



## SKA INTELLECTUAL PROPERTY POLICY

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## 1 The Purpose and Structure of this Document

- 1.1 This document is a publicly accessible document which is intended to provide all potential contributors to the SKA Project with a clear understanding of:
- (a) The IPR-related risks and opportunities which the SKA Project faces;
  - (b) How SKA Organisation will seek to identify specific IPR-related risks and opportunities; and
  - (c) How SKA Organisation will seek to manage IPR-related risks and opportunities via the careful management of all relevant Background IPR and Foreground IPR, and the careful allocation of Third Party IPR risk.
- 1.2 The principles set out in this SKA IP Policy, and the tools which SKA Organisation envisages using to implement them, are designed primarily to ensure the maximum achievable freedom for SKA Organisation and SKA Contributors to engage in the development, delivery, operation and maintenance of the SKA without concern that their activities may be blocked by the enforcement of intellectual property rights.
- 1.3 All potential SKA Contributors are required to accept the principles set out in this SKA IP Policy before engaging with SKA Organisation or any of the other entities tasked with the delivery of the SKA. This is because the terms of this SKA IP Policy will ultimately govern the IPR-related aspects of all SKA Contributors' involvement in the SKA Project. Whilst it is conceivable that SKA Organisation may need to permit some variation or relaxation of those terms in specific and SKA Project-critical contexts, such variations/relaxations will be permitted only where necessary. Potential SKA Contributors should therefore plan their proposed involvement in the SKA Project accordingly.
- 1.4 This document is split into the following sections:
- Part 1** This introductory section.
  - Part 2** A brief overview of the IPR related risks associated with the delivery of the SKA and IPR related opportunities which delivery of the SKA is likely to create.
  - Part 3** An explanation of how SKA Organisation will attempt to identify IPR related risks and opportunities.
  - Part 4** An explanation of how SKA Organisation will manage IPR related risks by the fair and prudent allocation, between SKA Organisation and SKA Contributors, of rights and risks associated with Background IPR, Foreground IPR, and Third Party IPR.
  - Part 5** An explanation of the legal status of this SKA IP Policy, and indication of the contracting structure within which it is intended that the principles set out in this SKA IP Policy will be made binding upon SKA Contributors.
  - Part 6** A definitions section to explain the meaning of the capitalised terms used in this document.

## 2 Intellectual Property Rights and the SKA

- 2.1 As a large, global, cutting-edge science enterprise, the SKA Project will require the use of existing and new innovations to fulfil its mission of developing, constructing, and operating a 'next-generation' radio telescope. Through cooperation among the Work Package Consortia members and other SKA Contributors, the SKA Project will support and require worldwide cooperation in the development, deployment, and exploitation of existing and new technologies and applications, and their associated Intellectual Property Rights.
- 2.2 Those associated Intellectual Property Rights give rise to a number of risks and opportunities for SKA Organisation and SKA Contributors, and each of them will need to be properly managed by SKA Organisation with support from SKA Contributors.
- 2.3 The risks associated with IPR can be easily summarised. Whilst the protection afforded to IPR-owners under different legal systems throughout the world differs in certain respects, the basic principles of IPR are universal, i.e. IPR owners are entitled to extensive remedies granted by competent courts to:
- (a) prevent the unauthorised exploitation of their protected innovations and work products via the grant of injunctions, and
  - (b) to compensate them for any such unauthorised exploitation by requiring unauthorised users to pay damages or an account of their profits associated with such unlawful use.
- 2.4 Intellectual Property Rights which already exist, and those which may come into existence as a result of the work undertaken on the SKA Project, therefore constitute a threat to the "freedom to operate" which SKA Contributors will need if the SKA is to be delivered successfully. SKA Organisation and SKA Contributors will consequently need to identify and properly manage those IPR and their attendant risks, whether by obtaining the necessary authorisations for the use of protected innovations or work products, or by modifying their plans to avoid the need to use such innovations or work products.
- 2.5 The IPR-related opportunities which will arise from the delivery of the SKA Project are far more positive. It is inevitable that the work undertaken in relation to the SKA Project will create innovations and other work products which are protected or protectable (either automatically or pursuant to appropriate applications) by IPR. The right to control the exploitation of such innovations and work products for purposes outside the SKA Project via the enforcement and exploitation of related IPR may prove extremely valuable, and potential SKA Contributors should be mindful of the opportunities which their involvement in the SKA Project may bring in that respect.

