

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 20 June 2007, the Commonwealth and the Contractor entered into a funding agreement regarding funding for Implementing an Investment Plan for the National Collaborative Research Infrastructure Strategy (NCRIS) Research Capability known as 'Radio and Optical Astronomy'. The funding agreement provides for a schedule of payments to be made to the Contractor subject to certain requirements being met.
- B On 22 May 2009 and 28 April 2010, the Commonwealth and the Contractor entered into successive Deeds of Variation to the funding agreement, to modify the schedule of payments, the list of approved sub-contractors and the related conditions of payment.
- C A third variation to the funding agreement is required to further modify the list of approved sub-contractors and the specified personnel.
- D The Commonwealth and the Contractor have agreed to vary the terms of the Contract in accordance with this Deed.

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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

Andrew Stevenson

Signature of witness

ANDREW STEVENSON

Name of witness (print)

← David Luchetti ←

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

Warwick Couett

Signature of director

WARWICK COUETT

Name of director (print)

← Jeremy Mould ←

Signature of director/company secretary

JEREMY MOULD

Name of director/company secretary

Schedule 1 – Variation to Contract

1.1 Schedule 1, Item C.2 is varied

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

The first sub-paragraph,

- (a) further capital investment in the Anglo-Australian Observatory (AAO), the national optical/IR facility; is replaced by:
- (b) further capital investment in the Australian Astronomical Observatory (AAO), the national optical/IR facility;

1.2 Schedule 1, Item H is varied

Schedule 1, item H is varied by replacing it with the following:

H. Subcontractors (clause 7)

- H.1 The following subcontractors are approved to undertake work on the Project on the terms and conditions set out:

Name of Subcontractor	Condition of Approval
<ul style="list-style-type: none"> • Commonwealth Scientific and Industrial Research Organisation (CSIRO) (ABN 41 687 119 230) • Australian Astronomical Observatory (ABN 74 599 608 295) • The University of New South Wales (ABN 57 195 873 179) • The Australian National University (ABN 52 234 063 906) • Curtin University of Technology (ABN 99 143 842 569) • Intersect Australia Ltd (ABN 67 131 752 657) 	<p>A written subcontract must be entered into which requires the subcontractor to execute all relevant activities specified in the Project Plan and binds the subcontractor to the conditions of this agreement, more particularly:</p> <p>Clause 6 [Acknowledgement and Publicity]; Clause 2.3, 2.4 and 2.5 [Project]; Clause 3.2c and 3.3 [Funding]; 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]; Clause 28 [Termination for Default]; and Clause 29 [Compliance with Laws and Our Policies].</p>
Other Agreement	Nature of Agreement
<ul style="list-style-type: none"> • Giant Magellan Telescope (“GMT”) Consortium 	<p>AAL will be a member/affiliate of the GMT International Consortium</p>

The Australian Research Council (ARC) is the Australian signatory to the international consortium operating the Gemini Observatory. Under this agreement, AAL will make payments to the National Science Foundation in the USA for membership of the Gemini Observatory.

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 Schedule 1, Item J is varied

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

J. Assets (clause 9)

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

Asset	Location (Facility and Location)	Ownership	Estimated Purchase Price In AUD (\$m)	Funds form what percentage of purchase price?
Anglo-Australian Telescope instrument	Australian Astronomical Observatory – Siding Spring and Epping, NSW	Australian Astronomical Observatory	4.25	100%
ASKAP	Murchison Radio Observatory, Boolardy Station, WA	CSIRO	101.3	14.4%
MWA (Work-in-progress towards phase 2)	Murchison Radio Observatory, Boolardy Station, WA	Curtin University of Technology	1.978	100%
PLATO-A	Dome A, Antarctica	University of NSW	0.540	41%
PLATO-F	Dome F, Antarctica	University of NSW	0.270	41%

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

1.5 Section 1.3 of Attachment A is varied

The first sub-paragraph of the third paragraph of Section 1.3 of Attachment A is varied as follows:

- further capital investment in the Anglo-Australian Observatory (AAO), the national optical/infrared facility;
- is replaced by:
- further capital investment in the Australian Astronomical Observatory (AAO), the national optical/infrared facility;

1.6 Section 1.4 of Attachment A is varied

Section 1.4 of Attachment A is varied by replacing it with the following:

1.4 Participating organisations (roles and responsibilities)

Participating organisations and their roles and responsibilities are described in Table 1.

