

**AGREEMENT BETWEEN**

**THE REPUBLIC OF AUSTRIA**

**AND**

**THE EUROPEAN ORGANISATION FOR ASTRONOMICAL RESEARCH IN**

**THE SOUTHERN HEMISPHERE**

**CONCERNING THE ACCESSION TO THE CONVENTION AND THE**

**FINANCIAL PROTOCOL ANNEXED TO THE CONVENTION**

**ESTABLISHING A EUROPEAN ORGANISATION FOR ASTRONOMICAL**

**RESEARCH IN THE SOUTHERN HEMISPHERE**

**AND, TO THE PROTOCOL ON PRIVILEGES AND IMMUNITIES OF THE**

**EUROPEAN ORGANISATION FOR ASTRONOMICAL RESEARCH IN THE**

**SOUTHERN HEMISPHERE AND THE RELATED TERMS AND**

**CONDITIONS**

The Republic of Austria (hereinafter referred to as “Austria”),

and

The European Organisation for Astronomical Research in the Southern Hemisphere, (hereinafter referred to as “ESO”), established by the Convention and the annexed Financial Protocol signed in Paris on 5 October 1962 (hereinafter referred to as the “Convention”),

CONSIDERING that, according to Article XIII.4 of the Convention, a State admitted to ESO by unanimous vote of the Member States shall become a Member of ESO by depositing an instrument of accession with the Ministry of Foreign Affairs of the French Republic,

CONSIDERING that, according to Article 30 of the Protocol on the Privileges and Immunities of ESO signed in Paris on 12 July 1974 (hereinafter referred to as the „Protocol“), the Protocol is open for accession by any State party to the Convention by depositing an instrument of accession with the Government of the French Republic,

CONSIDERING that Austria has applied to become a Member of ESO and that the Council of ESO has approved unanimously the admission of Austria at its 112<sup>th</sup> meeting held in Prague on 3-4 June, 2008,

CONSIDERING the resolution of ESO Council determining the special contribution of Austria in accordance with Article VII.3 of the Convention as set out in Attachment 2 to ESO/Cou-1200,

CONVINCED that this accession will contribute to the achievement of the objectives set out in the Convention,

HAVING REGARD to Articles VII, XIII and XV of the Convention, and Article 30, 31 of the Protocol,

HAVE AGREED AS FOLLOWS:

#### ARTICLE 1

The purpose of this Agreement is to determine the terms and conditions under which Austria shall accede to the Convention and to the Protocol.

#### ARTICLE 2

1. Austria shall become a Member of ESO and a party to the Convention and to the Protocol.
2. Austria agrees, subject to ratification, to the conditions governing its accession as stated in the present Agreement.

#### ARTICLE 3

As from the date of accession as defined in Article 9.1 of this Agreement, the provisions of the Convention and the Protocol, together with all other Agreements signed by ESO and all measures taken by the ESO Council, shall be binding and applicable for the Austria. As from the same day, Austria shall be placed in the same situation as the other Member States with regard to decisions, rulings, resolutions or any other acts made by the Council or, in delegation therefrom, by any subordinate body, and with regard to any Agreements concluded by the Organisation. Austria shall consequently abide by the terms of these instruments and measures and by the principles and policies stemming therefrom and shall whenever necessary take appropriate measures to ensure their full implementation.

## ARTICLE 4

4.1. In accordance with the resolution of ESO Council determining the special contribution of Austria as set out in Attachment 2 to ESO/Cou-1200, adopted pursuant to Article VII. 3 of the Convention, Austria shall pay to ESO a special contribution of 24.1 million Euros (in 2008 prices) as defined in 4.2 and 4.3 below:

### 4.2. Cash contribution

At least 75% of the above amount shall be paid in cash. Thus, Austria shall pay at least 18.075 million Euros (in 2008 prices) to ESO over 15 years in yearly instalments, payable no later than on 1 July of each year, not less and not later than as set out below:

Year	2009	2010	2011	2012	2013	2014	2015	2016
Euros	401 666	401 666	803 333	1 205 000	1 606 667	1 606 667	1 606 667	1 606 667

Year	2017	2018	2019	2020	2021	2022	2023
Euros	1 606 667	1 606 667	1 606 667	1 606 667	803 333	803 333	803 333

The above amounts are subject to yearly indexation, using the ESO cost-variation index (updated annually based on weighted OECD figures for the ESO Member States and approved by the ESO Council).

### 4.3. In-kind contribution

4.3.1. Austria shall deliver services and goods to ESO in the areas of:

- Mathematical algorithms and software for ELT adaptive optics;
- Software modules for reduction of ESO data;
- Clean rooms for the new ESO Headquarters extension.

4.3.2. The description of the in-kind projects is given in Annex II to this Agreement.

4.3.3. The value of the in-kind contribution shall not exceed 6.025 million Euros (in 2008 prices), which is equal to 25% of the special contribution. The final value of the in-kind contribution is subject to completion of the work by Austria and acceptance by ESO. Any undelivered parts of the in-kind projects shall be compensated by Austria in cash, in accordance with the quality warranty and the late delivery penalty rules defined in Annex II to this Agreement.