### 3 Identification of Risks and Opportunities Relating to Intellectual Property Rights

3.1 Specific IPR risks relating to the delivery of the SKA Project cannot easily be identified with any precision, and measures and procedures will need to be put into place to maximise the prospects of identifying them at the earliest opportunity, which will in turn maximise the prospect of them being managed effectively.

3.2 These measures and procedures will or may include the following:

(a) SKA Contributors will be required to use all reasonable endeavours to notify SKA Organisation of:

(i) all Background IPR held by them which they are not willing to licence to other SKA Contributors for SKA Project purposes on a royalty-free basis, and

(ii) all Third Party IPR known to them,

which might be used to restrict the freedom of any SKA Contributor to operate for SKA Project purposes;

(b) SKA Contributors will be required to use all reasonable endeavours to notify SKA Organisation of all Foreground IPR created by them (whether registered or unregistered), and of innovations and work products which may appropriately be the subject of applications for registered Foreground IPR, as soon as reasonably practicable after those innovations and work products are devised or created. In respect of innovations or work products which are potentially the subject of registered IPR protection, and subject always to the rights of SKA Contributors to maintain the confidentiality of trade secrets, SKA Organisation may require the innovating SKA Contributor to permit SKA Organisation to pursue such registered IPR protection for that innovation or work product if that SKA Contributor does not propose to pursue appropriate protection for that innovation itself;

(c) SKA Contributors may be requested to conduct appropriate searches for existing Third Party IPR which may be enforced to prevent them from contributing to the SKA Project in the manner proposed by them;

(d) SKA Organisation may also conduct searches for Third Party IPR which may prejudice the freedom of SKA Contributors to operate for SKA Project purposes; and

(e) SKA Organisation may create and maintain an IPR Register, which will be accessible to SKA Contributors subject to certain terms of access, which will record appropriate information relating to relevant IPR which is notified to SKA Organisation or of which it becomes aware. To the extent appropriate, public access may also be provided to it. SKA Contributors will be in a position to consult any such IPR Register to identify:

(i) Such Background IPR and Third Party IPR as has already been identified which may prevent or otherwise hinder their proposed contribution to the SKA Project; and

- (ii) Foreground IPR for which they may see an application outside the scope of the SKA Project and for which they might seek a licence.

No warranty or guarantee is given by SKA Organisation as to the completeness or accuracy of any such IPR Register, however, and no cause of action or claim will lie against SKA Organisation in the event of any incompleteness or inaccuracy. It will be the responsibility of SKA Contributors to identify any Background IPR and Third Party IPR relevant to their proposed contributions to the SKA Project and to ensure that the risk they bear in association with such IPR is managed appropriately.

- 3.3 It is not realistic to expect that all relevant Third Party IPR which might prejudice the successful delivery of the SKA Project will be identified sufficiently early (if at all) for the risks created by them to be managed in the optimum manner. Consequently, SKA Contributors will be required to accept certain of the IPR risk associated with their contribution to the SKA Project. SKA Organisation's policy relating to the allocation of such risk is addressed in the next section of this document.
- 3.4 Mere association with the SKA Project may also provide opportunities for SKA Contributors, and it is to be expected that SKA Contributors will wish to benefit from the goodwill which the SKA Project creates. It is part of SKA Organisation's remit to ensure that the reputation and goodwill of the SKA Project is not abused or misappropriated by SKA Contributors. SKA Organisation therefore intends to issue a binding SKA Brand Use policy, to supplement this SKA IP Policy, to which SKA Contributors will be required to adhere.

#### 4 Allocation of IPR Related Rights and Risks

4.1 IPR risks cannot easily be allocated in a manner which will obtain universal approval among SKA Contributors. Consequently, SKA Contributors must accept that whilst some aspects of this SKA IP Policy will operate in their favour, other aspects may not.

