

The Supplementary Agreement
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Treaty Series No. 10 (2008)

Supplementary Agreement

between the Government of the United Kingdom of Great Britain and
Northern Ireland and the Government of the Commonwealth of Australia
concerning the Anglo-Australian Optical Telescope, at Siding Spring,
New South Wales, Australia

Canberra, 3 November 2005

[The Agreement entered into force on 27 June 2006]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
August 2008*

Cm 7371

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**SUPPLEMENTARY AGREEMENT BETWEEN
THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND AND THE GOVERNMENT OF THE
COMMONWEALTH OF AUSTRALIA CONCERNING THE ANGLO-
AUSTRALIAN OPTICAL TELESCOPE, AT SIDING SPRING, NEW
SOUTH WALES, AUSTRALIA**

The Government of the United Kingdom of Great Britain and Northern Ireland (the “United Kingdom Government”) and The Government of the Commonwealth of Australia (the “Commonwealth Government”), referred to as “the Contracting Parties”,

Desiring to make certain supplementary amendments to the Agreement for the Establishment and Operation in Australia of a Large Optical Telescope, signed at Canberra on 25 September 1969¹, to provide for the continued management and operation of this Telescope and the manner in which this Telescope and associated facilities shall be dealt with on termination of the Agreement,

Hereby agree as follows:

1. Interpretation

(1) In this Supplementary Agreement, “Principal Agreement” means the Agreement to provide for the Establishment and Operation in Australia of a Large Optical Telescope, signed at Canberra on 25 September 1969, as amended by an Exchange of Notes signed on 28 February 1986², relating to the establishment and operation as a joint enterprise of a large optical telescope located at Siding Spring, New South Wales, Australia.

(2) All words and expressions defined in the Principal Agreement shall have the same meaning in this Supplementary Agreement.

(3) In the event of a dispute concerning the terms of the Principal Agreement and the terms of this Supplementary Agreement, the terms of this Supplementary Agreement shall prevail.

2. Definitions

(1) A new Article 1 (f) shall be inserted into the Principal Agreement as follows,

“Joint Programme” means:

¹ Treaty Series no. 19 (1971) Cmnd 4622

² Treaty Series no. 34 (1986) Cmnd 9828

- (a) the programme approved by the Telescope Board for the operation, maintenance and enhancement of capabilities of the Telescope and associated facilities and services (“Part A”); and
 - (b) activities, including instrumentation development and construction projects, approved by the Telescope Board, funded by one or both of the Contracting Parties, and which the Designated Agencies agree provide wider benefits to the Australian and United Kingdom astronomical communities (“Part B”).”
- (2) A new Article 1 (3) shall be inserted into the Principal Agreement as follows,

“For the purposes of Article 1 (2), the designated agency for the United Kingdom Government shall be the Particle Physics and Astronomy Research Council of the United Kingdom and for the Commonwealth Government, the designated agency shall be the Department of Education, Science and Training of the Commonwealth Government, (the ‘Designated Agencies’).”

3. Use of the Telescope

- (1) Article 5 (1) of the Principal Agreement shall be replaced by the following paragraph,

“Observing time on the Telescope and use of associated facilities and services shall be shared between the Contracting Parties in proportion to the value of their financial contributions to the Joint Programme, such time to be distributed equitably throughout the year taking into account as far as possible the phases of the moon and the seasons of the year.”

- (2) A new Article 5 (4) shall be inserted into the Principal Agreement as follows:

“It shall be the responsibility of the Telescope Board to make arrangements consistent with Article 5 in its determination of the use of the Telescope and associated facilities, except that there shall be, as soon as the Telescope Board deems it practicable, a single joint time allocation committee which shall allocate time to both Contracting Parties. The terms of reference for the joint time allocation committee shall be agreed in advance by the Telescope Board.”

4. Research and work programme

- (1) A new Article 8 (1) (j) shall be inserted into the Principal Agreement as follows,

“to approve the Joint Programme including its budget, and to obtain the agreement of the Designated Agencies for Part B of the Joint Programme.”

(2) A new Article 8 (1) (k) shall be inserted into the Principal Agreement as follows,

“to manage, in the period from the entry into force of this Supplementary Agreement until 30 June 2010 inclusive, and in a manner commensurate with the financial contributions made to it by the Contracting Parties in respect of the Joint Programme, the Telescope and associated facilities, including the acquisition and disposal of assets, and the restructuring of staff and operations as it deems appropriate”

(3) A new Article 8A shall be inserted after Article 8 of the Principal Agreement as follows,

“Nothing in this Agreement shall prevent the Telescope Board from undertaking external work, involving the use of the Telescope and associated facilities and services, exclusively for the Commonwealth Government, the United Kingdom Government, or a third party.”

5. Financial Arrangements

Article 11(2) shall be replaced by the following,

“The Contracting Parties agree that:

- (a) each Contracting Party shall provide an annual financial contribution of not less than 500,000 (five hundred thousand) Australian dollars in respect of the Joint Programme;
- (b) in addition to the annual financial contributions referred to in 11 (2) (a), the Contracting Parties may make other financial contributions from time to time, jointly or separately, including in the form of specific project grants, that shall be considered contributions in respect of the Joint Programme provided such contributions are given for purposes consistent with the definition of the Joint Programme and are approved by the Telescope Board and the Contracting Parties;
- (c) each Designated Agency shall indicate to the Telescope Board, by 1 March in each year, the financial contributions that the Designated Agency anticipates that it will make to the Joint Programme in each year of the following three-year period; and
- (d) the Telescope Board shall determine, with reference to the indicative financial contributions anticipated to be made to it by the Contracting Parties in respect of the Joint Programme, the annual budget allocation for each part of the Joint Programme.

6. Termination of the Principal Agreement

- (1) The Principal Agreement and this Supplementary Agreement shall terminate with effect from 1 July 2010, and such termination shall not affect the rights, liabilities and obligations of the Contracting Parties arising under the Principal Agreement and this Supplementary Agreement prior to 1 July 2010.
- (2) On termination of the Principal Agreement,
 - (a) ownership of and responsibility for the Telescope and associated facilities, including but not limited to assets, cash-in-hand, buildings, equipment and personnel, shall pass to the Commonwealth Government to use or dispose of, in whole or in part, without recourse to the United Kingdom Government;
 - (b) all liabilities relating to the Telescope and associated facilities shall also pass to the Commonwealth Government; and
 - (c) the Commonwealth Government shall, at its own cost, put in place such arrangements as are required relating to the persons who are employed by the Telescope Board.
- (3) Unless otherwise agreed, the Contracting Parties shall bear their own expenses in relation to administrative costs incurred in preparation for the termination of the Principal Agreement and the transfer of property, assets and staff to the Commonwealth Government.
- (4) Notwithstanding the termination of the Principal Agreement, the Contracting Parties shall own any intellectual property developed in relation to the Telescope and its activities. Any subsequent revenue or financial benefit deriving directly from such intellectual property in existence at the termination of the Principal Agreement shall be shared equally by the Contracting Parties.

7. Variation

The Contracting Parties may agree in writing to extend, amend or supplement this Supplementary Agreement.

8. Entry into force

This Supplementary Agreement shall enter into force from the date of receipt of the last notification in writing through diplomatic channels of completion by the Contracting Parties of all relevant domestic procedures necessary for its entry into force.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed the present Supplementary Agreement.

Done at Canberra on the third day of November two thousand and five in duplicate.

For the Government of the United
Kingdom of Great Britain and Northern
Ireland

For the Government of the
Commonwealth of Australia

HELEN LIDDELL

BRENDAN NELSON



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