DEFENSE

Cooperation

Memorandum of Understanding
Between the
UNITED STATES OF AMERICA
and AUSTRALIA

Signed at Canberra March 13, 2009

NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

". . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof."

AUSTRALIA

Defense: Cooperation

Memorandum of understanding signed
at Canberra March 13, 2009;
Entered into force March 13, 2009.

MEMORANDUM OF UNDERSTANDING (MOU)
BETWEEN
THE DEPARTMENT OF THE AIR FORCE OF THE UNITED STATES OF AMERICA

AND

THE DEPARTMENT OF DEFENCE OF AUSTRALIA

REGARDING

THE CONSTRUCTION AND MAINTENANCE OF AN INSTALLATION HOUSING OPTICAL TELESCOPES IN AUSTRALIA

SECTION I
INTRODUCTION

1.1 The Department of the Air Force of the United States of America and the Department of Defence of Australia (the "Participants"):

1.2 Recalling the Security Treaty which was signed at San Francisco between Australia, New Zealand, and the United States of America (ANZUS) on September 1, 1951;

1.3 Recognizing the Mutual Defense Assistance Agreement between the Government of Australia and the Government off the United States of America, entered into force on February 20, 1951 (U.S./Australia Mutual Defense Assistance Agreement);

1.4 Acknowledging that the Agreement between the United States of America and Australia concerning the Status of United States Forces in Australia, and the Protocol to that Agreement done on May 9, 1963 applies to this Memorandum of Understanding (MOU);

1.5 Acknowledging that the Exchange of Notes Constituting an Agreement between the Government of the United States of America and the Government of Australia concerning Certain Mutual Defense Commitments, done at Sydney December 1, 1995 (the Chapeau Defense Agreement), as may be amended, applies to this MOU;

1.6 Recognizing that logistic support required for implementation of this MOU may be provided pursuant to Implementing Arrangements under the Agreement between the Government of the United States of America and the Government of Australia concerning Acquisition and Cross Servicing, dated September 22, 1999 (U.S.-AUS ACSA);

1.7 Acknowledging that the Australia-United States Joint Statement of Environmental and Heritage Principles for Combined Activities, signed at Adelaide on November 18, 2005, applies to activities under this MOU;

1.8 Recognising the Australian Government's policy of full knowledge and concurrence in respect to all activities conducted on or through Australia's territory, as outlined in Section IV of this MOU;.

1.9 Having a common interest in scientific research; and

1.10 Have reached the following understandings regarding the installation and maintenance of an installation housing optical telescopes in Australia.

SECTION 2
PURPOSE AND SCOPE

2.1 This MOU establishes the arrangements for the U.S. Air Force (USAF) to support the construction and maintenance of an installation near Learmonth Solar Observatory in the North West Cape of Western Australia. This installation may house up to three optical telescopes as a part of the Extended High Accuracy Network Determination System (Ext-HANDS), a USAF network of autonomous optical research sensors which collect data for space situational awareness (SSA) research. Research conducted through the use of this installation will be used to develop techniques to extract information from optical observations of earth-orbiting satellites.

2.2 The term "installation" in this MOU is defined as including the necessary support equipment to ensure the proper functioning of the installation. Each telescope will consist of an optical tube, a mount that supports and points the telescope atop the concrete pad, a camera attached to the telescope, and a dome providing housing for the telescope. Supporting equipment includes computers that operate the telescope and analyze the data, a shed to house the computers, a weather station to monitor environmental conditions, power and communication equipment, and air conditioners for the telescope dome and computer shed.

SECTION 3
COLLABORATION

3.1 The Australian Government may be provided with access to the information and product collected by and developed from the global Ext-HANDS network for joint research and development activities in accordance with applicable U.S. laws and regulations. The Australian Government and the USAF will explore actively opportunities for collaboration on research and development activities related to the activities of the installation.

SECTION 4
FULL KNOWLEDGE & CONCURRENCE

4.1 The U.S. DOD will operate the installation in accordance with Australia's policy of full knowledge and concurrence in respect of activities conducted on its sovereign territory and Australia's understanding of the systems utilized to conduct such activities, as set forth in this section. In order to satisfy the ADOD's requirements for full knowledge and concurrence in respect of foreign military installations on Australian territory, the U.S. DOD will provide the Australian Government with:

4.1.1 full and detailed understanding of the contents and technical capabilities of the installation;

4.1.2 full and detailed understanding of the operation and activities of the Ext-HANDS and the way in which data is collected and used;

4.1.3 access to the information collected through the installation;

4.1.4 full and detailed understanding of any substantive technical improvements, command and control, or other significant changes involving the Ext-HANDS capabilities, its role or function; and

4.1.5 full and detailed reviews of the purposes for which the installation is used, on an annual basis or at a lesser interval at either Participant's request, and fully inform the ADOD of the outcomes of these reviews.

4.2 To the extent it may affect the purpose and scope of the installation's operations, the USAF will seek the Australian Government's concurrence prior to any changes to the installation's activities or functions from those originally advised to Australia at the time this MOU first came into effect. In particular, Australian Government concurrence is required where any proposed changes would result in the installation undertaking activities and functions inconsistent with the purpose and scope accepted at the time this Arrangement came into effect.

SECTION 5
SECURITY

5.1 The construction and operation of the installation itself will be unclassified and data collected through it will be unclassified.

5.2 All classified information provided or generated pursuant to this arrangement will be stored, handled, transmitted, and safeguarded in accordance with the Agreement Concerning Security Measures for the Protection of Classified Information between the Governments of Australia and the United States of America, dated November 7, 2002 (Security Agreement).

