

Agreement for Supply of AST3-NIR Camera

Swinburne University of Technology

**Commonwealth of Australia as represented by the
Department of Industry, Innovation and Science
acting through the Australian Astronomical
Observatory**

Version: 1.0

TABLE OF CONTENTS

1. Definitions and interpretation	3
2. Term.....	8
3. Nature of the Agreement.....	8
4. The Deliverables	9
5. Pricing	10
6. Payment.....	11
7. Variations	11
8. Product Delivery.....	12
9. Not used.....	14
10. Not used	14
11. Confidentiality	14
12. Intellectual Property Rights, Warranty and Indemnity.....	14
13. Software	15
14. Specific Obligations of SUT	15
15. Specific Obligations of the Contractor.....	16
16. Personnel	19
17. Conduct and Dispute Management.....	20
18. Termination by SUT	22
19. General.....	23
Schedule 1 Agreement Details.....	26
Schedule 2 Statement of Requirements	28
Schedule 3 Pricing	29
Schedule 4 SUT's Specific Responsibilities and Materials	30
Schedule 5 Not Used	31
Schedule 6 Expert Determination Procedure.....	32

DETAILS

Parties

SUT	Name	Swinburne University of Technology
	ABN	13 628 586 699
	Address	10 John St , Hawthorn Vic 3122
the Contractor	Name	Commonwealth of Australia as represented by the Department of Industry, Innovation and Science acting through the Australian Astronomical Observatory
	ABN	74 599 608 295
	Address	105 Delhi Road North Ryde NSW 2113

Date of Agreement

TERMS

Introduction

- A. SUT and the Contractor have together successfully applied to the Australian Research Council (ARC) for Linkage Infrastructure, Equipment and Facilities (LIEF) grant.
- B. Under the LIEF grant, SUT is to award contracts for the design, construction and commissioning of AST3-NIR Camera which will include the supply by the Contractor of the Deliverables.
- C. SUT and the Contractor have agreed to enter into this Agreement to govern the supply, installation and implementation of the Deliverables.

It is agreed

1. Definitions and interpretation

Definitions

Acceptance means acceptance by SUT of the Deliverables at the Site for Delivery after successful completion of the acceptance tests, as set out in Schedule 1.

Agreement means this Agreement including the Schedules and any Annexures.

Annexure means an annexure to this Agreement.

Approved Sub-Contractors means the approved sub-contractors in Item 4 of Schedule 1.

Authority means any statutory, public or other authority and includes government, semi or local government, licensing or civic authority or body.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in New South Wales, Australia.

Change in Control means a circumstance in which control is or may be exercised over the Contractor:

- (a) through removal or appointment of directors of the Contractor;
- (b) by virtue of the direct holding of at least 15% of the voting shares in the Contractor or a holding company of the Contractor; or
- (c) by any other means whatsoever.

Circumstances Beyond the Control of the Contractor include:

- (a) acts of God;
- (b) fire, flood, or earthquake;
- (c) national emergency (including terrorist acts) or war; or
- (d) a serious industrial dispute.

Commissioning Services means the commissioning services specified in Schedule 2.

Component means any constituent part, being material or other matter or thing, which forms or is intended to form part of or be incorporated into the Deliverables, or form part of the Deliverables.

Confidential Information means, in relation to a Party, information that:

- (a) is by its nature confidential;
- (b) is designated by that Party as confidential; or
- (c) the other Party knows or ought to know is confidential;

but does not include:

- (d) information that is or becomes public knowledge otherwise than by breach of this Contract or any other confidentiality obligation.

Contract Price means the price (which may be a fixed lump sum or a schedule of rates), stated in Item 1 of Schedule 3 which is payable to the Contractor for the supply of the Deliverables by the Contractor, and adjusted to include any Variations which may be required to be made under the terms of this Agreement.

Contractor's Insolvency means any of the following:

- (a) insolvency;
- (b) the Contractor indicates that it does not have the resources to perform the Agreement;
- (c) an application for winding up is made and not stayed within fourteen (14) days;
- (d) a winding up order is made;
- (e) a controller, administrator, receiver and manager, provisional liquidator or liquidator is appointed;
- (f) a mortgagee enters the possession of any property of the Contractor;
- (g) a notice is given of a meeting of creditors for the purposes of a deed of arrangement; or
- (h) any actions of a similar effect are taken.

Deliverables means the goods and their associated services to be executed and supplied by the Contractor and specified in Schedule 2 and includes any Variation to this Agreement in accordance with clause 7.

Delivery Services means the delivery services provided by the Contractor in respect of the System, as referred to in Schedule 2.

Documentation means documentation described in the Project Definition Plan and all other documents that enables the full use, operation and maintenance of the Deliverables in accordance with the Statement of Requirements. The Documentation must be:

- (a) of a reasonable standard in terms of its presentation, accuracy, and scope;
- (b) a resource that provides a comprehensive explanation of functions, capacity and operation of the Deliverables;
- (c) the most current and up to date available;
- (d) in English language; and
- (e) of a form where all the key terms, words and symbols are adequately defined.

Due Date means the date for completion of the Deliverables by the Contractor in Item 2 of Schedule 1.

Information includes information in the form of data, text or images.

Intellectual Property or Intellectual Property Rights includes copyright, patent, trademark, design, semi-conductor or circuit layout rights, trade, business or company names, or other proprietary rights, or any rights to registration of such rights existing in Australia, whether created before or after the date of this Agreement.

Key Personnel means the personnel of the Contractor nominated in Item 8 of Schedule 1 to perform the specified roles under this Agreement.

Loss means any claim, costs (including reasonable legal costs), liability, proceeding, action and expense, whether based on common law, equity, or statute.

Party means SUT and/or the Contractor.

Personal Information has the same meaning as in *Privacy and Personal Information Protection Act 1998 (NSW)*.

Personnel of a Party means;

- (a) the officers, employees, agents and contractors of that Party,
- (b) in the case of the Contractor, includes subcontractors (whether approved or not), and Key Personnel.

Progress Payment means a payment in accordance with clause 6.8.

Project Definition Plan means the detailed plan regarding the delivery and timing Stages for the Deliverables to be met by the Contractor under this Agreement for the completion of such Stages, as amended from time to time in accordance with clause 4.2.

Relationship Manager means the Contractor's employee named in Item 8 of Schedule 1.

Schedule means a schedule to this Agreement.

Site for Delivery means the place(s) specified in Item 9 of Schedule 1 where the Deliverables are to be delivered by the Contractor for Acceptance in accordance with this Agreement.

Specifications means the specifications in respect of the System, including without limitation, specifications about the functionality and performance of the System set out in Schedule 2.

Stage means an individual milestone identified in the Project Definition Plan for staged completion by the Contractor of the Deliverables and payment by SUT.

Statement of Requirements means the detailed description of the Deliverables to be provided under this Agreement in Schedule 2.

Standards means Australian Standards, where such exist and are applicable to the Deliverables, and includes international standards in the event of a lack of an applicable Australian Standard.

Statutory Requirements means the laws relating to the performance of this Agreement or the lawful requirements of any Authority with respect to the performance of this Agreement.