4.2 The fundamental principles which will apply to all SKA Contributors are as follows:

(a) Background IPR:

- (i) Ownership of all Background IPR will remain with its owner.
- (ii) All SKA Contributors must use all reasonable endeavours to identify and notify to SKA Organisation, as part of any submissions, proposals or recommendations made by them which relate to the potential design, construction, installation, operation and maintenance of the SKA:

(A) Any Background IPR owned by them which they are not willing to licence to other SKA Contributors for SKA Project purposes on a royalty-free basis and which might, if it is not made the subject of an appropriate licence, make it unlawful for:

- (I) another SKA Contributor to implement those submissions, proposals or recommendations,
- (II) another SKA Contributor to implement any other aspect of the SKA Project, or
- (III) any user of the SKA to use the SKA and the outputs of such use.

(B) Any terms (including payment terms and associated payment mechanisms) under which they would be willing to grant licences under any Background IPR identified by them under (A) above for the purposes of the SKA Project. Potential SKA Contributors are encouraged to be competitive in their pricing proposals in order to be considered for involvement in the Construction Phase.

(Background IPR will not be deemed to have been notified unless the notification is accompanied with a sufficiently detailed explanation of why it is considered to fall within the scope of paragraph (A) for SKA Organisation and other SKA Contributors to be able to assess the risk created by that Background IPR.)

(C) Any Background IPR owned by other SKA Contributors of which they are aware which might, if it is not made the subject of an appropriate licence, make it unlawful for:

- (I) another SKA Contributor to implement their submissions, proposals or recommendations;
    - (II) another SKA Contributor to implement any other aspect of the SKA Project, or
    - (III) any user of the SKA to use the SKA and the outputs of such use.
  - (D) Any terms (including payment terms and associated mechanisms) of which they are aware under which that other SKA Contributor may be willing to grant a licence under any Background IPR identified under (C) above for the purposes of the SKA Project.
  - (E) Any alternative solutions to their primary submissions, proposals or recommendations, which would not require a licence under any Background IPR, together with details of the relative advantages and disadvantages of those proposals.
- (iii) Any Background IPR owned by an SKA Contributor which is not identified and notified to SKA Organisation by that SKA Contributor in accordance with the policy outlined at (ii) above sufficiently early, and any Background IPR owned by it which is identified and notified by it sufficiently early but in respect of which no proposed licensing terms are specified, will be deemed to be the subject of a licence granted by that SKA Contributor to SKA Organisation. Notification of Background IPR will not be considered to have been made sufficiently early if, in SKA Organisation's reasonable opinion:
- (A) an SKA Contributor is, prior to such notification, already sufficiently committed to the use of the technology or other subject-matter which is protected by that Background IPR that the use of alternative technology or subject matter would increase the cost or delay the delivery of that SKA Contributor's contribution to the SKA Project; and
  - (B) the owner of that Background IPR was, or ought reasonably to have been, aware of the likely desire to use that technology or subject-matter for the purposes of the SKA Project before that level of commitment was reached.
- (iv) Any licence deemed to be granted under paragraph (iii) above will be a non-exclusive, worldwide, royalty-free, perpetual, and irrevocable licence, granted to SKA Organisation, to:
- (A) use the innovations and work products protected by that Background IPR for SKA Project purposes only, and
  - (B) grant non-exclusive, worldwide, royalty-free, perpetual, and irrevocable sub-licences to other SKA Contributors to use those innovations and work products for SKA Project purposes only.

- (v) Licences relating to Background IPR shall not carry with them a right to be granted access to any trade secrets or technical know-how which is protected by that Background IPR unless such access is permitted under the terms of the Document Access and Use Policy in Appendix 1. This will be the case whether the licence is granted pursuant to negotiation or granted by default pursuant to paragraph (iii) above.
- (b) Foreground IPR:
  - (i) Subject to paragraph (ii) below, ownership and exploitation rights in respect of Foreground IPR will be governed by the governing local law of the country in which the exploitation of the protected innovation or work product is proposed (this will typically mean that the creator of the innovation or work product (or, if the creator is employed, its employer) will own and have exclusive exploitation rights in relation to any IPR created as a result of its work), as that position may be varied by agreement between Work Package Consortium members.
  - (ii) All Foreground IPR (which includes but is not limited to rights in computer source code) will be subject to a non-exclusive, worldwide, royalty-free, perpetual, and irrevocable licence, granted to SKA Organisation, to:
    - (A) use the innovations and work products protected by that Foreground IPR for SKA Project purposes only, and
    - (B) grant non-exclusive, worldwide, royalty-free, perpetual, and irrevocable sub-licences to other SKA Contributors to use those innovations and work products for SKA Project purposes only.
  - (iii) The owners of Foreground IPR shall, without restriction, therefore be entitled to:
    - (A) exploit Foreground IPR for purposes outside the SKA Project without restriction wherever, for whatever purpose, and on whatever terms they deem appropriate, and/or
    - (B) reserve the use, for purposes outside the SKA Project, of the innovations or work products protected by that Foreground IPR for themselves;