5.3 Visits of USAF personnel or other visitors to the installation will be in accordance with the provisions of the Security Agreement.

SECTION 6
OPERATIONS

6.1 This telescope system is designed to be autonomous, operating daily from shortly after sunset until shortly before sunrise, unless weather conditions require system shutdown for the duration of inclement weather. Human intervention should only be required for routine maintenance or troubleshooting, estimated to average an hour or two per week. Such activities will be the responsibility of the USAF unless otherwise mutually determined in writing by the participants.

6.2 The use of radio frequencies, powers, and band-widths for the installation will be in accordance with arrangements to be made between the Australian Government and USAF. Such arrangements will be subject to the approval of the appropriate Australian authorities, and consistent with arrangements in force between the Parties.

6.3 The Australian Government will provide security consistent with the existing security arrangements at the Learmonth Solar Observatory. IPS Radio and Space Services and Director Joint Facilities and Technical Programs of the Australian Department of Defence will be advised in advance of visits to the site relating to the installation. IPS Radio and Space Services will facilitate USAF access to its property and systems associated with the installation at all times consistent with security and safety considerations and procedures as mutually determined. The USAF will in all circumstances ensure emergency services providers are able to access the installation.

6.4 Ownership of the land on which the installation is constructed will be retained by the Australian Government. Ownership of structures and equipment installed at the cost of the USAF will be retained by the USAF. The Australian Government will not be responsible for any costs incurred by the USAF should the location for any reason become unsuitable or unavailable for the operation of the installation.

6.5 When the land or any improvements constructed on the land by the USAF are no longer required, the land and any improvements will be relinquished, as mutually determined, to the Australian Government. The USAF may remove any equipment that it owns at its own expense, free from taxes, export duties and related charges.

SECTION 7
PUBLIC HANDLING

7.1 Where information relating to this MOU may need to be disclosed, the Participants will immediately consult. Where, subject to the Participants' laws and regulations, information has to be released to the public relating to activities conducted under this MOU the Participants may consult concerning such disclosure

7.2 The Participants may choose to develop a mutually determined public statement which can be used to respond to public enquiries without the need to consult and concur on each

occasion. For other issues or queries outside the scope of the joint statement, any public or media comments will be made in consultation with the other Participant.

SECTION 8
FINANCIAL PROVISIONS AND CLAIMS

8.1 The USAF will bear the financial costs it incurs for performing, managing, and administering its activities under this MOU. These costs include salaries, travel, per diem costs for its personnel, as well as any contract costs. USAF expenditures under this MOU will be subject to the availability of funds for such purposes.

8.2 All claims arising under this MOU will be dealt with in accordance with Clause I (1) of the Chapeau Defence Agreement which entered into force on 1 December 1995.

8.3 Claims arising under a contract will be resolved in accordance with the contract. Unless otherwise mutually determined by the Participants, the costs of claims arising as a consequence of a contract awarded in order to fulfill the terms of this MOU, will be the sole responsibility of the parties to the contract. The Participants will not indemnify contractors against third party liability claims.

SECTION 9
CUSTOMS AND DUTIES

9.1 The USAF may remove equipment, materials, supplies and other property from Australia at its own expense and free from export duties and related charges, upon the termination of this arrangement or as mutually determined. However, other than the relinquishing of any property to the Australian Government in accordance with Section 6.5, such property will not be disposed of within Australia except as mutually determined in writing between the USAF and the Australian Government.

SECTION 10
GENERAL PROVISIONS

10.1 All operations and activities in Australia under this MOU will be conducted in conformance with the Participants' national laws, regulations, and policies, including their respective export control laws and regulations, recognizing that Australian law, regulations, and policies apply to all activities within Australia, consistent with agreements and arrangements in force between the Parties.

10.2 The Participants may enter into subordinate arrangements pursuant to this MOU which will incorporate by reference the provisions of this MOU. In the event of a conflict between a provision of a subordinate arrangement and the provisions of this MOU, the provisions of this MOU will govern.

10.3 Any action required to be taken under the provisions of this MOU will be subject to the availability of appropriated funds.

10.4 The Commander, U.S. Air Force Research Laboratory is the U.S. official responsible for implementation and oversight of this MOU. The Deputy Secretary Intelligence, Security and International Policy of the Australian Department of Defence is the Australian official responsible for oversight of this MOU. Each participant will advise the other in writing of any changes to its official responsible for oversight of this MOU.

SECTION 11
SETTLEMENT OF DISPUTES

11.1 Disputes arising from or related to this MOU will be settled through consultation between the Participants' representatives detailed in Section 10.4. Where these officials cannot resolve the dispute it will be referred by them up their respective chains of command. Disputes will not be referred to a national court, to an international tribunal, or to any other person or entity for resolution or settlement.

SECTION 12
ENTRY INTO EFFECT, AMENDMENTS, AND TERMINATION

12.1 This MOU will come into effect on the date of the last signature by the Participants and will remain in effect for ten (10) years, unless earlier terminated or extended. The Participants will review the operation of this MOU annually or at other intervals by mutual determination.

12.2 This MOU may be amended with the written concurrence of the Participants.

12.3 Termination of this MOU may be effected by mutual written determination or by either Participant giving 180 days written notification to the other Participant of its intent to withdraw.

SIGNED.:

FOR THE UNITED STATES AIR FORCE	FOR THE DEPARTMENT OF DEFENCE OF AUSTRALIA
Signature	Signature
BRUCE S. LEMKIN Name	Stephen Merchant Name
DEPUTY UNDER SECRETARY OF THE AF, INT'L AFFAIRS Title	Deputy Secretary Title
13 MAR 2009 Date	13 March 2009 Date
CANBERRA Location	Canberra ACT Location