Substantial Breach means a substantial breach of a term of this Agreement by the Contractor and includes any breach of the following clauses:

- (a) clauses 16.7 to 16.10 (failure to provide competent Personnel);
- (b) clauses 15.9 to 15.13 (Minimum Insurance Requirements);
- (c) where a delay continues beyond the extension of time granted under clause 8.4;
- (d) clauses 19.1 to 19.2 (No Assignment or Novation);
- (e) clauses 19.3 to 19.5 (Conflicts of Interests); and
- (f) where the Contractor breaches a time of the essence obligation imposed on the Contractor in accordance with clause 8.

Support Services means the support services provided by the Contractor in respect of the System, as referred to in Schedule 2.

System means the system described in Schedule 2 supplied and integrated by the Contractor into SUT's operating environment, and set to work and operating in accordance with the Specifications and this Agreement.

System Level Requirements as defined in the Project Definition Plan

Term means the term of this Agreement set out in Item 2 of Schedule 1 and any extension made under this Agreement by SUT.

Training means the training provided by the Contractor in respect of the System, as referred to in Schedule 2.

SUT's Delegate means SUT's employee named in Item 7 of Schedule 1, responsible for the overall management of this Agreement on behalf of SUT.

SUT's Material means any material, document, or Information supplied by SUT, to the Contractor by whatever means indicated in Schedule 4.

SUT's Specific Responsibilities means any activities that SUT is to carry out as specified in Schedule 4.

Variation means any change to the Deliverables including additions, increases, omissions and reductions to and from the Deliverables, (including a change in the quality of any material used in the supply of the Deliverables) which has been directed in writing by SUT's Delegate under clause 7.

Warranty Period means, in relation to particular Deliverables, the period of warranty of those Deliverables specified in Item 13 of Schedule 1.

Rules for interpreting this Agreement

- 1.1 Headings are for convenience only, and do not affect the interpretation of this Agreement. The following rules also apply in interpreting this Agreement, except where the context makes it clear that a rule is not intended to apply.
- 1.2 A reference to:
 - (a) legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (b) a document or agreement, or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (c) a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity;
 - (d) anything (including a right, obligation or concept) includes each part of it.
- 1.3 Where:
 - (a) the Contractor consists of more than one (1) person or corporation, this Agreement binds each of them separately and any two or more of them jointly and severally;
 - (b) an obligation, representation or warranty made by the Contractor in this Agreement shall bind each person or corporation separately and jointly and each person or corporation shall alone be responsible for the performance of every obligation, representation or warranty contained in this Agreement.
- 1.4 A singular word includes the plural, and vice versa.
- 1.5 A word which suggests one (1) gender includes the other genders.
- 1.6 If a word is defined, another part of speech of that word has a corresponding meaning.
- 1.7 In the event of any ambiguity, discrepancy or inconsistency in interpreting any term or terms of this Agreement, the order of priority in the interpretation of such term or terms will be in the order of:
 - (a) Schedule 3;
 - (b) the terms and conditions of this Agreement;
 - (c) Schedule 1 and Schedule 2 of this Agreement;
 - (d) any other Schedules to this Agreement; then
 - (e) any Annexures to this Agreement.

2. Term

This Agreement:

- (a) commences on the commencement date specified in Item 2(a) of Schedule 1; and
- (b) continues until the expiry of the Warranty Period,

unless terminated earlier in accordance with this Agreement.

3. Nature of the Agreement

Nature of the Agreement between SUT and the Contractor

- 3.1 This Agreement describes the terms and conditions between SUT and the Contractor under which the Contractor agrees with SUT that it will supply the Deliverables.
- 3.2 The Parties acknowledge they are also subject to the Multi-Institutional Agreement for ARC LIEF Project LE150100024 dated 30 June 2015 (**MIA**), which sets out their general obligations with respect to the LIEF project. In the event of any ambiguity, discrepancy or inconsistency in interpreting the terms of this Agreement in conjunction with the MIA, this Agreement will take precedence.

The Contractor's General Obligations

- 3.3 The Contractor is solely responsible for:
 - (a) the execution and delivery of the Deliverables in accordance with this Agreement and by the Due Date;
 - (b) the performance of all activities necessary for the execution and delivery of the Deliverables including without limitation, the engagement, supervision and direction of Approved Sub-Contractors and other Personnel of the Contractor, the detailed coordination of all activities and the supply of all necessary equipment and administrative requirements;
 - (c) the performance of the reasonable steps required to ensure that the Deliverables are executed to a high professional standard and in accordance with all approvals and requirements of all Authorities relevant to the Deliverables; and
 - (d) using materials described in this Agreement, or failing any specific description, then the best quality available and fit for their intended purpose.
- 3.4 The Contractor further agrees that:
 - (a) it has specifically made all of its inspections and observations in light of the Agreement and is satisfied that none of the documents evidencing the Agreement are in conflict (except as expressly brought to SUT's attention before it executed this Agreement);
 - (b) SUT is relying on the Contractor's skill and judgement in the execution of the Deliverables;
 - (c) it will keep SUT's Delegate fully and promptly informed of all industrial issues, matters and disputes which affect or are likely to affect the execution and delivery of the Deliverables; and
 - (d) SUT will make use of the Deliverables in a research, educational, and/or commercial capacity and that any delay in the Contractor carrying out its obligations will delay research, educational, and/or commercial activities of SUT.

Approved Sub-Contractors

- 3.5 The Contractor may with the written consent of SUT, sub-contract any part of this Agreement to an Approved Sub-Contractor.
- 3.6 The Contractor must make the Approved Sub-Contractor aware of the terms and conditions of this Agreement and this clause.
- 3.7 The terms and conditions of the sub-contract must be consistent with this Agreement.
- 3.8 The Contractor will continue to be bound by, and responsible for the performance of this Agreement notwithstanding that part or all of it may have been sub-contracted.
- 3.9 SUT may, without incurring liability, withdraw its approval of an Approved Sub-Contractor if in its reasonable opinion the sub-contractor is not meeting the requirements of this Agreement. SUT will notify the Contractor in writing that its approval is withdrawn and the Contractor will immediately terminate its arrangement with the sub-contractor.

4. The Deliverables

Statement of Requirements

- 4.1 The Deliverables to be supplied by the Contractor under this Agreement are detailed in Schedule 2.

Project Definition Plan

- 4.2 The Contractor warrants that:
 - (a) the Project Definition Plan will meet the requirements of this Agreement; and
 - (b) that the Project Definition Plan is fit for its intended purpose.

The Contractor is responsible for ensuring that all of the requirements of the Project Definition Plan are complied with at the Contractor's cost. The Project Definition Plan may be varied by agreement between the Parties in writing from time to time.

Progression to the Project Definition Plan

- 4.3 When requested by SUT's Delegate, the Contractor must submit a schedule detailing the dates and times by which each Stage of the Deliverables is due to be completed in a format to be agreed between the Parties in accordance with the Project Definition Plan.

