

**Delibera n. 43/2011, Verbale CdA n. 06/11**

Oggetto: approvazione del Memorandum of Understanding tra INAF ed ESO (*European Organisation for Astronomical Research in the Southern Hemisphere*) per la regolamentazione del GOT (*Guaranteed Observing Time*) con il VST (VLT Survey Telescope).

IL CONSIGLIO DI AMMINISTRAZIONE

- VISTO** il Decreto Legislativo 23 luglio 1999, n. 296 di istituzione dell'INAF, pubblicato nella G.U. del 26 agosto 1999, n. 200;
- VISTO** il Decreto Legislativo 4 giugno 2003, n. 138 di riordino dell'Istituto Nazionale di Astrofisica, pubblicato nella G.U. del 19 giugno 2003, n. 140, in particolare nei suoi artt. 3, comma 1, lett. a) e 17, comma 1, lett. a);
- VISTO** il Decreto Legislativo 31 dicembre 2009, n. 213 di riordino degli enti di ricerca in attuazione dell'articolo 1 della legge 27 settembre 2007, n. 165;
- VISTO** il nuovo Statuto dell'INAF, entrato in vigore il 1 maggio 2011;
- VISTO** il Regolamento di organizzazione e funzionamento degli organi e delle strutture dell'INAF, pubblicato nel S.O. n. 185 alla G.U. Serie Generale n. 300 del 23 dicembre 2004, in particolare nel suo art. 6, comma 2, lett. c) e 31, comma 2;
- VISTO** il Regolamento sull'amministrazione, sulla contabilità e sull'attività contrattuale dell'INAF, pubblicato nel S.O. alla G.U. Serie Generale n. 300 del 23 dicembre 2004;
- MESSO IN RILIEVO** che, nell'ambito delle finalità dell'INAF rientrano lo svolgimento, la promozione, la diffusione, il trasferimento e la valorizzazione delle attività di ricerca scientifica e tecnologica, anche attraverso la collaborazione con Università, Istituti pubblici nazionali ed internazionali e società private;
- VISTO** il Memorandum of Understanding stipulato nel giugno 1998 tra ESO (European Southern Observatory) e l'INAF - Osservatorio Astronomico di Capodimonte, avente ad oggetto la realizzazione del "VST" (VLT Survey Telescope), un telescopio del diametro di 2,61 metri da implementare presso l'Osservatorio Astronomico di Paranal (Cile) per il supporto al "VLT" (Very Large Telescope);
- CONSIDERATO** che, ai sensi degli artt. 2 e 9 del MoU sopra citato, l'Osservatorio Astronomico di Capodimonte è tenuto a fornire supporto all'operatività del telescopio VST con almeno due unità di proprio personale e, proprio in virtù dell'apporto economico e tecnico-scientifico offerto dall'INAF, alla comunità scientifica italiana spetterà il 15% del del tempo ESO utile di osservazioni del VST più 50 notti ad una unità del VLT per il prossimo decennio (c.d. GOT: *Guaranteed Observing Time*);

VISTA la comunicazione del Direttore Generale dell'ESO, Prof. Tim de Zeeuw, del 15 giugno u.s., a mezzo della quale ha formulato all'INAF una proposta di suddivisione del *Guaranteed Observing Time* spettante all'Istituto;

DATO ATTO che, proprio al fine di stabilire una puntuale e certa suddivisione del *Guaranteed Observing Time*, nonché una precisa definizione dei reciproci diritti ed obblighi, INAF ed ESO sono addivenuti alla stesura di un nuovo Memorandum of Understanding, all'oggetto "*Guaranteed Observing Time, Loan and Operation of the 2.6-m VLT Survey Telescope at the ESO Paranal site of the La Silla Paranal Observatory (Chile)*";

TENUTO CONTO che il su menzionato Memorandum of Understanding prevede tra l'altro, all'art. 1, la corresponsione, da parte di INAF, di un contributo alle spese di euro 1.000,00 per ogni notte di osservazione;

RIAFFERMATI l'alta valenza scientifica e il valore strategico del progetto in parola, non solo in termini di immagine, ma anche per il notevole ampliamento delle possibilità di ricerca offerto alla comunità scientifica italiana;

DATO ATTO che la stipulazione del predetto Memorandum non richiede l'autorizzazione del Ministero dell'Istruzione, Università e Ricerca, rientrando nell'ambito di applicazione dell'art. 31, comma 2, del Regolamento di organizzazione e funzionamento dell'INAF;

DELIBERA

con voto unanime dei presenti espresso nei modi di legge, per i motivi richiamati in premessa, da ritenersi qui integralmente riportati:

- di approvare il testo del Memorandum of Understanding, allegato alla presente delibera in modo da formarne parte integrante e sostanziale, tra INAF ed ESO (European Organisation for Astronomical Research in the Southern Hemisphere), avente ad oggetto "*Guaranteed Observing Time, Loan and Operation of the 2.6-m VLT Survey Telescope at the ESO Paranal site of the La Silla Paranal Observatory (Chile)*";
- di conferire mandato al Presidente di procedere alla sottoscrizione del suddetto Memorandum of Understanding nel testo approvato con la presente deliberazione.