Table 1: Participating organisations and their roles and responsibilities

Organisation	Role and responsibilities
Astronomy Australia Limited (AAL)	<ul style="list-style-type: none">• Recipient of NCRIS funding through the Funding Agreement;• Responsibility for overall governance, management and implementation of the project and reporting to the Commonwealth;• Responsibility for managing distribution of NCRIS funding through subcontracting arrangements;• Responsibility for liaising with the astronomical community, and creating scientific advisory committees as necessary;• Engagement with, and possible membership of, the international GMT consortium;• Responsibility for other requirements in the Funding Agreement and Project Plan;• The members of AAL are listed in Table 2;• Further details on the governance role of AAL can be found at Section 4 of the Project Plan;• Responsibility for overall governance, management and implementation of the \$10M Astronomy EIF project (funding provided to AAL through a separate EIF Funding Agreement) and reporting to the Commonwealth;• Responsibility for managing distribution of EIF funding through subcontracting arrangements.
Commonwealth Scientific and Industrial Research Organisation (CSIRO)	<ul style="list-style-type: none">• NCRIS funding recipient through a subcontractual arrangement with AAL;• Responsibility for implementing the Australian Square Kilometre Array Pathfinder (ASKAP) consistent with this Project Plan and the subcontract with AAL;• Responsible for negotiating with potential international partners in the ASKAP project;• Responsible for managing the GSKA MNRF as required by the MNRF funding agreement with DEST.
Curtin University of Technology	<ul style="list-style-type: none">• NCRIS funding recipient through a subcontractual arrangement with AAL;• Responsibility for finalising the project plan for the MWA project;• Responsibility for implementing the Australian component of phase 2 of the Murchison Widefield Array (MWA) consistent with this Project Plan and the subcontract with AAL.

	<ul style="list-style-type: none"> • Providing in-kind resources to the MWA project.
Australian National University (& Australian GMT Project Office)	<ul style="list-style-type: none"> • Responsibility for coordinating with AAL joint Australian membership of the GMT project; • NCRIS funding recipient (for the Australian GMT Project Office) through a subcontractual arrangement with AAL; • Providing in-kind resources to the GMT project.
University of New South Wales (& Australian PILOT Science Office)	<ul style="list-style-type: none"> • Providing in-kind resources to the Antarctic astronomy project (PILOT Science Office and PLATO development); • Responsibility for coordinating with AAL in relation to international partnership arrangements for PILOT and PLATO sub-projects; • NCRIS funding recipient through a subcontractual arrangement with AAL; • Responsible for the PILOT and PLATO components of the Project consistent with this Project Plan and the subcontract with AAL.
Government of Western Australia	<ul style="list-style-type: none"> • Providing in-kind resources to the ASKAP project for enabling infrastructure.
Australian Astronomical Observatory (& Australian Gemini Office)	<ul style="list-style-type: none"> • NCRIS funding recipient through a subcontractual arrangement with AAL in relation to AAO components of the Project and the Australian Gemini Office; • Responsibility for implementing the AAO components of the Project consistent with this Project Plan and the subcontract with AAL.
Intersect Australia Ltd	<ul style="list-style-type: none"> • NCRIS funding recipient through a subcontractual arrangement with AAL; • Responsibility for providing to AAL a concept design study on the federation of national astronomy datasets;
Australian Research Council	<ul style="list-style-type: none"> • Funding provider through agreements with AAL or other funding arrangements as noted below.