Suspension of Project Definition Plan

- 4.4 SUT may at any time request the Contractor to suspend or postpone the progress of any one (1) or more Stages within the Project Definition Plan. If SUT makes such a request, the Contractor must:
 - (a) suspend or postpone the progression of the relevant Stage(s) in accordance with SUT's request;
 - (b) adjust the Project Definition Plan to account for the suspension or postponement and provide a revised schedule of Stages;

- (c) not charge SUT for any costs (including but not limited to delay costs) associated with the suspension or postponement, if the period of suspension or postponement is within six (6) months of the original Project Definition Plan.

University Shutdown

4.5 The Contractor must ensure that the Project Definition Plan includes a Stage for the SUT shutdown period which occurs annually from mid-December to mid-January (**Shutdown Period**). The Contractor must not:

- (a) submit any invoice to SUT for payment;
- (b) deliver any Deliverable to SUT; and
- (c) require any SUT personnel to perform any obligation or activity,

during the Shutdown Period, without obtaining the prior written consent of the SUT Delegate.

5. Pricing

Contractor's Obligations

5.1 The Contractor must supply the Deliverables on the basis of the Contract Price in Schedule 3.

Calculating the Contract Price

5.2 The Contract Price in Schedule 3, unless specified in Schedule 2, includes all applicable levies, duties, taxes, insurances, imposts, overheads and profits but is exclusive of GST.

Goods and Services Tax

5.3 In this clause and Agreement, **Consideration**, **GST**, **Tax Invoice** and **Supply** have the same meaning as provided for in the *A New Tax System (Goods & Services Tax) Act 1999* (Cth).

5.4 The Contractor must hold an Australian Business Number (ABN) and be registered for GST.

5.5 Every invoice issued by a person making a Supply must be in the form of, or be accompanied by, a valid Tax Invoice or statement. No amount is payable until a valid Tax Invoice or statement is received.

5.6 If there is any abolition or reduction of any tax, duty, excise or statutory charge associated with the GST, or any change in the GST, the Consideration payable for the Supply must be varied so that the Contractor's net dollar margin for the Supply remains the same.

5.7 Any contract entered into by a Party to this Agreement with a third party which involves a Supply being made, the cost of which will affect the cost of any Supply made under or in connection with this Agreement, must include a clause in equivalent terms to clause 5.6.

6. Payment

Payment of Contract Price

- 6.1 Subject to clauses 6.3 to 6.9 and in consideration for the Contractor providing the Deliverables under this Agreement, SUT shall pay the Contractor the Contract Price in the amounts and in the Stages, if any, set out in Schedule 3 in accordance with this clause 6.
- 6.2 Not Used.

Invoices and Time for Payment

- 6.3 All claims for payment made by the Contractor must be in the form of a Tax Invoice and the tax invoice must include and be substantiated by documents necessary to evidence Acceptance of the Deliverables by SUT. Such documents must include a statement that shows the value of the work carried out by the Contractor, and any further details reasonably requested by SUT. The value of work not incorporated into the Deliverables must not be included in the invoice.
- 6.4 Subject to clause 4.5(a) and clauses 6.3 to 6.9, SUT shall make payment within thirty (30) days from the end of the month after receipt of a Correctly Rendered Invoice or Statement and documents necessary to evidence delivery to SUT.
- 6.5 The Parties agree the making of a payment is not intended to be an acknowledgment that the Deliverables have been supplied in accordance with this Agreement.
- 6.6 If SUT disputes an invoice amount, SUT shall certify the amount it believes is due for payment and shall pay that amount and the liability for the balance of payment shall be determined in accordance with this Agreement.
- 6.7 The Contractor will not be entitled to any credit charge, service fee or any other fee or charge for extending credit or allowing time for the payment by SUT of money becoming due for the supply of the Deliverables.
- 6.8 Where the Deliverables are to be delivered on a staged basis as per the Project Definition Plan, Progress Payments shall be made by SUT upon completion of the relevant Stage in the Project Definition Plan and in accordance with clauses 6.3 to 6.9.
- 6.9 For the purposes of clauses 6.3 to 6.9:

Correctly Rendered Invoice or Statement means an invoice or statement which is:

- (a) rendered in accordance with all of the requirements of the approved purchase order and this Agreement;
- (b) for amounts correctly calculated; and
- (c) for goods or services properly supplied in accordance with this Agreement.

7. Variations

Variations to Agreement

- 7.1 This Agreement may not be varied except in writing signed by both SUT and the Contractor.
- 7.2 SUT's Delegate may direct the Contractor in writing and signed by SUT's Delegate, to carry out a Variation at any time prior to the expiration of the Warranty Period.

- 7.3 Within seven (7) days (or earlier if requested) of a receipt of notice under clause 7.2, the Contractor must advise SUT's Delegate in writing:
- (a) whether the proposed Variation can be effected; and if so
 - (b) the effect which the Contractor anticipates that the proposed Variations will have on the Due Date and the Contract Price, and must supply a variation impact statement.
- 7.4 For the purposes of clause 7.3(b), a variation impact statement must consist of the Contractor's estimates of the direct labour, material and equipment costs associated with the proposed variation including an itemised breakdown of the following:
- (a) quantities of materials;
 - (b) unit cost of materials;
 - (c) total labour hours for each classification of labour and applicable hourly rates;
 - (d) equipment costs including rental costs;
 - (e) programming and timing information; and
 - (f) the total cost to SUT.
- 7.5 The Contractor must receive a written directive from SUT's Delegate to proceed with a Variation (subject to a notice under clause 7.2), in accordance with the Contractor's variation impact statement or as otherwise agreed in writing between the Contractor and SUT's Delegate before commencing work on Deliverables subject to the proposed Variation. The Contractor will not be entitled to payment in respect of a direction for Variation unless the provisions of this clause 7.5 are complied with.
- 7.6 The value of the Variation will be determined by agreement between the Parties. If the Parties are unable to agree, the matter will be dealt with in accordance with clause 17.

8. Product Delivery

Time of Essence

- 8.1 The Contractor acknowledges that time is of the essence in completing its obligations under this Agreement in accordance with the Due Date and the Project Definition Plan.

Risk of Delay

- 8.2 The Contractor's entitlement to extensions of time are set out in clauses 8.3 to 8.6, but apart from that entitlement, the Contractor accepts the risk and liability for the completion and delivery of the Deliverables in accordance with clause 8.1.

Extension of Time

- 8.3 Where there is likely to be a delay in the Contractor discharging an obligation under this Agreement because of a Circumstance Beyond the Control of the Contractor (other than a circumstance arising out of any act or omission on the part of the Contractor), the Contractor will:
- (a) within three (3) days of becoming aware of the possibility of such a delay, notify SUT, in writing of the circumstances which the Contractor considers will give rise to the delay, and the extent or likely extent of the delay and strategies proposed to manage the consequences of the delay; and
 - (b) request a reasonable extension of time.

- 8.4 SUT may consent to a request for extension of time under clause 8.3 provided that:
- (a) the Contractor uses its best endeavours to minimise the delay and recover lost time; and
 - (b) where appropriate, the Contractor provides SUT with a plan indicating in detail the steps the Contractor proposes to take to minimise the impact of the Circumstance Beyond the Control of the Contractor.
- 8.5 Except as provided for in clause 8.6 or 8.7, the Contractor will not be entitled to any increase in the Contract Price or damages, costs or expenses in connection with the delay.
- 8.6 The Contractor will not be entitled to any increase in the Contract Price or damages, costs or expenses in connection with the delay unless the delay has occurred because of SUT's failure to perform its obligations in accordance with this Agreement.