Roma, li

Il Segretario

Il Presidente

AGREEMENT

**on the GUARANTEED OBSERVING TIME, the LOAN and the
- OPERATION of the 2.6-m VLT SURVEY TELESCOPE
(hereinafter referred to as VST)
at the ESO Paranal site of the La Silla Paranal Observatory
(Chile)**

BETWEEN

the **European Organisation for Astronomical Research in the Southern Hemisphere**, hereinafter referred to as **ESO**, having its Headquarters at Karl-Schwarzschild Str. 2, D-85748 Garching bei München (Germany),

on the one hand,

AND

the **Instituto Nazionale de Astrofisica**, hereinafter referred to as **INAF**, whose registered address is at Viale del Parco Mellini n.84 - 00136 Roma (Italy),

on the other hand,

hereinafter collectively referred to as the **Parties**.

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CONSIDERING

the Memorandum of Understanding (MoU) governing the construction and principles of operation for the VST, signed by ESO and the Osservatorio di Capodimonte (OAC), Naples, in June 1998,

AND THAT

INAF was created by the Italian government to administer all Italian ground based astronomical facilities and therefore has undertaken to honour all previous obligations of the OAC and take delivery of all accrued benefits to the OAC arising from the MoU,

IT IS AGREED THAT

the VST and all equipment necessary for the purposeful usage of the facility shall be on loan to ESO and will be operated by ESO under the following terms.

Article 1. OPERATION OF THE VST FOR TEN YEARS

In return for the contributions to the VST, INAF will be allocated the following percentages of the available observing time to be executed on the VST during the first ten years after the start of routine operation (hereinafter referred to as INAF Observing Time):

Years 1,2,3,4:	10%
Years 5,6:	15%
Years 7,8,9,10:	20%

Available observing time is defined as the number of hours of clear or better sky transparency where the telescope and all its subsystems but excluding the dome and the OmegaCAM instrument are operational. Available observing time further excludes Chilean and technical time.

For scheduling purposes the available observing time is initially estimated from the total number of observing hours per year minus 10% Chilean time, 10% technical time, and 10% weather and technical loss time . The observing time that was actually available will be established from the observing logs after every year of operation and the INAF Observing Time will be adjusted accordingly for the subsequent year.

INAF contributes to the running expenses of the VST (including but not limited to the costs for electricity, water, internet, basic site maintenance, insurance, LN2 for OmegaCAM) at a rate of 1000 Euro per night of INAF Observing Time.

Mode following the standard Service Mode observing procedures. INAF Observing Time is accounted for through the actual execution time of the Service Mode Observing Blocks.

The scientific programmes of INAF shall be equally distributed over the operational range of observing constraints, i.e., lunar phases, seeing, and sky transparency.

There shall be no proprietary targets or scientific programmes for INAF at the VST nor shall any exclusion be placed upon INAF with respect to targets of other programmes approved by ESO for execution at the VST.

INAF shall submit detailed descriptions of its observing programmes, targets, and observing constraints of the first four semesters (two years) to ESO two months before the issue of the Call for Proposals for the first of these four semesters to allow the ESO Observing Programmes Committee (OPC) and the Public Survey Panel (PSP) to avoid duplication of programmes. The procedure will be repeated every two years.

Data obtained during INAF Observing Time shall remain proprietary to INAF. ESO shall archive all data obtained by the VST including data taken during INAF time. Visibility of the data within the ESO Science Archive shall be possible using standard ESO tools at the time INAF declares the data to be public and free of any restrictions but latest one year after the termination of this Agreement.

INAF shall be provided with copies of the raw data obtained at the telescope in a manner analogous to other users of ESO facilities. The media costs shall be established after the first year of routine operations by mutual agreement and shall be invoiced by ESO to INAF.

Article 2. INSTRUMENTATION AVAILABLE AT THE VST

In the period covered by this Agreement, the telescope will be equipped with the OmegaCAM instrument. No visitor or other instrument shall be attached to the telescope without prior agreement of the Parties.

OmegaCAM shall be deemed to be completed and operational when at least 29 of the 32 science detectors are operational.

Upon agreement by both Parties, additional filters may be installed on OmegaCAM and these shall be made available to all users. The availability of new filters shall be announced by ESO through the Call for Proposals. ESO shall reserve the right to restrict the exchange of filters if it places an additional operational burden or increases the risk to the equipment.



