

Dated: 1st September 2007

Deed of novation and variation

Deed

Parties **Commonwealth of Australia** as represented by the **Australian Research Council (ABN 35 201 451 156)**
of GPO Box 2702, Canberra, ACT 2601
(ARC)

The University of Sydney (ABN 15 211 513 464)
of Sydney, NSW 2006
(Retiring Party)

Astronomy Australia Limited (ABN 19 124 973 584)
of Swinburne University of Technology, Alfred Street, Hawthorn,
VIC 3122
(Incoming Party)

Introduction

- A.** ARC and the Retiring Party have entered into a contract for Project ID LE 0668351 with a Project Commencement Date of 1st January 2006 and a Project Completion Date of 31 December 2007, which has been subsequently varied to extend the completion date to 31 December 2010 (**Contract**), under which ARC provided funds to the Retiring Party for specified purposes.
- B.** The Retiring Party wishes to be released from the Contract and its obligations under the Contract, and the Incoming Party wishes to assume the rights and obligations of the Retiring Party under the Contract to the extent specified in this deed.
- C.** ARC has agreed to release the Retiring Party to the extent specified in this deed upon condition that the Incoming Party undertakes to perform the terms of the Contract and be bound by the terms contained in this deed.

It is agreed

1. **Definitions and interpretation**

1.1 **Definitions**

In this deed:

- (1) **Continuing Obligations** means the obligations referred to in clause 3.1.
- (2) Unless the context otherwise requires any term used in this deed which is a defined term in the Contract has the same meaning in this deed.

2. Incoming Party to perform obligations of Retiring Party

- 2.1 Except as provided under clause 3, the Incoming Party agrees to perform all the obligations of the Retiring Party under the Contract to the extent they have not already been performed by the Retiring Party. The Incoming Party is bound by the Contract as if the Incoming Party were named in the Contract in place of the Retiring Party.

3. Continuing Obligations

- 3.1 The Parties acknowledge that under clauses 6.1 and 10 of the Contract the Retiring Party retains certain obligations relating to Collaborating Organisations. The Retiring Party agrees to carry out those obligations by the end of 2007.
- 3.2 ARC acknowledges that clauses 6.1 and 10 of the Contract do not apply to the Incoming Party.

4. Release of Retiring Party

- 4.1 Except as otherwise provided in this deed, ARC:
 - (1) releases the Retiring Party from the Retiring Party's obligations under the Contract; and
 - (2) accepts the liabilities of the Incoming Party in place of the liabilities of the Retiring Party in respect of the Contract.

5. Transfer of rights of Retiring Party

- 5.1 Subject to clause 5.5, the Retiring Party transfers to the Incoming Party the rights of the Retiring Party under the Contract with effect from 1st September 2007 (**Effective Date**). ARC recognises that the Incoming Party is entitled to those rights as if the Incoming Party, after the Effective Date, were named in the Contract in place of the Retiring Party.
- 5.2 The Retiring Party has established a trust fund to hold cash which the ARC has paid to it under the Contract and under previous contracts for funding Gemini, including the Gemini cash reserve. The Retiring Party shall within ten (10) days after the Effective Date pay to the ARC the

balance of the cash held in that trust fund together with any interest earned thereon and provide a reconciliation statement.

- 5.3 The ARC will transfer to the Incoming Party promptly after receipt the amounts transferred by the Retiring Party under clause 5.2 and clause 5.5, together with a copy of the reconciliation statement.
- 5.4 With effect from the Effective Date the ARC will pay the Funds payable under the Contract to the Incoming Party.
- 5.5 In addition to the cash held in the trust fund referred to under clause 5.2, the Retiring Party has established an operating account which holds funds allocated to enable the Retiring Party to comply with the Continuing Obligations. The Retiring Party may use those funds to enable it to comply with the Continuing Obligations and, following completion of the Continuing Obligations, must promptly transfer the balance to the ARC and provide a reconciliation statement.

6. Warranties by Retiring Party

- 6.1 The Retiring Party warrants to ARC and to the Incoming Party that it has carried out its obligations under the Contract to the Effective Date.

7. Variation

- 7.1 ARC agrees that it will not unreasonably exercise its rights under clause 5.3 and 5.4 of the Contract so as to reduce payments to the Incoming Party in a manner that would affect the Incoming Party's participation in activities carried out under any international agreement or Memorandum of Understanding to which the Commonwealth is a signatory.

8. Further assurance

- 8.1 Each party must promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this deed.

9. Notices

- 9.1 The Incoming Party's address for notice and service are:

Name: Astronomy Australia Limited
Attention: Mark McAuley

Address: c/o Swinburne University of Technology (H39 CASC)
1 Alfred Street
Hawthorn VIC 3122

10. Governing law and jurisdiction

- 10.1 The law of Australian Capital Territory governs this deed.
- 10.2 The parties submit to the non-exclusive jurisdiction of the courts of Australian Capital Territory and the Federal Court of Australia.

11. No assignment without ARC approval

- 11.1 Neither the Retiring Party nor the Incoming Party may assign or transfer any of its rights or obligations under this Deed without prior approval in writing from the ARC.

12. Survival

- 12.1 The Retiring Party acknowledges that nothing in this Deed relieves the Retiring Party from any obligations under the Contract before the Effective Date, In particular, the following clauses which are intended to survive termination of the Contract continue to apply in relation to actions of the Retiring Party before the Effective Date:

- (1) clause 14 (Indemnity for IP infringement);
- (2) clause 15 (Protection of Personal Information);
- (3) clause 20 (Access to Premises and Records)
- (4) clause 21 (Reporting Requirements);
- (5) clause 22 (Copyright licence regarding Reports);
- (6) clause 23 (Recovery of Unspent or overpaid Funds);
- (7) clause 24 (Indemnities); and
- (8) any other clauses expressed to survive termination.

Executed as a deed and delivered on the date shown on the first page.

Signed for Commonwealth of Australia as represented by the **Australian Research Council** (ABN 35 201 451 156) by an authorised officer in the presence of

Signature of officer

Signature of witness

Name of officer (print)

Name of witness (print)

Office held

Signed for The University of Sydney (ABN 15 211 513 464) by an authorised officer in the presence of

Signature of officer

Signature of witness

Name of officer (print)

Name of witness (print)

Office held

Signed for Astronomy Australia Limited (ABN 19 124 973 584) by an authorised officer in the presence of

Signature of officer

Martin Cole

Signature of witness

Name of officer (print)

Chairman

Name of witness (print)

Office held