Delay Costs

- 8.7 The Contractor is not entitled to any costs for any delay in the completion of the Deliverables or disruption in the progress of the Deliverables unless:
- (a) an extension of time has been made, or should properly have been allowed under clauses 8.3 to 8.6 as a result of a delay caused by a Variation, or by the breach of the provisions of this Agreement by SUT;
 - (b) the Contractor has within three (3) days after the commencement of such cause of delay given notice in writing to SUT's Delegate that the Contractor's opinion it is entitled to costs in respect of such delay or disruption; and
 - (c) the Contractor further submits within a further three (3) days, a notice in writing to SUT's Delegate containing:
 - (i) a time impact analysis in a form reasonably required by SUT's Delegate; and
 - (ii) sufficiently detailed particulars to enable SUT's Delegate to make an informed decision thereon.

- 8.8 Not Used.

Delivery

- 8.9 The Contractor must deliver the Deliverables in accordance with Schedule 2 and must obtain an acknowledgement of their delivery:
- (a) in the required nature and volume;
 - (b) on the Due Date/s for delivery of the Deliverables and or dates for progressive delivery as indicated in Schedule 2 and Project Definition Plan; and
 - (c) to the Site for Delivery specified in Item 9 of Schedule 1.
- 8.10 Delivery and receipt of the Deliverables shall not be taken to be an acceptance by SUT.

Risk and Title

- 8.11 Title in the Deliverables shall pass to SUT at the time specified in Item 3 of Schedule 1.

8.12 Risk in the Deliverables shall pass to SUT on delivery of the Deliverables to the Site for Delivery. Notwithstanding that SUT has taken delivery, the Contractor will remain liable for any loss or damage to the Deliverables and/or their Components, which occurred prior to delivery, and for any non-compliance of the Deliverables with the Statement of Requirements.

9. Not used

9.1 Not Used.

10. Not used

10.1 Not Used

11. Confidentiality

Obligations of Parties

11.1 Except to the extent necessary to comply with any Statutory Requirements or government policy relating to the public disclosure of Confidential Information, neither Party will make public, disclose or use any Confidential Information of the other Party except in accordance with this Agreement, unless the other Party gives its prior written consent.

11.2 Each Party may disclose Confidential Information to its officers, employees and subcontractors where such disclosure is essential to carrying out their duties or in accordance with this Agreement.

11.3 Each Party must ensure the Confidential Information of the other Party is used solely in connection with or for the purposes of fulfilling its obligations under this Agreement.

11.4 This clause will survive the termination of this Agreement.

12. Intellectual Property Rights, Warranty and Indemnity

12.1 The Contractor must ensure all licence fees and/or consents required under law are paid and/or obtained as a result of any reproduction, adaptation or use of any Intellectual Property necessary for the provision of the Deliverables and any software supplied with the Deliverables.

12.2 The Contractor warrants that the Deliverables and the software supplied with the Deliverables do not infringe the Intellectual Property Rights of any person. The Contractor shall fully indemnify SUT against any suit, action and proceeding and any loss or liability in respect of a claim by a third party that the use of the Deliverables or any of the software by SUT infringes the Intellectual Property Rights of any person.

12.3 If a claim for infringement of Intellectual Property Rights in respect of any Deliverable is made or threatened by a third party, the Contractor must, with the consent of SUT and at the Contractor's sole expense:

- (a) obtain for SUT the right to the continued use of that Deliverable; or
- (b) replace or modify the relevant Deliverable so that the alleged infringement ceases and the replaced or modified the Deliverable provides SUT with equivalent functionality and performance as required in Schedule 2.

13. Software

- 13.1 The Contractor warrants that it has the right and authority to grant to SUT, or has procured from any third party for the benefit of SUT, a licence in respect of all software required to operate the Deliverables.
- 13.2 The software licence referred to in clause 13.1 is a perpetual, royalty free, non-revocable, transferrable, paid-up licence for SUT to use, reproduce and adapt for its own use, that software as part of the Deliverables.
- 13.3 The Contractor agrees to supply all updates and upgrades to the software provided with the Deliverables at no additional charge during the Warranty Period. Any failure or refusal by SUT to implement an update provided by the Contractor under this clause 13.3 does not limit or expand the liabilities or obligations of the Contractor under the other provisions of this Agreement.

14. Specific Obligations of SUT

SUT to Provide Information

- 14.1 SUT must provide the Contractor with its Statement of Requirements.
- 14.2 SUT must, at its own cost, when required under this Agreement or as otherwise reasonably required by the Contractor, as soon as possible:
- (a) make available to the Contractor all relevant instructions, information, data, documents, specifications, plans, drawings, and other materials; and
 - (b) answer queries made by the Contractor relating to SUT's requirements in connection with this Agreement.

SUT's Specific Responsibilities and SUT's Materials

- 14.3 SUT must:
- (a) carry out any activities specified in Item 1 of Schedule 4; and
 - (b) provide the SUT's Materials specified in Item 2 of in Schedule 4.
- 14.4 Provided the Contractor complies with its obligations under clause 15.6 to 15.7, SUT must repair or replace SUT's Materials within a reasonable time after being notified by the Contract that the SUT's Materials do not comply with Item 2 of in Schedule 4.
- 14.5 Unless explicitly specified in Schedule 4 or as otherwise agreed between the Parties in writing, SUT shall not be responsible for carrying out any activities or providing any materials.

SUT's Personnel

- 14.6 Not Used
- 14.7 Not Used.

15. Specific Obligations of the Contractor

Licences and Approvals

- 15.1 The Contractor must obtain at its own cost all licences, approvals and consents necessary to perform this Agreement.

Compliance with Laws and Standards

- 15.2 Not Used.
- 15.3 Not Used.
- 15.4 Not Used.

Notification to SUT

- 15.5 The Contractor must immediately inform SUT's Delegate in writing of any problems or issues which prevent, may prevent, or have an impact on the delivery of the Deliverables under this Agreement which may include matters pertaining to industrial relations, work health and safety, and environmental management.

Contractor's Obligations in Relation to SUT's Materials

- 15.6 The Contractor must;
- (a) not use any of SUT's Materials other than for the purposes of this Agreement without the prior written consent of SUT;
 - (b) not part with possession of any of SUT's Materials unless SUT has provided its prior written consent, nor create or allow the creation of any lien, charge or mortgage over any of SUT's Materials;
 - (c) take all reasonable care of all SUT's Materials including accounting for, preserving, installing or handling of SUT's Materials;
 - (d) pay the costs, if any, set out in Schedule 1 for SUT's Materials;
 - (e) not modify SUT's Materials without the prior written consent of SUT;
 - (f) promptly inform SUT of any loss, destruction or damage to any of SUT's Materials; and
 - (g) comply with any instruction of SUT for preserving, forwarding, or disposal of any damaged SUT's Materials.
- 15.7 If no longer required for the purposes of this Agreement, SUT's Materials must be returned to SUT as soon as practicable unless other arrangements are agreed by the Parties.

Contractor's Obligations in Relation to SUT's Personnel

- 15.8 The Contractor must ensure a safe system of work for any Personnel made available by SUT who perform work under the control and direction of the Contractor.

Minimum Insurance Requirements

- 15.9 The Contractor must hold and maintain under or otherwise hold and maintain, the following insurances for the Term, or for such other period as may be specifically required by this Agreement for the particular policy:

- (a) a broad form liability policy of insurance which includes public liability insurance for at least the amount specified in Item 6(a) of Schedule 1 in respect of each claim; and
- (b) products liability insurance for at least the amount specified in Item 6(b) of Schedule 1 for the total aggregate liability for all claims arising out of the Contractor's products for the period of cover; and
- (c) workers' compensation insurance in accordance with applicable legislation for all the Contractor's employees; and
- (d) such other insurances as are specified in Item 6 of Schedule 1.

15.10 Not Used.

15.11 The Contractor must ensure that each policy is in effect for the Term of this Agreement or such other period as required by SUT.

15.12 The Contractor must, when requested in writing by SUT, arrange for its insurer to provide a certificate of currency for each insurance policy.

15.13 The effecting of insurance shall not limit the liabilities or obligations of the Contractor under other provisions of this Agreement.

General Indemnity

15.14 The Contractor indemnifies SUT and its Personnel (together, those Indemnified) from and against all Loss sustained or incurred by any of those Indemnified arising from or in relation to any negligent or otherwise unlawful act or omission of the Contractor or its Personnel in connection with this Agreement.

15.15 The Contractor's liability in respect of, and indemnity given in, clause 15.14 shall be reduced proportionally to the extent that any negligent or otherwise unlawful act or omission of SUT or its Personnel caused or contributed to the Loss.

Contractor's Warranties

15.16 The Contractor warrants that the Deliverables will:

- (a) be supplied in accordance with the requirements of this Agreement and all relevant Standards, applicable legislation, and industry codes;
- (b) be free from any charge or liability;
- (c) conform to the description, and sample (if any) approved by SUT in Schedule 2 (except that if a sample is inconsistent with the Statement of Requirements, that latter must prevail);
- (d) be of good merchantable quality and fit for purpose; and
- (e) be provided with due care and skill.

15.17 The Contractor warrants that:

- (a) the hardware incorporated in the System is newly manufactured;
- (b) the hardware and software incorporated in the System are free from defects in material and workmanship;
- (c) the System will, throughout the Warranty Period, continue to perform in accordance with the System's Specifications.

15.18 The Contractor warrants that:

- (a) the Deliverables do not infringe the Intellectual Property Rights of a third party;
- (b) if specified in the Statement of Requirements that they are required, the Contractor has established quality assurance arrangements for the provision of the Deliverables and will comply with, and maintain, those quality assurance arrangements up to and including the Due Date;
- (c) the Contractor will not enter into any arrangement that impedes or is likely to hinder its provision of the Deliverables in a manner, and to a standard, satisfactory to SUT, without obtaining SUT's prior written consent; and
- (d) the Training will enable technically competent operators to acquire the skills necessary to efficiently operate and maintain the Deliverables.

Warranty Period

- 15.19 The Contractor shall rectify any error or defect in a warranted Deliverable that has been notified to it by SUT during the Warranty Period in Schedule 2 at the Contractor's cost and expense.
- 15.20 Upon receipt of a notification pursuant to clause 15.19, the Contractor shall promptly inspect the Deliverable and replace or repair any part thereof that is defective during the Warranty Period in accordance with the agreed Warranty response times or if no such times are agreed, as soon as practicable, at the Contractor's expense.
- 15.21 Where the Contractor replaces or repairs any part of a Deliverable pursuant to its warranty obligations, the Contractor warrants that the replacement or repair will be warranted in the same manner as set out in clauses 15.16 to 15.18.
- 15.22 The Contractor shall meet all costs incidental to the discharge of its warranty obligations including the provision of spare parts or back-up equipment and any packaging, freight, disassembly or reassembly costs.
- 15.23 If the Contractor fails to rectify an error or defect in a warranted Deliverable within the agreed Warranty response times or if no such times are agreed as soon as practicable after notification by SUT, SUT may arrange for performance of the necessary remedial work by a third party at the Contractor's expense.

Third Party Warranties

- 15.24 Where the Contractor supplies Deliverables that have been procured from third parties, the Contractor agrees to assign to SUT, to the extent permitted by law, the benefits of any warranties given by the third parties.
- 15.25 The Parties agree that the assignment of any third party warranties is in addition to the warranties offered directly by the Contractor under this Agreement and does not relieve the Contractor from the obligation to comply with the Contractor's own warranties.

Mistakes in Information

- 15.26 Not Used.

Notification of Change in Control or Transfer of Ownership

- 15.27 During the Term, the Contractor must immediately notify SUT under this Agreement in writing of any Change in Control or other action to restructure or amalgamate itself.

Notification of Contractor's Insolvency

- 15.28 The Contractor must immediately notify SUT in writing of Contractor's Insolvency and disclose the details of any action taken in relation to the Contractor's Insolvency in so far as it affects this Agreement.

16. Personnel

SUT's Delegate and SUT's Personnel

- 16.1 SUT has nominated SUT's Delegate in Item 7 of Schedule 1 to oversee the performance of this Agreement. The Contractor must comply with all reasonable directions given by SUT's Delegate in connection with the delivery of the Deliverables under this Agreement.
- 16.2 SUT may make available Personnel to work with the Contractor. The Contractor may decide whether to accept the SUT Personnel at the Contractor's sole discretion. SUT Personnel accepted to work with the Contractor will be required to comply with all Commonwealth laws and policies relevant to the work, including (but not limited to) with respect to security and safety, access to premises, and confidential information.
- 16.3 SUT must use reasonable efforts to ensure that Personnel made available to work with the Contractor have the requisite competencies, skills, and experience to perform the tasks for which they are provided.

Relationship Manager

- 16.4 For the purpose of ensuring an efficient relationship with SUT, the Contractor has appointed the Relationship Manager indicated in Item 8 of Schedule 1. The Relationship Manager must:
- (a) act as the representative of the Contractor and have the legal power to bind the Contractor in all matters pertaining to this Agreement;
 - (b) serve as the principal point of contact of the Contractor with respect to the overall administration of the Agreement;
 - (c) have the authority to implement such actions (including issuing of directions through the Contractor's organisation), as may be required for the Contractor to comply with this Agreement;
 - (d) meet with SUT's Delegate as required by SUT to provide information regarding the Contractor's performance under this Agreement; and
 - (e) answer SUT's queries and work with SUT to address issues relating to matters considered urgent by SUT arising out of this Agreement.
- 16.5 The Relationship Manager must be available during business hours and at all other times on reasonable notice by SUT's Delegate to discuss any queries, concerns or issues arising in connection with this Agreement.
- 16.6 The Relationship Manager must be supported by the Key Personnel in Item 8 of Schedule 1 in respect of SUT.

