



**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

**Astronomy Australia Limited**

**ABN 19 124 973 584**

regarding funding for the

***Astronomy Australia Limited (AAL) Education  
Investment Fund (EIF) Project***

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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

**ASTRONOMY AUSTRALIA LIMITED** (ABN 19 124 973 584) a public company limited by guarantee, C/- Swinburne University, John Street, Hawthorn, VIC 3122 ('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,

9 June 2010

Initials

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effectively and to a high professional standard.

- 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, unless We agree otherwise in writing.
- 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 that 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 or any other arrangement between You and Us or between You and the Commonwealth generally.
- 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, where the total value of the subcontract exceeds the threshold specified in item H of schedule 1. In giving Our approval, We may impose terms and conditions as We think fit.
- 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 During the Project Period You must ensure that the owner of each Asset:
- (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.

The parties acknowledge that the obligation in clause 9.3(e) may not be appropriate for all Assets and the parties will agree, (on a case by case basis) those Assets which are not required to be insured to their full replacement value.

- 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 AAL EIF 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 Board Chair 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 AAL EIF 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 AAL EIF 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 AAL EIF Annual Business Plans in accordance with this clause 14;
- 14.6 If You have any moral rights in the Reports or the AAL EIF 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 AAL EIF Annual Business Plans.
- 14.7 You agree:
- (a) to include in each Report and AAL EIF Annual Business Plan the names of all persons having moral rights (as defined in the *Copyright Act 1968*) in the Report or AAL EIF Annual Business Plan (the 'Authors');
  - (b) to use reasonable endeavours to obtain from each Author (other than You) of any Report or AAL EIF 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 AAL EIF 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 AAL EIF Annual Business Plans, including any claims by third parties about the ownership or right to use Intellectual Property Rights (including moral rights) in Reports or AAL EIF Annual Business Plans.

- 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 AAL EIF 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 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 AAL EIF 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 <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.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; or

as is necessary to monitor compliance by You and the Project Parties 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:

- (d) adding and/or retaining trainees and apprentices;
- (e) increasing the participation of women in all aspects of the industry; or
- (f) 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 29.15 to 29.16:

