australian Government contribution to a project is \$10 million or more, irrespective of the proportion of Australian Government funding.
- Q.15 The Scheme is established by the Building and Construction Industry Improvement Act 2005 (the BCII Act) and the Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005 (the Accreditation Scheme Regulations).
- Q.16 Building work is considered indirectly funded where it is funded by the Commonwealth (Australian Government) or a Commonwealth authority through grants and other programs. This includes building projects where the Australian Government provides money through a funding agreement or grants to a person, for example a state or territory government who then may contract with persons who will undertake the building work or persons who will arrange for the building work to be carried out.
- Q.17 You acknowledge that:
- (a) subject to the definition of building work in the BCII Act and the thresholds contained in the Accreditation Scheme Regulations, the application of the Scheme is a condition of this funding; and

- (b) any head contract for building work (between You and any other person) under the Project that is valued at \$3 million or more must:
- i. be notified by You to the Office of the Federal Safety Commissioner at the earliest possible opportunity (that is, when approaching the market); and
 - ii. contain a requirement that the builder:
 - a. be accredited under the Scheme;
 - b. maintains Scheme accreditation for the life of the contract; and
 - c. must comply with all conditions of the Scheme accreditation.

R. Notices (clauses 8 and 31)

R.1 The person who can accept notices for You is:

Name: Professor Peter Rathjen
Position: Deputy Vice-Chancellor - Research
Office Address: The University of Melbourne, Grattan Street
PARKVILLE VIC 3010
Phone: 03 8344 3238
Email: dvc-research@unimelb.edu.au

SCHEDULE 2: Our Obligations

AA. Funding (clause 3)

AA.1 The total Funding for the Project is **\$47,000,000** GST exclusive payable by the following instalments:

	Payable
\$23 million	On provision of a satisfactory Payment Milestone Report 1 - National Servers Program Implementation Plan by the date specified in item L of Schedule 1 as determined by the Program Delegate in his/her sole opinion
\$12 million	On provision of Payment Milestone Report 2 – advising that all subcontracts in the Research Tools and Virtual Laboratory Programs have been satisfactorily executed, by the date specified in the Interim Project Plan, as determined by the Program Delegate in her sole opinion.
\$12 million	On provision of Payment Milestone Report 3 - advising the satisfactory commissioning of the first Cloud Core infrastructure by the date specified in the Interim Project Plan, as determined by the Program Delegate in her sole opinion.

AA.2 GST is not included in the Funding in accordance with paragraph 9-15(3)(c) of the GST Act as explained in Goods and Services Tax Ruling (GSTR) 2006/11. If, however, it is subsequently determined that GST must be remitted by You to the Australian Taxation Office in respect of the Funding, We will, in addition to the Funding, pay to You an amount equal to the GST that is payable.

BB. Program Delegate (clauses 11 and 31)

BB.1 The Program Delegate is:

Office: General Manager, Research Infrastructure Branch
 Department of Innovation, Industry, Science and Research

Name: David Wilson

Office Address: Level 6, 10 Binara Street, Canberra City, ACT 2601

Postal Address: GPO Box 9839, Canberra, ACT, 2601

Phone: (02) 6213 6025

Email: David.Wilson@innovation.gov.au

CC. Your Confidential Information (clause 15)

CC.1 Not applicable

THIS AGREEMENT is made on the _____ day of _____ 2010

SIGNED for and on behalf of)
THE COMMONWEALTH OF AUSTRALIA)
by Ms Anne-Marie Lansdown)
Head of the Science and Infrastructure Division)
of the Department of Innovation, Industry,)
Science and Research).....

In the Presence of:

.....
WITNESS

.....
Full name and occupation or profession of witness (Please print)

SIGNED BY)
)
Professor Glyn Davis)
Vice-Chancellor)
The University of Melbourne).....

In the Presence of:

.....
WITNESS

.....
Please print full name and occupation or profession of witnesses above.

Initials
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ATTACHMENT B CONTENT OF ANNUAL BUSINESS PLANS

Each Annual Business Plan should set out the activities to be undertaken to progress the Project Plan during the coming financial year (i.e. 1 July to 30 June). The Annual Business Plans must include, but are not limited to, the following:

Executive Summary (2 pages)

- expected progress with the project in the coming year
- any material variations from the Interim, or the Final Project Plan (whichever is the most recent) that are proposed
- key risk factors for the year and strategies to address them

Status of Project

- address highlights, difficulties or breakthroughs since the previous Annual Business Plan
- describe the outlook for the Project in future years

Project infrastructure

- describe expected progress with the provision of the EIF infrastructure during the period of the Annual Business Plan
- describe expected progress with the commissioning of the EIF infrastructure and facilities during the period of the Annual Business Plan
- describe activities to position researchers and research teams to occupy and utilise the infrastructure
- describe other activities to ensure the effective management and governance of the Project, including providing access to external users

Management and implementation

- describe the expected governance, access and pricing and management activities and developments during the period of the Annual Business Plan
- describe the key risks and risk management strategies for the period of the Annual Business Plan

Milestones

- List the Milestones to be achieved during the period of the Annual Business Plan. Examples include:
 - construction Milestones
 - governance Milestones
 - infrastructure establishment Milestones
 - staffing targets
 - financial targets
 - levels of co-investment

Project Resources

- summary of the expected EIF funds on hand at the beginning and end of the period
- describe the expected level and nature of in-kind co-investment and its impact on the Project
- describe the staffing positions funded under the Project

Any confidential information is to be clearly identified as such and presented in a separate attachment.