Article 3. USE OF ESO TIME

ESO has the right to assign part of its observing time to a third party. However, ESO shall not assign any operational responsibility for the telescope without prior agreement of the Parties.

Article 4. USE OF INAF TIME

INAF has the right to assign part of its observing time to a third party. In such a case INAF will remain the sole responsible for advising ESO of the observing programmes to be executed.

Article 5. TECHNICAL SUPPORT

For the first two years after the start of routine operations INAF shall provide direct technical support for the VST in the form of experienced technical staff based in Italy. Three categories of emergency support are foreseen:

1. Catastrophic failures that interrupt operations: Immediate support via hot-line to analyse failure scenarios and propose solutions. (High Priority)
2. Failure that can be mitigated by change of operational strategy or which do not interrupt operation. (Medium Priority)
3. Failures or problems that are not detrimental to operation and which can be solved on a lower priority. (Low Priority)

INAF reaction times to ESO requests for emergency support will, where possible, be 1, 2 and 5 working days for high, medium and low priority requests respectively.

INAF support staff shall be available either remotely or on site if deemed necessary by the La Silla Paranal Observatory Director. In case of on-site support ESO shall cover the travel costs of the INAF personnel on the same basis as for ESO visiting astronomers.

In case of a major failure of the telescope subsystem after the first two years of operation, INAF and ESO shall convene a joint team to establish a course of action. As a rule the costs of major repairs arising from wear and tear shall be borne by ESO while the costs of other necessary major repairs shall be borne by INAF.

Article 6. IMPROVEMENTS AND UPGRADES

The Parties may suggest improvements and upgrades to the telescope and its subsystems after acceptance. The agreement of both Parties shall be



necessary for changes to be made to the telescope and its subsystems. The Party supplying the improvement or the upgrade shall be responsible for it if not otherwise mutually agreed between the Parties in writing.

Article 7. ENTRY INTO FORCE/ TERMINATION

This Agreement shall enter into force on the day of signature by both parties.

It shall terminate ten years after the start of routine operation of the VST or upon cancellation of the MoU.

The Parties shall establish the starting date for routine operation by mutual agreement.

The Agreement may be terminated before by either Party on the basis of important and justified reasons upon prior written notice of at least three months to the other Party.

One calendar year before termination of this Agreement the Parties shall meet to discuss a possible new Agreement concerning the VST. Upon termination of the Agreement INAF shall bear the costs of removing the telescope from the Paranal site of the La Silla Paranal Observatory.

Article 8. MISCELLANEOUS PROVISIONS

Publications based on VST data taken in INAF and ESO Observing Time shall include the following statement: *"Based on data collected with the ESO INAF – VLT Survey Telescope and OmegaCAM at the European Southern Observatory, Chile (ESO Programme <Programme ID>)."*

All Paranal operational and safety procedures are applicable to the VST during operations irrespective of mode of operation.

ESO shall include the VST in the Paranal property insurance. In case of a claim, ESO shall be the sole representative towards the insurance.

In case of total destruction of the telescope any proceeds of the insurance shall be distributed between ESO and INAF by mutual agreement.

This Agreement is supplementary to the MoU. INAF and ESO shall endeavor to settle amicably any dispute concerning this Agreement. Failing amicable settlement, the Parties shall resort to arbitration in accordance with the procedures defined in Appendix 1.

While the telescope is located at Paranal, INAF may not negotiate the transfer nor transfer the ownership of the telescope to any other party without the prior agreement of ESO.



The implementation of this Agreement will be monitored in an annual meeting of the Parties.

Article 9. AMENDMENTS

The Parties in an exchange of letters shall agree upon further organizational details and arrangements not covered in this Agreement. Should preconditions or circumstances underlying this Agreement change or cease, or terms have to be amended, the Parties will enter into negotiations with the aim to conclude an amendment to this Agreement.

Article 10. POINTS OF CONTACT

The responsible persons of the contracting Parties for the execution of this Agreement are:

For ESO:

For general matters: La Silla Paranal Observatory Director
Dr. A. Kaufer
Email: akaufer@eso.org
Tel: +56 55 43-5303
Fax: +56 55 43-5995

For operational matters: La Silla Paranal Observatory Deputy Director
U. Weilenmann
Email: uweilenm@eso.org
Tel: +56 55 43-5268
Fax: +56 55 43-5995

For INAF:

For general matters: Prof. Massimo Capaccioli
Email: capaccioli@na.astro.it
Tel: +39 081 5575601
Fax: +39 081 5575604

For operational matters: Dr. Ing. Pietro Schipani
Email: schipani@na.astro.it
Tel: +39 081 5575555
Fax: +39 081 5575604



Enclosures:

Appendix 1: Status of ESO/ Arbitration clause

Done in two originals.