#### ARTICLE 5

The yearly contribution of Austria shall be calculated according to Article VII. 1 of the Convention.

The contribution of Austria for 2008 shall be 1.5 million Euros in 2008 prices. This comprises one half of the annual contribution calculated for the whole of 2008, which amount is proportional to the fraction of the year 2008 for which Austria is considered a Member of ESO, in accordance with Annex I to this Agreement.

#### ARTICLE 6

Any dispute arising out of the application or interpretation of this Agreement, which cannot be settled amicably between ESO and Austria shall, at the request of either party, be submitted to an arbitration tribunal.

The Arbitration Tribunal shall consist of three members, one arbitrator designated by ESO, one designated by Austria and a third arbitrator, who shall be elected by the first two arbitrators and who shall be the Chair. If, within a period of six months from the date of the request for arbitration, either party has not named its choice, the arbitrator shall, at the request of either party, be appointed by the President of the International Court of Justice. The same procedure shall apply if, within six months of the designation or appointment of the first two arbitrators, the third has not been elected.

The Arbitration Tribunal shall establish its own procedure; its decision shall be final and binding.

#### ARTICLE 7

Article X of the Convention shall apply to the termination of this Agreement.

#### ARTICLE 8

The Annexes constitute an integral part of this Agreement. Any dispute arising out of the application or interpretation of Annex II to this Agreement, which cannot be settled amicably between ESO and Austria shall be resolved by consultations between the Minister of Science and Research of the Republic of Austria and the Director General of ESO and shall not be referred to an arbitration tribunal for settlement.

#### ARTICLE 9

9.1. In accordance with Article XIV.2 of the Convention, the accession to the Convention shall enter into force on the date the Austrian instrument of accession is deposited with the Ministry of Foreign Affairs of the French Republic. According to Article 31 of the Protocol, Austria's accession to the Protocol shall enter into force on the date of the deposition of the instrument of accession with the Government of the French Republic. Austria shall take all necessary steps in order that these occur not later than 120 days after the signature of this Agreement. Austria shall notify ESO in writing when these legal procedures have been completed.

9.2. Should the instruments of ratification not be deposited until that day, the terms and conditions of this Agreement may be renegotiated at the request of either party.

9.3. The present Agreement, after signature by ESO and Austria and its approval in accordance with the legal order of the Republic of Austria, shall enter into force on the date of the notification by Austria to ESO of this approval. Done in duplicate in the English language in Vienna, in the Republic of Austria, on the 30<sup>th</sup> of June, 2008.

For the Republic of Austria

For the European Organisation for Astronomical  
Research in the Southern Hemisphere (ESO)

**Dr. Johannes Hahn m.p.**

**Prof. Dr. Tim de Zeeuw m.p.**

Minister of Science and Research  
of the Republic of Austria

Director General of ESO

## **Annex I**

### **Terms of Reference for the accession period**

#### **1. Status of Austria**

The accession period is deemed to commence on the day of the signature of the present Agreement, but not later than 1 July 2008. From said date, Austria shall be considered a Member of ESO, under the following interim regulations, which expire upon the completion of the legal procedure described in Article 9.1 to the Agreement.

#### **2. Financial provisions**

The contribution of Austria for 2008 shall be paid not later than 90 days after the signature of the current Agreement.

In the event that the ratification procedure of the Agreement in Austria fails, ESO shall return the abovementioned contribution to Austria not later than 90 days after the official notification by Austria of the failed ratification.

#### **3. Observer status of Austria in ESO Council and Committees**

Austria shall be entitled to attend the meetings of the ESO Council and its subsidiary bodies as an Observer upon signature of the current Agreement. Article V.1 of the Convention is applicable to the representation. Austria, as an Observer, shall have no voting rights, but shall receive draft agendas and relevant documents available to Member States to enable it to participate in the meetings. Upon accession, Austria shall become a Member of these bodies, according to Article 3 of this Agreement.

#### **4. Industrial policy**

Austria is entitled to participate in ESO Invitations to Tender after signature of this Agreement, applying the rules defined by Articles 2 to 5 of the ESO General



Conditions Governing Invitations to Tender and Tenders. The contracts and agreements as a result of the tendering procedure will only be granted to Austria upon its accession to ESO in accordance with Article 9.1 to this Agreement, except where otherwise decided by ESO.

## **Annex II**

### **In-kind contribution of Austria**

1. In accordance with Article 4.3 of the Agreement Austria shall deliver services and goods as an in-kind contribution to ESO in the following areas:
  - Mathematical algorithms and software for ELT adaptive optics;
  - Software modules for reduction of ESO data;
  - Clean rooms for the new ESO Headquarters extension.
2. On behalf of Austria, the Ministry of Science and Research of the Republic of Austria is responsible for the implementation for all three areas of in-kind contributions and serves as a contact point for the present Agreement.
3. On behalf of ESO, the following Divisions are appointed to be responsible for the implementation and serve as a contact point for this Annex to the present Agreement:
  - Telescope Division: Mathematical algorithms and software for ELT adaptive optics;
  - Software Development Division: Software modules for reduction of ESO data;
  - Instrumentation Division: Clean rooms for the new ESO Headquarters extension.
4. For the calculation of the value of the in-kind contribution, as defined in Article 4.3 of the present Agreement, the value of one full time equivalent (FTE), covering personnel costs, travel allowance and any kind of overheads, agreed upon is 100 000 Euros.

