

**Exchange of Notes constituting an Agreement
between the Government of Australia and the
Government of the United States of America
to Amend and Extend the Agreement concerning the
Conduct of Scientific Balloon Flights for Civil Research Purposes**



N° PRB 05/***

The Department of Foreign Affairs and Trade presents its compliments to the Embassy of the United States of America and has the honour to refer to the Embassy's Note of (DATE) concerning the Exchange of Notes between the Government of Australia and the Government of the United States of America to Amend and Extend the Agreement Concerning the Conduct of Scientific Balloon Flights for Civil Research Purposes. The Note reads:

The Embassy of the United States of America presents its compliments to the Department of Foreign Affairs and Trade and has the honor to refer to the Agreement between the Government of the United States and the Government of Australia (hereinafter referred to as the "parties") concerning the use of Australian facilities by the National Aeronautics and Space Administration (NASA) for the conduct of scientific balloon flights for civil research purposes of June 15 and 19, 1992, which in accordance with its terms expired on June 19, 2002.

In view of the mutual benefits that have been derived from this cooperative program, the Embassy has the honor to propose that the following apply to the renewed use of Australian facilities by NASA for the conduct of scientific balloon flights for civil research purposes:

1. The allocation of technical and operational responsibility with respect to launchings and recoveries in Australian territory, the financial arrangements in relation to the programs (which arrangements shall be subject to the respective funding procedures of each party), the provision of facilities and services for balloon launchings and recoveries in Australian territory, tracking and telemetering of information from each balloon, the recording and sharing of information from each balloon and the publication of information concerning the program shall be as mutually determined by NASA, the cooperating agency of the Government of the United States of America, and the Commonwealth Scientific and Industrial Research Organisation (CSIRO), the cooperating agency of the Government of Australia, and set out in a cooperating agency arrangement.

2. The Government of the United States shall coordinate any necessary support activities with other countries and shall comply with the relevant provisions of Article 8 of the December 7, 1944 Convention on International Civil Aviation (hereinafter referred to as the Chicago Convention), in particular the conditions relating to unmanned free balloon flights which are set out in Appendix D of Annex 2 to the Chicago Convention.

3. CSIRO, may upon receiving advice from NASA that all steps required by Article 8 of the Chicago Convention have been taken, permit each balloon flight in accordance with the program determined by the cooperating agencies.

4. In the event of premature termination of a flight in a third country, the Government of the United States shall be responsible for recovery of the balloon and its payload. Recovery operations shall be conducted according to the laws and regulations of the third country concerned.

5. Neither the Government of the United States nor the Government of Australia shall make any claims against the other, its employees, contractors or subcontractors for any injury to or death of its employees, its contractors or subcontractors or their employees, or for damage to or loss of its property or the property of its contractors or subcontractors, resulting from activities carried out under this Agreement, whether such injury, death or damage arises through negligence or otherwise, except in the case of willful misconduct. This provision is not intended to limit the application of the criminal laws of either party.

6. The Government of the United States shall be responsible for and pay or compensate meritorious third-party claims, including claims brought against the Government of Australia, for personal injury (including death) or damage to, or loss of, property caused by NASA, its employees, contractors or subcontractors within or beyond Australia's territorial jurisdiction, resulting from activities carried out on behalf of the Government of the United States under this Agreement. The Government of Australia recognizes that any payment required of the Government of the United States shall be contingent upon the appropriation of specific funds for this purpose by the Congress of the United States. For the purpose of this paragraph, meritorious claims include judgments awarded by courts of competent jurisdiction.

7. If any claim, demand or legal action is brought against the Government of Australia for any injury, death, damage or loss referred to in paragraph 6 above, the Government of Australia shall notify the Government of the United States within one calendar month of the receipt thereof. The Government of the United States shall be afforded the opportunity to assist the Government of Australia in the defense of any such action by providing information and advice.

8. When conducting balloon flight operations in Australia, NASA shall use its best efforts to provide assistance to Australian scientists who wish to carry out balloon-based experiments. Such assistance shall be subject to satisfactory conclusion of a written arrangement covering operational arrangements, payment of any fees, and liability between NASA and the Australian sponsoring institution or organization.

9. The parties are obliged to transfer only that technical data (including software) and those goods necessary to fulfill their respective responsibilities under this Agreement, in accordance with the following provisions:

- 1) All activities of the parties shall be carried out in accordance with their national laws and regulations, including those pertaining to export control and the control of classified information.
- 2) The transfer of technical data for the purpose of discharging the parties' responsibilities with regard to interface, integration, and safety shall normally be made without restriction, except as provided in sub-paragraph 1 above.
- 3) All transfers of proprietary or export-controlled goods and technical data are subject to the following provisions. In the event a party or its related entity (e.g., contractor, subcontractor, grantee, cooperating entity) finds it necessary to transfer proprietary or export-controlled goods or technical data, for which protection is to be maintained, such goods shall be specifically identified and such technical data shall be marked. The identification for such goods and the marking on such technical data shall indicate that those goods and that technical data shall be used by the receiving party or related entities only for the purposes of fulfilling the receiving party's or related entity's responsibilities under this Agreement, and that those goods and that technical data shall not be disclosed or retransferred to any other entity without the prior written permission of the furnishing party or its related entity. The receiving party or related entity shall abide by the terms of the identification or marking and protect any such identified goods and marked technical data from unauthorized use and disclosure. The parties to this Agreement shall cause their related entities to be bound by the provisions of this Article related to use, disclosure, and retransfer of such identified goods and marked technical data through contractual mechanisms or equivalent measures.
- 4) All proprietary or export-controlled goods and technical data exchanged in the performance of this Agreement shall be used by the receiving party or related entity exclusively for the purposes of the Agreement. Upon completion of the activities under the Agreement, the receiving party or related entity shall return or, at the request of the furnishing party or its

related entity, otherwise dispose of all identified proprietary or export-controlled goods and marked proprietary or export-controlled technical data provided under this Agreement, as directed by the furnishing party or related entity.

10. The Government of the United States shall retain title to equipment, materials, supplies and other movable property provided by or acquired in Australia by it or on its behalf at its own expense, for the purposes of the activities under this Agreement. The Government of the United States may remove such property from Australia at its own expense and free from export duties or similar charges upon termination of this Agreement or upon reasonable notice to the Government of Australia. Such property shall not be disposed of within Australia without the permission of the cooperating agency of the Government of Australia. Such property shall not be disposed of within Australia except in accordance with the Agreement between the two governments concerning the disposal of excess property of the Government of the United States in Australia effected by an exchange of notes dated November 9, 1973, or in the event that that Agreement should terminate, under conditions acceptable to both governments.

11. The Government of Australia shall, in accordance with its laws, regulations and procedures, facilitate the admission into and exit from Australia of people not normally resident in Australia, employed or engaged as staff, consultants or contractors by the Government of the United States or its cooperating agency in connection with the activities provided for in this Agreement.

12. The effects for the personal and household use of such people entering Australia for the purposes of the activities under this Agreement shall be permitted free entry in accordance with Australian customs law in effect at the date the goods are imported.

13. Activities under this Agreement are subject to the availability of appropriated funds.

14. In accordance with the Convention between Australia and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, done at Sydney on August 6, 1982, as Amended by the 2001 Protocol, done at Canberra on September 27, 2001 (the "Convention") and the domestic laws of Australia, United States personnel sent to Australia by the United States cooperating agency for the purposes of activities under this Agreement shall be exempt from Australian income tax. For these purposes, 'United States personnel' means nationals of the United States of America not ordinarily resident in Australia and who are employees of the United States Government or the cooperating agency. All other persons engaged or employed for the purposes of

the activities under this Agreement shall be subject to applicable Australian taxation laws, as modified by the Convention.

15. (A) The Government of Australia shall take the necessary steps to facilitate the admission into Australia of all equipment, materials, supplies and other property provided by or on behalf of the United States Government in connection with activities under this Agreement. Duties, taxes or like charges shall not be levied or shall be refunded on such property which is certified by the United States Government to be imported for use in such activities and which it is certified at the time of entry is or is intended to be the property of the United States Government.

(B) A refund of indirect Australian federal taxes shall be allowed in respect of equipment, materials, supplies and other property and services purchased in Australia which are certified as being for use in connection with the activities under this Agreement and which are not for resale, provided that such property shall become the property of the United States Government prior to use in Australia.

16. The parties shall consult promptly with each other on all issues involving interpretation or implementation of this Agreement, implementing arrangement and resulting annexes as specified. Any matter in dispute shall be referred to the appropriate program managers of the relevant cooperating agencies. These program managers will attempt to resolve all issues arising from the implementation of this Agreement. If they are unable to come to agreement on any issue, then the dispute will be referred to the parties, or their designated representatives for joint resolution.

17. The Government of the United States agrees to use, to the maximum extent practicable, Australian resources in activities under this Agreement.

18. (A) This Agreement shall remain in force until June 12, 2012, and may be extended by agreement of the two Governments.

(B) Either Government may terminate the Agreement by giving written notice of termination through the diplomatic channel after consultations between the Governments have occurred. Such termination shall take effect one year after the date of written notice.

The Embassy has the honor to propose that, if the foregoing is acceptable to the Government of Australia, this note and the Government of Australia's confirmatory note in reply shall together constitute an Agreement between the Government of the United States and the Government of Australia on this matter, which shall enter into force on the date of the Department's reply.

The Embassy of the United States of America avails itself of this opportunity to renew to the Department of Foreign Affairs and Trade the assurances of its highest consideration.

The Department confirms that the foregoing is acceptable to the Government of Australia. The Agreement shall enter into force today, (DATE).

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CANBERRA

** 2005

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Embassy of the United States of America,
Canberra, _____
(Date)