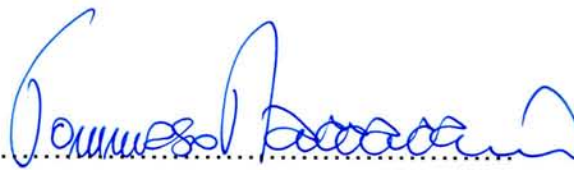
Done at ESO, Garching, 14 June 2011

**For the EUROPEAN ORGANISATION FOR ASTRONOMICAL RESEARCH
IN THE SOUTHERN HEMISPHERE – ESO**



Prof. Dr. Tim de Zeeuw, Director General ESO

Done at INAF, Rome,



/ 22. June. 2011

for the ISTITUTO NAZIONALE DE ASTROFISICA – INAF

Prof. Dr. Tommaso Maccacaro, President INAF

Appendix I

Status of ESO

ESO is an intergovernmental organisation set up by the Convention of October 5, 1962, and has its Headquarters in Garching, Federal Republic of Germany. It is established on the territory of the Federal Republic of Germany. ESO enjoys international status as defined in the Protocol on Privileges and Immunities of the European Organisation for Astronomical Research in the Southern Hemisphere of July 12, 1974 and the Headquarters Agreement between the Government of the Federal Republic of Germany and ESO of January 31, 1979.

Arbitration/ Applicable Law

Failing an amicable settlement of any dispute, the Parties shall resort to arbitration under the following conditions:

Within thirty days after notice has been given, by registered letter with acknowledgement of receipt, by any Party to the others, of its intention to resort to arbitration, ESO, on the one hand, and INAF, on the other hand, shall each appoint an arbitrator. The two arbitrators shall, by joint agreement and within thirty days of the appointment of the second arbitrator, select a third arbitrator, who may under no circumstances be drawn from amongst persons who are or have been in any way in the service of the Parties, or of any subsidiary company or institutes. The third arbitrator thus selected shall preside over the Arbitration Tribunal.

Should one of the Parties fail to appoint an arbitrator and/or shall an appointed arbitrator be prevented for any reason from fulfilling his functions, a replacement shall be selected within a period of thirty days in accordance with the above procedure.

Should one of the Parties fail to appoint an arbitrator and/or the two arbitrators fail to agree on the selection of a third, the choice shall be made by the President of the Court of Arbitration of the International Chamber of Commerce, at the request of the first Party to do so.

The arbitration proceedings shall take place in Munich unless otherwise agreed by the Parties.

The arbitrator's award shall faithfully interpret the terms of the Agreement. The Parties agree that this Agreement is subject to the regulations adopted by ESO by virtue of its international status, and subsidiary to the Law of the Federal Republic of Germany.

The arbitrators shall be entitled to be assisted, in such manner as they see fit,

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by legal advisers, experts and other persons selected by them, to undertake investigations, to hear the Parties either separately or in each other's presence, assisted if they so desire by legal advisers and/or experts, and generally to carry out any inquiries, investigations and hearings which may provide them with information for the performance of their task.

The Parties shall spontaneously provide the arbitrators with such assistance, as they are capable of providing.

The award shall be made within three months of the final appointment of the third arbitrator. This time limit may, however, be extended provided the Parties agree.

The award shall be final and binding upon the parties, who shall in advance undertake not to resort to any form of appeal. Nevertheless, either Party to the dispute may, within fifteen days of announcement of the arbitrators' award, request them to provide a joint interpretation of their award. This interpretation shall be given within thirty days of the award. During this time, execution of the award shall be suspended.

The costs and fees of arbitration shall be determined and apportioned by the Arbitration Tribunal.



European Organisation
for Astronomical
Research in the
Southern Hemisphere

Organisation Européenne
pour des Recherches
Astronomiques
dans l'Hémisphère Austral

Europäische Organisation
für astronomische
Forschung in der
südlichen Hemisphäre

INAF - AMMINISTRAZIONE CENTRALE	
Anno	Titolo <u>m</u> Classe <u>2</u>
Fascicolo	
N. <u>4549</u>	Data <u>21/6/14</u>
Destinazione	<u>DP</u>
Assegn. per comp.	
Assegn. per consoc.	

Garching, 15 June 2011
ODG133-11/isk

Professor Tommaso Maccacaro
Presidente of the
Istituto Nazionale di Astrofisica
Viale del Parco Mellini 84
I-00136 ROMA

253/11/PR
-VST

Agreement VST

Dear Professor Maccacaro,

On behalf of Professor de Zeeuw, please find attached two originals of the Agreement on the Guaranteed Observing Time and the Operation of the 2.6m VLT Survey Telescope.

We would be grateful if you could sign the agreements and return one of the originals to the attention of Professor de Zeeuw.

Yours sincerely,

Isolde Kreutle