

Department of Innovation, Industry,
Science and Research

Deed of Variation

Commonwealth of Australia (**Commonwealth**)

Astronomy Australia Limited (**Contractor**)

Details

Date

13 / JULY / 2011
day month year

Parties

Name The Commonwealth of Australia as represented by the Department of Innovation, Industry, Science and Research

ABN 74 599 608 295

Short form name **Commonwealth**

Address details

Mr David Luchetti

General Manager, Astronomy and Research Agencies Branch

GPO Box 9839, Canberra ACT 2601

Industry House Level 6, 10 Binara Street, Canberra City ACT 2600

Fax 02 6213 7977

Name Astronomy Australia Ltd

ABN 19 124 973 584

Short form name **Contractor**

Address details

Professor Warrick Couch FAA

Chair, Astronomy Australia Limited,

PO Box 2100, Hawthorn, Victoria 3122.

Fax: 03 9214 4396

Background

- A On 18 June 2010 the Commonwealth and the Contractor entered into a funding agreement regarding funding for the Astronomy Australia Ltd Education Investment Fund (EIF) Project.
- B A variation of this funding agreement is required to modify: the schedule of payments to be made to the Contractor subject to certain requirements being met; the names of approved subcontractors; and the names of specified personnel required to undertake the work set out in the Project Plan.
- C The Commonwealth and the Contractor have agreed to vary the terms of the Contract in accordance with this Deed.

Table of Contents

Details	2
Agreed terms	4
1. Defined terms and interpretation	4
2. Variation to Contract	4
3. Affirmation of Contract	4
4. Costs and GST	4
5. Miscellaneous	4
Signing page	5
Schedule 1 – Variation to Contract	6

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

In this Deed, unless the contrary intention appears:

- (a) a word or expression defined or referred to in the Contract has the meaning given to it in the Contract;
- (b) **Contract** means the contract described in paragraph A of the Background;
- (c) **Deed** means this deed, including all annexures and schedules to it; and
- (d) **Effective Date** means the date of execution of this variation.

2. Variation to Contract

On and with effect from the Effective Date, the Contract is varied as set out in Schedule 1 to this Deed.

3. Affirmation of Contract

- (a) The parties affirm in all other respects the covenants and conditions in the Contract as varied by this Deed.
- (b) The Contract, as varied by this Deed, comprises the entire agreement between the parties.
- (c) The parties acknowledge and agree that the Contract as varied by this Deed is and continues to be in full force and effect.

4. Costs and GST

- (a) Each party must meet or pay its own costs and expenses in respect of the preparation, negotiation, execution and completion of this Deed.
- (b) If GST is payable on any supply made under or in connection with this Deed, the recipient of the supply must pay to the supplier an additional amount equal to the GST payable on the supply provided that the supplier has given the recipient a tax invoice for the supply.
- (c) The Contractor must pay any stamp duties and registration or other fees (including fines, penalties and interest relating to such duties and fees) which are payable or are assessed by a relevant government body or other person to be payable in relation to this document or any transaction contemplated by it.

5. Miscellaneous

5.1 Counterparts

This Deed may be executed in counterparts. All executed counterparts constitute one document.

5.2 Governing law and jurisdiction

This Deed is governed by the law of the Australian Capital Territory and each party irrevocably submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

Signing page

EXECUTED as a deed.

Signed for and on behalf of the
Commonwealth of Australia as
represented by the Department of
Innovation, Industry, Science and
Research by its duly authorised delegate in
the presence of



Signature of witness

ANDREW STEVENSON

Name of witness (print)



Signature of delegate

DAVID LUCHETTI

Name of delegate (print)

GENERAL MANAGER

Position of delegate (print)

Executed by Astronomy Australia Ltd in
accordance with Section 127 of the
Corporations Act 2001 in the presence of



Signature of director

WABECA CARETT

Name of director (print)



Signature of director/company secretary

JEREMY MOULD

Name of director/company secretary

Schedule 1 – Variation to Contract

1.1 Item C.2 of Schedule 1 is varied

The first paragraph of Item C.2 of Schedule 1 is varied as follows:

The third dot point,

- Further invest capital in the national optical telescope facility, the Anglo-Australian Observatory (AAO), for new and upgraded instrumentation;

is replaced by:

- Further invest capital in the national optical telescope facility, the Australian Astronomical Observatory (AAO), for new and upgraded instrumentation;

1.2 Item H.2 of Schedule 1 is varied

Item H.2 of Schedule 1 is varied by replacing it with the following:

H.2

Name of Subcontractor	Activity
<ul style="list-style-type: none"> • Australian Astronomical Observatory (ABN 74 599 608 295) • Commonwealth Scientific and Industrial Research Organisation (CSIRO) (ABN 41 687 119 230) • Adelaide Research and Innovation Pty Ltd (ABN 55 008 027 085) • Swinburne University of Technology (ABN 13 628 586 699) • University of New South Wales (ABN 57 195 873 179) • Curtin University of Technology (ABN 99 143 842 569) 	<p>A written subcontract must be entered into which requires each subcontractor to execute all relevant activities specified in the AAL EIF Project Plan and binds each subcontractor to conditions that are consistent with the following conditions of this Agreement, more particularly,</p> <p>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>

1.3 Item I of Schedule 1 is varied

Item I of Schedule 1 is varied by replacing it with the following:

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.	Professor Warrick Couch FAA	Chair, Board of Astronomy Australia Ltd
Strategic leadership, experience managing a research organisation	Mr Mark McAuley	Chief Executive Officer, Astronomy Australia Ltd

1.4 Item J.1 of Schedule 1 is varied

Item J.1 of Schedule 1 is varied by replacing it with the following:

J.1 The Assets that are to be acquired or created as part of the Project, using the Funding, are as follows:

Asset	Location	Ownership	Estimated Purchase Price A\$	Funds form what portion of purchase price (%)
HERMES	Australian Astronomical Observatory, Epping and Siding Spring, NSW	Australian Astronomical Observatory	\$10,000,000	16
4x Cloud Monitoring Cameras	University of Adelaide and Pierre Auger Observatory, Argentina	University of Adelaide	\$50,000	100
gSTAR	Swinburne University of Technology, Hawthorn Campus	Swinburne University of Technology	\$1,040,000	100
PLATO-R	Ridge A, Antarctica	University of New South Wales	\$500,000	100
3x AST3 Cameras	Dome A, Antarctica	University of New South Wales	To be specified, subject to AAL Board approval, following consultation between UNSW and the Chinese Academy of Sciences	TBD
MWA components towards Phase 2	Curtin University of Technology and Murchison Radio-Astronomy Observatory, WA	Curtin University of Technology	\$2,500,000	85

1.5 Item L.3 of Schedule 1 is varied

Item L.3 of Schedule 1 is varied by replacing it with the following:

- L.3 The content of AAL EIF Annual Business Plans is set out in Attachment B which you must provide in a format agreed by Us. You must provide the following AAL EIF Annual Business Plans to Us on the due dates set out below:

Details of AAL EIF Annual Business Plans	Due Date
AAL EIF Annual Business Plan 1	31 May 2011
AAL EIF Annual Business Plan 2	31 March 2012

We will consider each AAL EIF Annual Business Plan, and approve the AAL EIF 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 AAL EIF Annual Business Plan is lodged, or (2) within forty-five (45) days of the lodgement of the AAL EIF Annual Business Plan with Us, whichever is the later.

1.6 Item L.4 of Schedule 1 is varied

Item L.4 of Schedule 1 is varied by replacing it with the following:

- L.4 You must provide AAL EIF Milestone Reports, AAL EIF Annual Reports and an AAL EIF Final Report that are acceptable to Us. The content of AAL EIF Milestone Reports, AAL EIF Annual Reports and the AAL EIF Final Report is set out in **Attachment C** which you must provide in a format agreed by Us. The AAL EIF Reports must be provided to Us on the due dates set out below:

Name of Report	Reporting Period		Report Due Date
	From	To	
AAL EIF Milestone Report 1	18 June 2010	30 June 2011	15 July 2011
AAL EIF Milestone Report 2	01 July 2011	30 September 2011	31 October 2011
AAL EIF Milestone Report 3	01 October 2011	31 March 2012	15 June 2012
AAL EIF Annual Report 1	01 July 2011	30 June 2012	30 September 2012
AAL EIF Milestone Report 4	01 April 2012	30 September 2012	31 October 2012
AAL EIF Milestone Report 5	01 October 2012	30 June 2013	30 September 2013
AAL EIF Annual Report 2	01 July 2012	30 June 2013	30 September 2013
AAL EIF Final Report	18 June 2010	30 June 2013	30 September 2013

1.7 Item AA of Schedule 2 is varied

Item AA of Schedule 2 is varied by replacing it with the following:

AA.1 The total Funding for the Project is \$11,000,000 inclusive of GST, payable by the following instalments:

	Payable
\$5,500,000	On acceptance by the Program Delegate that, in his sole opinion, AAL EIF Milestone Report 1 provided by You by the date specified in item L of schedule 1 shows evidence of meeting initial milestones for the Project specified in AAL EIF Annual Business Plan 1.
\$2,750,000	On acceptance by the Program Delegate that, in his sole opinion, AAL EIF Milestone Report 2 provided by You by the date specified in item L of schedule 1, shows satisfactory performance against milestones specified in AAL EIF Annual Business Plan 1.
\$1,375,000	On acceptance by the Program Delegate that, in his sole opinion, AAL EIF Milestone Report 3 provided by You by the date specified in item L of schedule 1, shows satisfactory performance a against milestones specified in AAL EIF Annual Business Plan 1
\$1,375,000	On acceptance by the Program Delegate that, in his sole opinion, AAL EIF Milestone Report 4 provided by You by the date specified in item L of schedule 1, shows satisfactory performance a against milestones specified in AAL EIF Annual Business Plan 1

AA.2 The Funding includes GST of \$1,000,000.

