

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE
CANBERRA

AGREEMENT

BETWEEN

THE GOVERNMENT OF AUSTRALIA

AND

THE EUROPEAN SPACE AGENCY

FOR A CO-OPERATIVE SPACE VEHICLE TRACKING PROGRAM

done at Cape Town on 5 October 2011

Not yet in force
[2011] ATNIF 23

THE GOVERNMENT OF AUSTRALIA AND THE EUROPEAN SPACE AGENCY ("the Parties"),

DESIRING TO BUILD on the longstanding co-operation in space vehicle tracking established since 1976, and

RECOGNISING the importance of the European Space Agency's Australian facilities, including particularly at New Norcia, to the mutual benefit of the Parties, and

CONSIDERING that the purpose of the European Space Agency is to promote space research and technology for space applications exclusively for peaceful purposes, and that the Australian Government is committed to utilizing and developing space and its applications also for peaceful purposes, and

DESIRING to strengthen the mutual benefits of international scientific and educational co-operation gained through the peaceful uses of space,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

For the purposes of this Agreement:

- (a) "Agency" means the European Space Agency which is responsible for giving effect to this Agreement on the European side;
- (b) "Agreed Activities" means the activities referred to in Article 2;
- (c) "Australian co-operating agency" means, unless otherwise determined by the Australian Government, the Department of Innovation, Industry, Science and Research, which shall be responsible on the Australian side for giving effect to this Agreement;
- (d) "Convention" means the Convention for the Establishment of a European Space Agency, which was opened for signature in Paris on 30 May 1975 and entered into force on 30 October 1980; and

(e) "Facilities" means facilities owned and operated by the Agency, owned by the Agency and operated by a third party on behalf of the Agency, or facilities not owned by the Agency and providing space tracking services to the Agency,

(f) "Implementing Arrangements" means the arrangements concluded pursuant to Article 4.1.

ARTICLE 2

1. The Agency, in association with the Australian Government, may participate in Australia in the following activities:
 - (a) tracking and telecommand of the Agency's space vehicles or other space vehicles as may be arranged between the Agency and the Australian co-operating agency, and
 - (b) acquiring data from these space vehicles.
2. The space vehicles referred to in paragraph 1 shall be operated in accordance with the Convention and for civil research and technology and their space applications.

ARTICLE 3

In order to participate in the Agreed Activities, the Agency may, in accordance with this Agreement and the Implementing Arrangements, make use of the Facilities in Australia designated in the Implementing Arrangements.

ARTICLE 4

1. The Agreed Activities, including the establishment, operation, maintenance and use of the Facilities, shall be undertaken by the Agency and the Australian Government in accordance with the Implementing Arrangements. The Implementing Arrangements shall be made consistent with the terms of this Agreement.
2. The Agency shall notify the Australian Government of its operational requests, or any changes to these, in writing.
3. The Implementing Arrangements may be modified by mutual determination between the Agency and the Australian co-operating agency.

ARTICLE 5

Except as otherwise provided in this Agreement, the Agency shall bear the costs of operating and maintaining the Facilities that it requires for the purposes of this Agreement and the costs of establishing any new Facilities, subject to any contribution by the Australian Government, as the Parties may from time to time arrange.

ARTICLE 6

The Agency and the Australian Government shall, in accordance with their respective rules and procedures, provide each other, on request, with scientific data acquired through the Agreed Activities, and with the results of any consequent studies. The publication of such results shall be subject to any priority rights of scientific investigators.

ARTICLE 7

1. The Facilities used for the Agreed Activities may be used for independent Australian activities endorsed by the Australian Government and for other independent scientific activities as may be arranged between the Agency and the Australian Government. Such activities shall be conducted so as not to interfere with the conduct of the Agreed Activities. The Agency shall not become liable for any costs arising from such use of the Facilities.
2. If the Australian Government wishes, it may for its own purposes and at its own cost construct facilities and install and use equipment on the site of the Facilities referred to in the Implementing Arrangements provided this does not interfere with the Agreed Activities. Use by the Agency of such facilities constructed by the Australian Government shall be covered by a separate arrangement between the Agency and the Australian co-operating agency.

ARTICLE 8

The Agency and the Australian co-operating agency shall make freely available to each other details in regard to all Agreed Activities and to the planning of all Agreed Activities undertaken pursuant to this Agreement.

ARTICLE 9

The Agency shall retain title to equipment, materials, supplies and other property brought into or acquired in Australia by it or on its behalf at its own expense, for the Agreed Activities. Consistent with this Agreement, the Agency may remove such property from Australia at its own expense and free from export duties or similar charges, upon the termination of this Agreement or upon reasonable notice to the Australian Government. Such property shall not be disposed of within Australia except under conditions acceptable to both the Agency and the Australian Government.

ARTICLE 10

1. The Australian Government shall, in accordance with its laws, regulations and procedures, facilitate the entry into and temporary stay in Australia of persons not normally resident in Australia employed or engaged as staff, consultants or contractors by the Agency in connection with the Agreed Activities.
2. The effects for the personal and household use of such persons entering Australia for the purpose of the Agreed Activities shall be permitted free entry in accordance with Australian customs law in effect at the date the goods are imported.