5. The aim of the Mathematical algorithms and software for ELT adaptive optics in-kind project is the development of fast algorithms and software for the correction of degraded images due to atmospheric turbulence. The correction process is based on the reconstruction of the refractive index of the atmosphere from noisy measurements of the incoming wavefront. The project consists of four subprojects that address different aspects of adaptive optics. The project requires altogether 22.25 FTEs. Therefore, the total value of the contribution amounts to 2.225 million Euros.
6. The aim of the Software modules for reduction of ESO data in-kind contribution project is the development of specific software modules for the reduction of ESO astronomical data. The development shall be done using the Common Pipeline Library with the goal of delivering instrument specific modules that implement some aspects of the calibration of astronomical images and spectra. These modules shall be made available to the user community. The project requires altogether 16 FTEs. Therefore, the total value of the contribution amounts to 1.6 million Euros.
7. The aim of the Clean rooms for the new ESO Headquarters extension in-kind project is to provide class 100 000 cleanliness in the Assembly Hall and class 1000 in an adjoining laboratory in ESO's new Headquarters extension in Garching, Germany. The value of the in-kind project is 2.2 million Euros in June 2008 prices and deemed to be firm and not subject to revision except in the case of a "force majeure". In the case of delays in the erection of the building by ESO a corresponding inflation correction will be applied. Should ESO decide not to build the Headquarters extension, Austria and ESO will negotiate possible alternative in-kind contributions with the same value.
8. The Minister of Science and Research of the Republic of Austria and the Director General of ESO shall agree on the detailed list of deliverables, the specifications, the terms, and conditions and schedule for delivery, and any other relevant rules managing the implementation of the

Mathematical algorithms and software for ELT adaptive optics and the Software modules for reduction of ESO data in-kind contribution projects by means of exchange of letters by 30 June 2008, and of the Clean rooms for the new ESO Headquarters extension in-kind contribution project, also by means of exchange of letters by 31 December 2008.

9. Regarding the Mathematical algorithms and software for ELT adaptive optics and the Software modules for reduction of ESO data in-kind projects the following late delivery penalty rules are applicable:

Each of these two projects shall be broken down in subprojects, defined in the above mentioned exchange of letters that shall also contain mid-term review dates and final delivery dates for each subproject. The penalty rules shall be applied separately to each subproject. In the event that no delays occur at the mid-term review, only the part of the subproject to be delivered after the mid-term review counts in the calculation of penalties for delay. If the delivery of a subproject is delayed more than six months, Austria shall pay 10% of the total value of the subproject as penalty, and another 10% of the total value if the subproject is delayed by another six months. Failure to deliver the subproject by Austria, more than eighteen months after the agreed date of delivery, will result in Austria having to pay in cash to ESO the equivalent of the total value of the subproject, at which point ESO will not accept any more the delivery of the originally agreed subproject as in-kind contribution. The expenses invested by Austria in the subproject shall not be calculated as items decreasing the total value of the subproject.

10. Regarding the Clean rooms for the new ESO Headquarters extension in-kind project, the following late delivery penalty rule is applicable:

In the abovementioned exchange of letters a final delivery date (T) of the project shall be defined. Final delivery of Clean rooms, accepted by ESO after T+6 months will incur a penalty on Austria of 8.5% of the inflation-corrected total value per month. If still not delivered after T+18 months

the Director General of ESO will re-negotiate the terms of their delivery with the Austrian Minister of Science and Research.

11. In the event that ESO decides that the quality of the delivered in-kind contribution subproject at the time of the mid-term review or the final delivery date does not comply with the specifications defined in the above referred exchange of letters, ESO reserves the right to refuse the acceptance of the delivery. In that event, ESO will decide, after receiving Austria's proposal, whether Austria shall carry out, at its own expense, all work, such as modifications, adjustments, replacements, settings and repairs, necessary to comply with the terms defined in accordance with the present Annex, or whether their cost shall be reimbursed by Austria. If all parts of the deliverable shall be reimbursed, Austria shall add the value of the deliverable agreed in this Annex to its upcoming yearly installment of its special contribution. If only one or some parts of the delivery shall be reimbursed, the reimbursement shall be calculated at replacement prices, and shall be settled by Austria in addition to the upcoming yearly installment of its special contribution.
12. Upon delivery by Austria and acceptance by ESO, ESO will become the owner of all the goods constituting the in-kind contribution of Austria. With regard to Intellectual Property Rights, ESO's rules and procedures are applicable, as described in Chapter VI of the General Conditions of ESO Contracts.