Initials
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ATTACHMENT C CONTENT OF REPORTS

Annual Reports

Each Annual Report should provide an accurate description of the Project activities, and overall Project status for the previous financial year (i.e. 1 July to 30 June), assessed against the relevant Annual Business Plan, in a format and content that is agreed by Us. Each Annual Report must include, but is not limited to, the following:

Content

- Overview of status of Project, e.g. addressing highlights, difficulties or breakthroughs
- A description of activities undertaken, including discussion of unexpected or unusual activities. This should include an assessment of the risk management strategy for the period
- A short description of progress against the Milestones set out in the relevant Interim or Final Project Plan or Annual Business Plan, including discussion of agreed Milestones not fully met and explanation
- A Milestone Report
- Reporting for the first year will be against the Interim Project Plan.
- Discussion of any deviations from the Interim or Final Project Plan or the agreed relevant Annual Business Plan, including:
 - additional activities undertaken (nature of activities, reason for undertaking the activities, realised or expected benefits from the additional activities);
 - agreed activities not completed and an explanation why they were not completed; and
 - remedial action proposed, including timeframes
- Discussion of the level of cash and in-kind co-investment received against expected levels
- Data against performance indicators (See Attachment D for performance indicators).
- The audited detailed statement referred to in clause 12.2(b) of the funding agreement, which addresses the applicable provisions of clauses 12.3, 12.5, 12.6 and 12.7 of the Funding Agreement

EIF Milestone Reports

EIF Milestone Reports are short reports of progress against Milestones, or any Milestones not met, and an explanation against the expected Milestones for each quarter as described in the Interim or Final Project Plan, and the Annual Business Plans.

A Milestone Report is required for every reporting period throughout the life of this Project.

Content

- Brief summary of progress on project overall
- Progress against Milestones

From time to time, by provision of a Notice to You, We may amend the content required in the Milestone Reports.

Initials

Final Report

The Final report must include, but is not limited to, the following:

- An Annual Report as described above, providing an accurate description of the Project activities, and overall Project status for the previous financial year
- A summary of the conduct of the Project as a whole, highlighting key successes and shortcomings
- Discussion of the expected future usage of the infrastructure, as well as the terms, including access terms and pricing
- Discussion of the expected future trends in the use of research infrastructure

All Reports and Annual Business Plans

Any confidential information is to be clearly identified as such and presented in a separate attachment.

Initials
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ATTACHMENT D PERFORMANCE INDICATORS

A set of indicators are to be developed for use in monitoring annual performance across the Project and must be included in the Final Project Plan and modified as required in each EIF Annual Business Plan. The specific performance indicators used are to be agreed with Us, but it is expected that the indicators will address the following areas:

Providing Research Infrastructure

- Value of new infrastructure by location
 - Include cost and description of facilities and equipment
- Value of all infrastructure made available under EIF
 - Include cost and description

Performance against EIF principles

- Principle 1:
 - Projects should address national infrastructure priorities
- Principle 2:
 - Projects should demonstrate high benefits and effective use of resources
- Principle 3:
 - Projects should efficiently address infrastructure needs
- Principle 4:
 - Projects should demonstrate they achieve established standards in implementation and management

Meeting Researcher Needs

- Number, type and location of applicants for each facility
- Number, type and location of users for each facility
 - User types are university, publicly funded research agencies, industry, other
 - User location is institution
- Percentage utilisation of facilities
 - Based on available capacity
 - Breakdown per specific capability node and/or instrument if applicable
- Measures of user satisfaction

Quality of Research Infrastructure

- Benchmark against other Australian and overseas infrastructure. Benchmarking methods may include:
 - Specific comparisons against facilities or instruments where available
 - Independent reviews

Collaborative Infrastructure Provision

- Extent and duration of collaborative agreements / relationships established for managing and developing research infrastructure
 - Include type of agreement and parties involved

Fostering Collaborative and World-class Research

- Number and nature of Australian research collaborations that involve use of EIF infrastructure
 - Include type of collaborative activity and parties involved
- Number and nature of international collaborative research activities supported by EIF infrastructure
 - Include type of collaborative activity and parties involved.

Initials
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