ARTICLE 11

1. The Australian Government 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 Agency in connection with the Agreed Activities.
2. No duties, taxes or like charges other than indirect taxes shall be levied on the equipment, materials, supplies and other property which are certified by the Agency to be imported for use in the Agreed Activities and which it certifies at the time of entry are, or are intended to be, the property of the Agency.
3. For the purposes of this Article, 'indirect taxes' means the goods and services tax, the wine equalisation tax, and the luxury car tax.

ARTICLE 12

The Agency shall utilise to the maximum extent practicable Australian resources in the Agreed Activities. The Agreed Activities shall be carried out by Australian personnel, except to the extent

otherwise provided in the Implementing Arrangements between the Agency and the Australian co-operating agency, under the Agency's operational directives.

ARTICLE 13

The Agency shall undertake the Agreed Activities respecting Australia's national security requirements. In this respect:

- a) The Agency shall allow technical understanding of the equipment associated with the Facilities, and the broader systems to which they contribute by the relevant Australian Government agencies;
- b) Notwithstanding the Agency's status as an Inter-Governmental Organization, the Agency shall allow a right of Australian Government access to the Facilities for the purpose of verifying compliance with Australian national security requirements, upon specific request, with adequate notice, and with the presence of an Agency representative;
- c) Any data obtained by the Australian Government as a result of compliance inspections under paragraph (b) shall be treated in confidence and used for no other purpose than verifying compliance with Australian national security requirements;
- d) In case the Australian Government establishes deviation from its established national security requirements, the Agency shall immediately bring the Facilities into compliance. The Agency shall allow the Australian Government an ability to deactivate the Facilities;
- e) The Agency shall notify the Australian Government of any changes to the role, function, capability or management of the Facilities;
- f) The Agency agrees to use the Facilities only for the purpose of its official activities and programmes and for peaceful purposes. The Agency agrees not to use the Facilities, information collected through the Facilities, or activities associated with the Facilities for purposes which are contrary to Australia's sovereignty or national interests.

ARTICLE 14

1. The Australian Government shall use its best endeavours to ensure that the frequency bands set out in the Implementing Arrangements are and remain available to carry out the Agreed Activities in accordance with the terms of this Agreement and the Implementing Arrangements.
2. The Agency shall take the necessary steps under Australian law to secure access to, and achieve domestic registration of, the radiofrequency spectrum necessary for the Agency to carry out the Agreed Activities. The Australian Government shall use its best endeavours to provide the Agency with access to the requested radiofrequency spectrum, and to achieve domestic registration of this spectrum.
3. Subject to achieving Australian domestic registration in accordance with paragraph 2, the Australian Government shall use its best endeavours to assist the Agency in obtaining registration with the International Telecommunication Union of radiofrequency spectrum usage necessary for the Agreed Activities.
4. The operation of radio transmitting and receiving equipment for the Agreed Activities shall comply with Australian law and the requirements of the relevant Australian authorities, including in accordance with the Implementing Arrangements.
5. The Australian Government shall use its best endeavours to protect the radio receiving Facilities used for the Agreed Activities from harmful radiofrequency interference from radiocommunications stations within Australia that are subject to Australian law. The measures to be taken by the Australian Government in this respect shall be specified in the Implementing Arrangements.

ARTICLE 15

In order to facilitate the implementation of this Agreement and the Implementing Arrangements representatives of the Parties shall meet as frequently as necessary for that purpose, but not less than once a year. Such meetings shall be held at Canberra unless otherwise agreed.

ARTICLE 16

1. Both Parties may agree to any amendments to this Agreement. Any such amendments shall be recorded in writing and signed by both Parties.
2. Any amendment shall enter into force upon written notification by the Australian Government to the Agency that all internal procedures for its entry into force have been fulfilled.

ARTICLE 17

1. Any dispute on the interpretation or application of this Agreement shall be referred to the Head of the Australian co-operating agency and the Director General of the Agency for amicable resolution in the first instance.
2. Should they be unable to resolve the dispute, then it shall promptly be submitted to an Arbitral Tribunal constituted by three members. One arbitrator shall be designated by the Australian Government, one by the Agency and the third one shall be designated by the first two arbitrators and shall act as a chairperson. Should the first two arbitrators be unable to agree on the choice of the third arbitrator, the latter shall be designated by the Secretary-General of the Permanent Court of Arbitration.
3. The Tribunal shall determine its own procedure and its seat.
4. The decision of the Arbitral Tribunal shall be determined in accordance with the provisions of this Agreement by majority vote. The decision of the Tribunal shall be final and binding on the Parties and shall be without appeal. The decision shall be executed in accordance with the rules of procedure in force in the country in which it is to be executed. The Parties shall contribute equally to the expenses of the Tribunal unless the Tribunal should decide otherwise.

ARTICLE 18

1. This Agreement shall enter into force upon written notification by the Australian Government to the Agency that all internal procedures for its entry into force have been fulfilled.
2. The *Agreement between the Government of Australia and the European Space Agency for a Co-operative Space Vehicle Tracking Program done at Paris on 15 June 1979, and as amended by an exchange of letters of 21 January 1987*, shall terminate upon this Agreement coming into force.
3. This Agreement shall remain in force until five years after the date on which one Party has given to the other Party written notice of its intention to terminate the Agreement.

DONE at CAPE TOWN on the fifth day of October 2011 in two originals in the English language.

For the Australian Government

For the European Space Agency