

PROPOSED THIRD AMENDMENT

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TO THE

AGREEMENT CONCERNING THE CONSTRUCTION AND OPERATION OF AN 8 METER TELESCOPE ON MAUNA KEA, HAWAII, AND AN 8 METER TELESCOPE ON CERRO PACHÓN, CHILE, TO BE KNOWN AS THE GEMINI FACILITIES
This Amendment is entered into between the National Science Foundation of the United States of America (hereinafter referred to as NSF), the Particle Physics and Astronomy Research Council of the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as PPARC), the National Research Council of Canada (hereinafter referred to as NRC), the Comisión Nacional de Investigación Científica y Tecnológica of Chile (hereinafter referred to as CONICYT), the Consejo Nacional de Investigaciones Científicas y Técnicas of Argentina (hereinafter referred to as CONICET), the Ministério da Ciência e Tecnologia of Brazil (hereinafter referred to as MCT), and the Australian Research Council (hereinafter referred to as ARC).

WHEREAS, NSF, PPARC and NRC entered into an Agreement concerning the construction and operation of an 8 meter telescope on Mauna Kea, Hawaii, and an 8 meter telescope on Cerro Pachón, Chile, to be known as the Gemini Facilities (hereinafter known as “the Agreement”) which became effective on 28 October 1993;

WHEREAS, the Agreement was amended on two subsequent occasions, for various purposes, including the addition of CONICYT, CONICET, MST and ARC as parties to the Agreement;

WHEREAS, the MCT has replaced MST as the appropriate appellation of the agency of Brazil responsible for the Gemini Project;

WHEREAS, Chile is host to Gemini South, and CONICYT has completed almost a decade in the Gemini Partnership;

WHEREAS, Chile is the host country to a number of other major astronomical projects, thus reducing the need for Chilean astronomers to use observing time allocated to CONICYT as a member of Gemini;

WHEREAS, Chile has a need to develop the means to optimize the use of the observing time available to her as host country, and the Gemini Partners wish to co-operate in the realization of these plans; and

WHEREAS, the current Managing Organization is the Association of Universities for Research in Astronomy, Inc. (AURA);

THEREFORE, it is agreed as follows:

1. Article 9.9 of the Agreement is amended to read “The members appointed by CONICYT and UH shall only have voting rights on scientific matters appertaining to Gemini South in the

case of CONICYT, and to Gemini North in the case of UH. The Chair is responsible for the interpretation and application of these restrictions in case of dispute”.

2. Article 9.10 of the Agreement is amended to read: “A representative of CONICYT and of UH”.
3. Article 10.1 of the Agreement is amended by inserting a new point m): “Participate in, and advise on, the program established in Article 25, and remain informed of its progress”.
4. Article 12.1 of the Agreement is amended by inserting a new point j): “Facilitate the distribution of funds to CONICYT for the development of Chilean astronomy, as established in Article 25 , and assist in realizing the program if requested”.
5. A new article 14.7 is inserted into the Agreement, to read as follows: “CONICYT is exempted from all subsequent increases in the cost of Construction and Commissioning over and above its initial contribution of US\$9,200,000”.
6. A new article 15.2 is inserted into the Agreement, to read as follows: “The contributions for operations of Gemini shall be shared among the Parties as follows:

NSF	50.119%
PPARC	23.81%
NRC	15.00%
ARC	6.19%
CONICYT	0.0%
CONICET	2.381%
MCT	2.5%

and all articles 15 after this are incremented in number.

7. Article 15.4 as redesignated is amended to read “The costs of using the facilities and resources of JACH and CTIO shall be approved by the Board and shall be shared between the Parties in proportion to their contributions as determined under Article 15.2.”
8. A new article 15.5 is inserted into the Agreement, to read as follows: “CONICYT is liberated from all past, present and future contributions for Operating Costs and Development Funds, and from any other financial agreements such as may be entered into between the Partners. This will be reflected in all subsequent issues of the Administrative Guidelines”.
9. A new article 18.5 is inserted into the Agreement, to read: “The Managing Organization will, when undertaking work relating solely to Gemini South, encourage bids from Chilean organizations or from organizations of other Parties that make substantial use of Chilean resources, recognizing, however, that the decision of the Managing Organization must be consistent with the timely and cost effective execution of the work”.
10. The tables in Article 19.1 of the Agreement, showing the allocation of observing time, are amended as follows:

a) Gemini North

NSF, including the University of Hawaii	53.91 %
PPARC	22.00 %
NRC	13.86 %
CONICYT	0.00 %
CONICET	2.20 %
MCT	2.31 %
ARC	5.72 %

b) Gemini South

NSF, including Chilean astronomy through CONICYT	53.91 %
PPARC	22.00%

NRC	13.86 %
CONICYT	0.00 %
CONICET	2.20 %
MCT	2.31 %
ARC	5.72 %

and the explanatory note is amended to read: “CONICYT has made available to the Gemini Parties the use of observing time in excess of Chilean needs consisting of 4.4% on Gemini North and 4.4% on Gemini South, for the duration of the present Agreement.”

11. The second sentence of Article 19.2 of the Agreement, stating that: “Chile shall be guaranteed 10% of the Observing Time on Gemini South”, remains unchanged.
12. A new article 25, “Cooperative Programs for the Development of Chilean Astronomy”, is added to the Agreement, as follows:
 - 25.1 CONICYT will establish a framework of a nationwide program for the development of Chilean astronomy, consistent with the objectives stipulated in the present agreement.
 - 25.2 The Gemini Partnership will, in accordance with the terms of this agreement, transfer to CONICYT, through the Managing Organization, a sum of US\$9,366,824, payment of which should be completed by 30 November 2005.
 - 25.3 The funds referred to in 25.2 are to be invested in a program established by CONICYT for the development of Chilean astronomy and closely related sciences. They are to be used wholly and exclusively for this purpose as described in the Cooperative Agreement signed by CONICYT and the parties to the Gemini Agreement which will become Annex I of that Agreement. For the parties contributing to the payments established in Annex I, the terms of Article 16 of the Gemini Agreement shall apply in the event of default or late payment.
 - 25.4 Any arrangement between the Managing Organization and CONICYT for the transfer of the funds in 25.2 shall be approved by the Gemini Board.
 - 25.5 The funds shall be administered by CONICYT in accordance with its legal faculties, the present agreement and any relevant laws and regulations.
13. The Rules of Procedure of the Gemini Board shall be amended in line with the present amendment to Article 9 of the Agreement.
14. The first sentence of Article 3.2 is amended to read “When it deems necessary, the Gemini Board may modify any Annexes to this Agreement with the exception of Annex I, providing the modification does not significantly alter the intent of this Agreement.”
15. It will be of mutual benefit that CONICYT continue as a member of the Gemini partnership under the conditions described in the present amendment.
16. All other Articles and Annexes of the Agreement and of Amendments 1 and 2 remain in effect and are unchanged by this Third Amendment.
17. This Third Amendment will become effective when signed by all Parties and will remain in force for the duration of the Agreement.

Signed this _____ day of _____ 2003 on behalf of the US National Science Foundation
by

(signature)

(print name and title)

(date)

Signed this _____ day of _____ 2003 on behalf of the Particle Physics and Astronomy
Research Council of the United Kingdom of Great Britain and Northern Ireland by

(signature)

(print name and title)

(date)

Signed this _____ day of _____ 2003 on behalf of the National Research Council of
Canada by

(signature)

(print name and title)

(date)

Signed this _____ day of _____ 2003 on behalf of the Australian Research Council of
Australia by

(signature)

(print name and title)

(date)

Signed this _____ day of _____ 2003 on behalf of the Comisión Nacional de Investigación Científica y Tecnológica of Chile by

(signature)

(print name and title)

(date)

Signed this _____ day of _____ 2003 on behalf of the Consejo Nacional de Investigaciones Científicas y Técnicas of Argentina by

(signature)

(print name and title)

(date)

Signed this _____ day of _____ 2003 on behalf of the Ministério da Ciência e Tecnologia of Brazil by

(signature)

(print name and title)

(date)