Table 2: Members of Astronomy Australia Limited

Organisation
Australian Astronomical Observatory
Australian National University
CSIRO
Curtin University of Technology
James Cook University
Macquarie University
Monash University
Swinburne University of Technology
The University of Adelaide
The University of Melbourne
The University of New South Wales
The University of Queensland
The University of Sydney
The University of Tasmania
The University of Western Australia

1.7 Section 1.5 of Attachment A is varied

The second row of Table 4 of Section 1.5 of Attachment A is varied by replacing the name 'Anglo-Australian Observatory (AAO)' with 'Australian Astronomical Observatory(AAO)'.

1.8 Section 2.1 of Attachment A is varied

Section 2.1 of Attachment A is varied by replacing it with the following:

2.1 Australian Astronomical Observatory

2.1.1 Refurbishment of facilities

The Australian Astronomical Observatory (AAO) is the national optical/infrared observatory with facilities at Siding Spring, near Coonabarabran, NSW and Epping, NSW. It is wholly owned by the Commonwealth of Australia and operates within the Department of Innovation, Industry, Science and Research.

The facilities are to be refurbished to assist in maintaining them at a world-class standard for at least the next ten years. The NCRIS funds are paid to the AAO via AAL. The detail of work to be undertaken is by agreement between AAL and the AAO. Ownership of any assets created by this element of the Project will reside with the AAO.

Funding source/s	Funding arrangement	2006-07	2007-08	2008-09	2009-10	2010-11	Total
NCRIS	Funds paid to AAL – which will subcontract with AAO	0.500	1.150	1.100	0.950	0.400	4.100

2.1.2 Anglo-Australian Telescope instrument

A new instrument for the Anglo-Australian Telescope (AAT), HERMES, a multi-object spectrograph providing world-leading scientific capabilities, will be developed, built and installed. The work will be undertaken primarily within the AAO's instrumentation facility. The NCRIS funds will be paid to the AAO via AAL. Ownership of the new instrument will reside with the AAO.

Funding source/s	Funding arrangement	2006-07	2007-08	2008-09	2009-10	2010-11	Total
NCRIS	Funds paid to AAL – which will subcontract with AAO	0.400	1.470	1.800	1.600	0.650	5.920

1.9 Section 3.2.1 of Attachment A is varied

Section 3.2.1 of Attachment A is varied by replacing it with the following:

3.2.1 Australian Astronomical Observatory

Applications for access to the Anglo-Australian Telescope (AAT) are made to a single joint time assignment committee, the Australian Time Assignment Committee (ATAC), which ranks all proposals for observing time on the AAT and all other Australian national optical astronomy facilities, from both Australian and international astronomers, on the basis of scientific merit and technical feasibility, and assigns each successful proposal an appropriate number of nights observing time.

The Secretary of the Department of Innovation, Industry, Science and Research, on the recommendation of the Director of the AAO and the Australian Astronomical Observatory Advisory Committee will appoint seven members of the ATAC, including one international member, and a substitute member to stand in for a member unavailable for a meeting of the Committee meeting, for terms of up to three years. The Secretary will appoint a Chair from among the ATAC members and the Director of the AAO will

then appoint a Deputy Chair. The ATAC appointment process will ensure suitable representation on the Committee, encompassing a broad spread of specialisations and seniorities and diversity in institutional representation. An AAO staff member may be appointed, but normally the ATAC will have no more than one representative from any given institution at a time. The AAO will provide a Technical Secretary to the ATAC; the Technical Secretary is not a member of the ATAC.

The ATAC issues calls for proposals twice a year. All researchers, irrespective of nationality, are able to apply. Full secretarial support for the proposal submission and review process is provided by the AAO. Technical evaluation and scheduling of the proposals is also carried out by the AAO.

No charge is made to users of the facility allocated time under this process. Basic costs associated with travel/accommodation to carry out the observations at the AAT are provided by the AAO, although some costs are borne by the users. Data archive/management costs are borne by the Observatory. All data are made freely available to the international scientific community via a WWW-based archive, following a proprietary period of 18 months.