The Contractor's Personnel

- 16.7 The Contractor warrants that all personnel engaged in the provision of the Deliverables are appropriately qualified, competent and experienced including the Contractor's Relationship Manager and the Key Personnel nominated in Item 8 of Schedule 1.

- 16.8 The Contractor must:
- (a) employ only such persons as are careful, skilled and experienced in the provision of the Deliverables or similar Deliverables; and
 - (b) (where applicable) hold, or ensure appropriate personnel hold, all necessary licences, permits and authorities.
- 16.9 SUT may object to and direct the Contractor to remove any of its Personnel (including the Relationship Manager and Key Personnel) who, in its reasonable opinion, are incompetent, unsuitable, or who have been guilty of neglect, or other improper behaviour. Such named personnel so removed may not be re-employed by the Contractor under this Agreement.
- 16.10 Any replacement Key Personnel provided by the Contractor must be approved by SUT.

Restriction on Engaging Personnel of the Other Party

- 16.11 During the Term of this Agreement, SUT and the Contractor agree that neither Party may, without the prior written agreement of the other Party, engage, employ, or induce or cause a third party to induce the other Party's Personnel engaged in the performance of this Agreement to enter into a contract for service or a contract of employment with it.
- 16.12 A general solicitation for employment such as a newspaper advertisement shall not constitute a breach of clause 16.11.

Work Health and Safety Consultation Arrangements

- 16.13 The Contractor will establish consultation arrangements with SUT and with Contractor Personnel who are, or are likely to be, directly affected by a matter relating to work health or safety.
- 16.14 The Contractor must ensure that if more than one person has a duty in relation to a work health or safety matter (whether SUT or Contractor Personnel), each person with the duty must, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with all other persons who have a duty in relation to the same matter.
- 16.15 The consultation processes referred to in clause 16.13 and 16.14 will include:
- (a) a health and safety representative or a health and safety committee or other arrangement; and
 - (b) the sharing of relevant health and safety information between Personnel of SUT, the Contractor and any other 'persons conducting a business undertaking' (PCBU) as that term is defined under the *Work Health and Safety Act 2011* (NSW).
- 16.16 The Contractor must provide SUT with documented evidence of work health and safety consultation arrangements.

17. Conduct and Dispute Management

Co-operation

- 17.1 The Parties must do all they reasonably can to co-operate in matters relating to this Agreement, but their rights and responsibilities under this Agreement remain unchanged unless the Parties agree in writing to vary them.

Duty not to Hinder Performance

- 17.2 Each Party must do all it reasonably can to avoid hindering the performance of the other under this Agreement.

General

- 17.3 In order to resolve any conflicts or issues between the Parties promptly and to the satisfaction of the Parties, the issue resolution process stated below is to be followed:
- (a) Amicable Resolution (clauses 17.4 to 17.12); then
 - (b) Expert Determination (clauses 17.13 to 17.18).

Amicable Resolution

- 17.4 Either Party may give notice to the other Party of an issue, including a dispute or difference, (**Issue Notice**) about the meaning or effect of this Agreement, or about any matter arising under or out of this Agreement. The Issue Notice must be given within a reasonable time of the Party becoming aware of the issue.
- 17.5 The Party submitting the Issue Notice must submit it to the other Party's authorised representative which in the case of SUT is SUT's Delegate, and in the case of the Contractor is the Relationship Manager.
- 17.6 The Parties must follow the issue resolution process in this clause before either commences proceedings or takes similar action except to seek an urgent injunction or declaration.
- 17.7 If a Party gives an Issue Notice under this clause, each Party will nominate in writing a senior executive who will promptly confer to resolve the issue.
- 17.8 If the senior executives are unable to resolve the issue, a party may seek to refer the issue to an expert for determination. A Party is not entitled to refer an issue to expert determination until twenty-one (21) days after the giving of the Issue Notice to the person or persons specified.
- 17.9 A Party may only refer an issue to expert determination by giving notice in writing specifying the issue to be decided (**Referral Notice**).
- 17.10 If the Party giving the Referral Notice is the Contractor it must give the Referral Notice to SUT.
- 17.11 If the Party giving the Referral Notice is SUT, it must give the Referral Notice to the Contractor.
- 17.12 Not Used.

Expert Determination

- 17.13 If a Referral Notice is given in accordance with clauses 17.9 to 17.12, the expert is to be agreed between SUT and the Contractor. If they cannot agree within twenty-eight (28) days of the Referral Notice, the expert is to be nominated by the Chief Executive Officer, Australian Disputes Centre, Sydney.
- 17.14 The expert nominated must be a lawyer unless otherwise agreed. The expert must not be:

- (a) an employee of the parties;
- (b) a person who has been connected with the Agreement; or
- (c) a person who the Parties have been unable to agree on.

17.15 When the person to be the expert has been agreed or nominated, SUT, on behalf of both Parties, must engage the expert by letter of engagement (and provide a copy to the Contractor) setting out:

- (a) the issue referred to the expert for determination;
- (b) the expert's fees;
- (c) the procedure for determination set out in Schedule 6; and
- (d) any other matter which is relevant to the engagement.

17.16 The Parties must share equally the fees and out-of-pocket expenses of the expert for the determination, and bear their own expenses.

17.17 If the expert determines that one (1) Party must pay the other an amount exceeding the amount shown in Item 11 of Schedule 1 (calculating the amount without including interest on it, and after allowing for set offs), then either Party may commence litigation, but only within fifty-six (56) days after receiving the determination.

17.18 Unless a party has a right to commence litigation under clause 17.17:

- (a) the Parties must treat each determination of the expert as final and binding and give effect to it; and
- (b) if the expert determines that one Party owes the other money, that Party must pay the money within twenty-eight (28) days.

18. Termination by SUT

Termination for Cause

18.1 Without prejudice to its rights at common law, SUT may immediately terminate this Agreement, in whole or in part, by written notice to the Contractor:

- (a) where the Contractor makes any statement, fact, information, representation or provides material in its proposal which is false, untrue, or incorrect in a way which materially affects the Agreement;
- (b) where proceedings or investigations are commenced or threatened by the Independent Commission Against Corruption or similar public body against the Contractor including for corrupt conduct or for collusive pricing;
- (c) where the Contractor commits a Substantial Breach of the Agreement that is not capable of remedy;
- (d) where the Contractor commits a Substantial Breach of the Agreement in a manner that is capable of remedy and does not remedy the breach within seven (7) days of receiving a notice from SUT requiring it to do so, or such further time, having regard to the nature of the breach and a reasonable time to remedy it, as SUT may reasonably allow;
- (e) where the Contractor assigns its rights and/or obligations, or novates this Agreement or subcontracts Agreement except in accordance with this Agreement;
- (f) in the case of the Contractor's Insolvency; or
- (g) if in SUT's view a conflict of interest exists for the Contractor which prevents the proper performance of this Agreement.

Effect of Termination for Cause

18.2 If SUT terminates this Agreement for cause, SUT may:

- (a) at its option, for an appropriate part payment of the Contract Price, (as agreed by the Parties, or failing agreement as determined by an agreed expert), require the Contractor to deliver to SUT any Deliverables or Components in the possession or control of the Contractor as at the date of termination;
- (b) deduct any loss or damages arising from or in connection with the termination, from any money due, or which may become due to the Contractor and/or from the Financial Security (if any); and
- (c) recover from the Contractor in an appropriate court the balance of any monies remaining unpaid as a debt due and owing from the Contractor to SUT.

Termination for SUT's Convenience

18.3 SUT may terminate this Agreement in whole or in part for its convenience by giving thirty (30) days written notice with effect from the date stated in the notice and without the need to provide reasons.

Effect of Termination for Convenience

18.4 SUT shall reimburse the Contractor for reasonable costs incurred by it before the effective date of termination, and its unavoidable costs directly incurred as a result of termination under clause 18.3 provided that any claim by the Contractor:

- (a) must be supported by written evidence of the costs claimed;
- (b) will be in total satisfaction of the liability of SUT to the Contractor in respect of termination of this Agreement; and
- (c) cannot exceed the Contract Price.

19. General

No Assignment or Novation

19.1 The Contractor must not assign or novate this Agreement without first obtaining the prior written consent of SUT, which consent may be withheld at their absolute discretion.

19.2 The Contractor acknowledges that SUT may make financial checks on the entity proposing to take over this Agreement before determining whether or not to give consent to the assignment or novation.

Conflicts of Interest

19.3 The Contractor promises that, to the best of its knowledge, no conflict of interest of the Contractor, its Personnel, employees, agents or sub-contractors exists or is likely to arise in the performance of its obligations under the Agreement.

19.4 The Contractor must:

- (a) notify in writing, and consult with, SUT immediately upon becoming aware of the existence, or possibility, of a conflict of interest; and
- (b) comply with any direction given by SUT in relation to those circumstances designed to manage that conflict of interest.

- 19.5 For the purposes of this clause, a 'conflict of interest' includes engaging in any activity, or obtaining any interest, likely to conflict with the performance by the Contractor of, or to restrict the Contractor in performing, its obligations under the Agreement.

Records and Access to Records

- 19.6 The Contractor must keep, and ensure that any sub-contractor of the Contractor keeps, proper accounts and records in accordance with the accounting principles generally applied in commercial practice.
- 19.7 During the Term, the Contractor must, within a reasonable time of a request from SUT, give SUT access to, and copies of, any material relevant to the performance of the Contractor's obligations under this Agreement, and any financial information, that SUT reasonably requires including where any such material is in the control or possession of any of the Contractor's Personnel.

Waiver

- 19.8 A waiver in respect of a breach of a term of this Agreement by the other Party shall not be taken to be a waiver in respect of any other breach. The failure of either Party to enforce a term of this Agreement will not be interpreted as a waiver of that term.

Severability

- 19.9 If any part of this Agreement is void or voidable, then that part is severed from this Agreement without affecting the continued operation of the remainder of the Agreement.

Notices

- 19.10 Notices must be sent to the other Party at its address shown in Item 12 of Schedule 1, or the address last notified to the other Party in writing, or in the case of the Contractor, at the Contractor's registered office.
- 19.11 All notices must be in writing and signed by the relevant Party and must be given either by hand delivery, post or facsimile transmission.
- 19.12 If delivery or receipt of a notice is not made on a Business Day, then it will be taken to be made on the next Business Day.

Counterparts

- 19.13 If there are a number of counterparts of this Agreement, the counterparts taken together constitute one and the same instrument.

Applicable Law

- 19.14 This Agreement is governed by the laws of the State of New South Wales and the Parties submit to the non-exclusive jurisdiction of the courts of the State of New South Wales.

No agency/no employment/no partnership

- 19.15 The Contractor agrees that the Contractor will not be taken to be, nor will it represent that it is, the employee, partner, officer and/or agent of SUT.

Information Sharing

- 19.16 The Contractor agrees that SUT may disclose performance and product information relating to the Services to any Australian university looking to engage the Contractor for the same or similar services, subject to that Australian university complying with clause 11 (Confidentiality). The performance and product information disclosed by SUT may be in the form of a user guide, Schedules to this Agreement or in any medium of communication SUT deems appropriate.

Government Information (Public Access) and Freedom of Information

- 19.17 The parties acknowledge that information relating to this Agreement including information provided by the Contractor to SUT or by SUT to the Contractor may be disclosed in accordance with the *Government Information (Public Access) Act 2009* (NSW) (**GIPA Act**) or the *Freedom of Information Act 1982* (Cth) (**FOI Act**).

Schedule 1 Agreement Details

Item 1	Contractor's Name: Commonwealth of Australia as represented by the Department of Industry, Innovation and Science acting through the Australian Astronomical Observatory ABN 74 599 608 295
Item 2	(a) Commencement Date (clause 2(a)): The date this Agreement is signed by the last Party to sign it. (b) Due Date (clauses 1 and 3.3): The date the Deliverables are due to be delivered to the Site for Delivery as set out in the Project Definition Plan.
Item 3	Title (clause 8.11) Upon Acceptance
Item 4	List of Approved Sub-Contractors (clause 3.5) N/A
Item 5	Not Used (clause 15.2)
Item 6	Insurances (clause 15.9) (a) Public and Products Liability Insurance: AU\$20 million for any one loss or occurrence (b) Workers compensation (c) Professional Indemnity Insurance: AU\$10 million for any one loss or occurrence
Item 7	SUT's Delegate (clause 16.1) Name: Karl Glazebrook Address: CAS, H29 Position: Director Telephone: 03 9214 4712 E-mail: kglazebrook@swin.edu.au
Item 8	Relationship Manager (clause 16.4) Name: Neville Legg Address: AAO – 105 Delhi Road, North Ryde, NSW 2113 Position: General Manager Telephone: 02 9372 4813 E-mail: Neville.Legg@aao.gov.au Key Personnel (clause 16.6) Name: Jon Lawrence Address: AAO – 105 Delhi Road, North Ryde, NSW 2113 Position: AST3-NIR AAO Project Leader Telephone: 02 9372 4853 E-mail: Jon.Lawrence@aao.gov.au
Item 9	Site for Delivery (clause 8.9(c)) The Site for Delivery will be a suitable loading port within Australia to be agreed between the Parties.

Item 10	Not Used
Item 11	Expert determination amount (clause 17.17): AUD: \$50,000.00
Item 12	<p>Notices to: (clause 19.10)</p> <p>The Contractor's contact name and address: Name: Neville Legg Address: AAO – 105 Delhi Road, North Ryde, NSW 2113 Position: General Manager Telephone: 02 9372 4813 E-mail: Neville.Legg@aao.gov.au</p> <p>Copy to: Name: Jon Lawrence Address: AAO – 105 Delhi Road, North Ryde, NSW 2113 Position: AST3-NIR AAO Project Leader Telephone: 02 9372 4853 E-mail: Jon.Lawrence@aao.gov.au</p> <p>SUT's contact name and address: Name: Jeremy Mould Address: CAS – H29 Telephone: 02 9214 4921 E-mail: jmould@swin.edu.au</p>
Item 13	Warranty Period (Clauses 2(b), 7.2, 13.3, 15.17, 15.19- 15.23) 12-months from the date of Acceptance

Schedule 2 Statement of Requirements

Background

SUT and the Contractor have together successfully applied to the Australian Research Council (ARC) for Linkage Infrastructure, Equipment and Facilities (LIEF) grant to:

- conduct a deep high-cadence wide-field K_{dark} infrared sky survey (KISS) from Antarctica;
- enhance the Australia/China/US collaboration in Antarctic astronomy; and
- gain knowledge on the operation of and procurement procedures for infrared detector arrays to be used in Antarctica.