1.8 Section 1 of Attachment A is varied

Section 1 of Attachment A is varied by replacing it with the following:

Participating organisations and their roles and responsibilities

Organisation	Role and Responsibilities
Astronomy Australia Limited (AAL)	<ul style="list-style-type: none"> • Recipient of EIF funding through the Funding Agreement • Responsibility for overall governance, management and implementation of the project and reporting to DIISR • Responsibility for managing distribution of EIF funding through subcontracting arrangements • Responsibility for liaising with the astronomical community, and creating scientific advisory committees as necessary • Responsibility for other requirements in the Funding Agreement and Project Plan
Australian Astronomical Observatory (AAO)	<ul style="list-style-type: none"> • EIF funding recipient through a subcontractual arrangement with AAL • Responsibility for implementing the AAO components of the Project (HERMES 4th channel and AAOmega) consistent with this Investment Plan and the subcontract with AAL.

Commonwealth Scientific and Industrial Research Organisation (CSIRO) - Astronomy and Space Science	<ul style="list-style-type: none"> • EIF funding recipient through a subcontractual arrangement with AAL • Responsibility for implementing ATCA Upgrade component of the Project consistent with this Investment Plan and the subcontract with AAL
US National Science Foundation (NSF)	<ul style="list-style-type: none"> • Responsibility for the Gemini Observatory.
Adelaide Research and Innovation Pty Ltd	<ul style="list-style-type: none"> • EIF funding recipient through a subcontractual arrangement with AAL • Responsibility for construction, deployment and data quality of cloud detectors • Responsibility for the Pierre Auger Observatory component of the Project consistent with this Plan and the subcontract with AAL.
Swinburne University of Technology	<ul style="list-style-type: none"> • EIF funding recipient through a subcontractual arrangement with AAL • Responsibility for design and construction of gSTAR • Responsibility for providing technical support to users of gSTAR • Responsibility for contracting software and queuing support • Responsibility for the gSTAR component of the Project consistent with this Plan and the subcontract with AAL.
University of New South Wales (UNSW)	<ul style="list-style-type: none"> • EIF funding recipient through a subcontractual arrangement with AAL • Responsibility for coordinating with AAL in relation to international partnership arrangements for the project • Responsibility for coordinating the international partnership arrangements for the Antarctica component of the project • Responsibility for the Antarctica component of the Project consistent with this Plan and the subcontract with AAL.
Macquarie University	<ul style="list-style-type: none"> • Responsibility for providing technical support to the Antarctica component of the project.
Curtin University of Technology	<ul style="list-style-type: none"> • EIF funding recipient through a subcontractual arrangement with AAL • Responsibility for the MWA component of the Project consistent with this Plan and the subcontract with AAL.

1.9 Section 5.5 of Attachment A is varied

The first paragraph of Section 5.5 of Attachment A is varied by replacing it with the following:

AAL will subcontract with the Adelaide Research and Innovation Pty Ltd to build the four cloud monitoring detectors for the Pierre Auger Observatory. Adelaide Research and Innovation Pty Ltd will then deliver the detectors to the Observatory.

1.10 Attachment C is varied

Attachment C is varied by replacing it with the following:

ATTACHMENT C CONTENT OF REPORTS

AAL EIF Annual Reports

Each AAL EIF 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 AAL EIF Annual Business Plan, in a format and content that is agreed by Us. Each AAL EIF 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 brief summary identifying significant deviations from the agreed relevant AAL EIF Annual Business Plan.
- A table of all milestones for the reporting period, indicating their status and a brief summary of circumstances for milestones not completed
- Discussion of the level of cash and in-kind co-investment received against expected levels and a listing of receipts and payments under each sub-project during the reporting period.
- Updated 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 AAL EIF Project Plan, and the AAL EIF Annual Business Plans.

An AAL EIF Milestone Report is required for every reporting period throughout the life of this Project.

Content

- Brief summary of progress on project overall
- A short description of progress against the Milestones set out in the relevant AAL EIF Project Plan or AAL EIF Annual Business Plan, including discussion of agreed Milestones not fully met and explanation
- Discussion of any deviations from the AAL EIF Project Plan or the agreed relevant AAL EIF 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;
 - changes to funding allocations to individual sub-projects; and
 - remedial action proposed, including timeframes, where appropriate.
- The names and ABNs of all subcontractors engaged at any time during the reporting period and a brief description of the obligations each subcontractor performed.

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

AAL EIF Final Report

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

- A summary of the conduct of the AAL EIF 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 AAL EIF Annual Business Plans

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