A copy of the funded LIEF proposal LE150100024 is attached as Attachment A to this Agreement and a copy of the Multi-Institute Agreement (MIA) associated with this proposal at Attachment B.

Contractor to supply Deliverables and Services

The Contractor will supply the Deliverables, Commissioning Services and Delivery Services in accordance with the Project Definition Plan. A copy of the Project Definition Plan - AST_PLN_001 Project Definition Plan (Revision 1) is attached as Attachment C to this Agreement. A summary of the Deliverables, Commissioning Services and Delivery Services is set out below:

The Contractor will supply the following Deliverables:

- Design and build a wide-field K-band imager for the AST3-NIR telescope (the AST3-NIR telescope is being designed and built by NAOIT) in accordance with the **Project Definition Plan**; and
- Integrate and interface the imager with the AST3-NIR telescope (location for integration to be determined).

The Contractor will supply the following Commissioning Services:

- Support commissioning activities (in-person and/or remotely) for the AST3-NIR telescope + instrument in Antarctica in accordance with the detailed Commissioning Plan to be developed by the AAO and approved by SUT.

The Contractor will provide the following Delivery Services:

- Initial delivery of the Deliverables to meet the telescope for assembly and testing at a place within Australia to be agreed between the Parties.
- After acceptance testing is completed, delivery to the final Site for Delivery, where Acceptance by SUT will occur. The Site for Delivery will be a suitable port designated for Antarctica (possibly Perth or Hobart), or other location within Australia to be agreed between the Parties.
- Deployment & logistics to and within Antarctica is not included as part of this Agreement, and the Site for Delivery will not be a location within Antarctica or otherwise outside Australia.
- A detailed Assembly, Integration and Acceptance Testing (AIT) plan will be developed by AAO and agreed by SUT. The AIT plan will set out the full details in relation to acceptance testing of the Deliverables, and will include the final Site for Delivery.

Schedule 3 Pricing

Item 1 Contract Price

No	Description	Details
1	Contract Price	AUD 1,350,000
2	Specific Contract Price exclusions	N/A

Item 2 Payment Milestones

No.	Activities to be completed to qualify for payment	% of Contract Price and corresponding currency amount	Letter of credit reference number(if applicable)
1	<ul style="list-style-type: none"> upon completion of the Execution of this Agreement and receipt of invoice by SUT. 	AUD 500,000	Not applicable
2	<ul style="list-style-type: none"> upon completion of Preliminary Design Review as specified in the Project Definition Plan; and receipt of invoice by SUT. 	AUD 500,000	Not applicable
3	<ul style="list-style-type: none"> upon completion of the Acceptance Tests as specified in the Project Definition Plan; and receipt of invoice by SUT. 	AUD 350,000	Not applicable

Schedule 4 SUT's Specific Responsibilities and Materials

Item 1 SUT's Specific Responsibilities

No.	Responsibility	Details
1	As defined in the Project Definition Plan	As defined in the Project Definition Plan
2		
3		

Item 2 SUT's Materials

No.	Material	Details
1	As defined in the Project Definition Plan	As defined in the Project Definition Plan
2		
3		

Schedule 5 Not Used

Schedule 5 is not used.

Schedule 6 Expert Determination Procedure

1 Questions to be determined by the Expert

- 1.1 The expert must determine for each issue the following questions (to the extent that they are applicable to the issue):
- (a) Is there an event, act or omission which gives the claimant:
 - (i) a right to compensation under this Agreement;
 - (ii) for damages for breach of this Agreement; or
 - (iii) otherwise in law?
 - (b) If so:
 - (i) what is the event, act or omission?
 - (ii) on what date did the event, act or omission occur?
 - (iii) what is the legal right which gives rise to the liability to compensation?
 - (iv) is that right extinguished, barred or reduced by any provision of the Agreement, estoppel, waiver, accord and satisfaction, set-off, cross-claim, or other legal right?
 - (c) In the light of the answers to the above clauses of this expert determination Procedure:
 - (i) What compensation, if any, is due from one party to the other and when did it fall due?
 - (ii) What interest, if any, is due when the expert determines that compensation?
- 1.2 The expert must determine for each issue any other questions required by the parties, having regard to the nature of the issue.

2 Submissions

- 2.1 The procedure for submissions to the expert is as follows:
- 2.2 The Party to the Agreement which has referred the issue to expert determination (**‘Referring Party’**) must make a submission in respect of the issue, within fifteen (15) Business Days after the date of the letter of engagement referred to in the issue resolution clause of the Agreement. This submission must address the questions to be determined by the expert under clause 1.1 of this Schedule 6.
- 2.3 The other party (**‘Responding Party’**) must respond within 15 Business Days after receiving a copy of that submission. That response may include cross-claims.
- 2.4 The Referring Party may reply to the response, but must do so within ten (10) Business Days after receiving the response, and must not raise new matters.
- 2.5 The Responding Party may comment on the reply, but must do so within ten (10) Business Days after receiving the reply, and must not raise new matters.
- 2.6 The expert must ignore any submission, response, reply, or comment not made within the time given in this clause 2 of this expert determination procedure, unless SUT and the Contractor agree otherwise.
- 2.7 The expert may request further information from either Party. The request must be in writing, with a time limit for the response. The expert must send a copy of the response to the other Party, and give the other Party a reasonable opportunity to comment on the response.

2.8 All submissions, responses, replies, requests and comments must be in writing. If a Party to the Agreement gives information to the expert, it must at the same time give a copy to the other Party.

3. Conference

3.1 The expert may request a conference with both parties to the Agreement. The request must be in writing, setting out the matters to be discussed.

3.2 The Parties agree that such a conference is considered not to be a hearing that would give anything under this expert determination procedure the character of an arbitration.

4. Role of Expert

4.1 The expert:

- (a) acts as an expert and not as an arbitrator;
- (b) must make its determination on the basis of the submissions of the parties, including documents and witness statements, and the Expert's own expertise; and
- (c) must issue a certificate in a form the expert considers appropriate, stating the expert's determination and giving reasons, within twelve (12) weeks after the date of the letter of engagement referred to above.

4.2 If a certificate issued by the expert contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the expert must correct the certificate.

Signing Page

Executed as an Agreement on

SIGNED by

for and on behalf of
Swinburne University of Technology
in the presence of:

Signature of Witness

Signature

Name of Witness

Date

EXECUTED for and on behalf of
**the Commonwealth as represented by the
Department of Industry, Innovation and
Science, acting through the Australian
Astronomical Observatory ABN 74 599 608
295**

by authority of:

Witness

Signature of authorised delegate

Name of Witness

Name of delegate

Date