in such manner and to such extent as their ownership rights and the terms of their Work Package Consortium agreements permit.
  - (iv) SKA Contributors will, however, be required to provide SKA Organisation with high level information about the nature and extent of their commercial exploitation, if any, of Foreground IPR outside the scope of the SKA Project. This requirement will not extend to details of revenues or customers, but merely the applications to which Foreground IPR has been put, so that SKA Organisation can assess

and (where appropriate) publicise the wider social, commercial and economic significance of the work undertaken on the SKA Project.

- (v) SKA Organisation hopes and expects that this freedom to exploit Foreground IPR, which will typically have been generated with the assistance of SKA Project funds, will incentivise potential SKA Contributors to engage with the SKA Project.
  - (vi) Licences to Foreground IPR granted under paragraph (ii) above shall not carry with them a right to be granted access to any trade secrets or technical know-how which is protected by that Foreground IPR unless such access is permitted under the terms of the Document Access and Use Policy.
- (c) Third Party IPR:
- (i) SKA Contributors must use all reasonable endeavours to identify and notify to SKA Organisation, as part of any submissions, proposals or recommendations made by them which relate to the potential design, construction, operation and maintenance of the SKA:
    - (A) Any Third Party IPR of which they are aware which might, if it is not made the subject of an appropriate licence, make it unlawful for:
      - (I) their submissions, proposals or recommendations to be implemented;
      - (II) any other aspect of the SKA Project to be implemented; or
      - (III) any user of the SKA to use the SKA and the outputs of such use.
    - (B) Any terms (including payment terms and associated mechanisms) of which they are aware under which that third party may be willing to grant a licence under any Third Party IPR identified under (A) above for the purposes of the SKA Project.
    - (C) Any alternatives solutions to their primary submissions, proposals or recommendations, which would not require a licence under the identified Third Party IPR, together with details of the relative advantages and disadvantages of those proposals.
  - (ii) SKA Contributors which contribute to the Construction Phase are required to accept any Third Party IPR risks associated with their delivery of those aspects of the SKA Project which they are contracted to deliver, and (where relevant) the ongoing use of those aspects in the ongoing operation of the SKA. Those risks will include, but not be limited to:

- (A) The cost of procuring any licence under any Third Party IPR which may be required to make their delivery of those aspects of the SKA Project, and their future use in the operation of the SKA, lawful; or
- (B) The cost of lawfully delivering those aspects of the SKA Project in a manner which does not require a licence under Third Party IPR.

SKA Contributors will, as indicated above, be provided with access to any IPR Register maintained by SKA Organisation to help them identify and scope such Third Party IPR risks.

(d) Confidentiality

- (i) As a global project intended to benefit the global community which will be funded from contributions from public funds across the world, it is important that as many aspects of the governance and delivery of the SKA Project as possible are transparent and open to public scrutiny. For that reason, an underlying principle governing the SKA Project is that all Project Information will be made publicly accessible unless there are compelling reasons why it should not be.
- (ii) SKA Organisation acknowledges that there are compelling reasons to maintain the confidentiality of, and control access to, certain types of Project Information. Such types of information will include but not be limited to:
  - (A) technical know-how which can properly be regarded as a trade secret (including but not limited to technical know-how which may be patentable);
  - (B) Design Work which is protected by Foreground IPR and which may realistically be licensable for purposes outside the SKA Project; and
  - (C) Project Information pertaining to the price at which SKA Contributors and potential SKA Contributors deliver or propose to deliver SKA Project requirements.
- (iii) In order to ensure that access to, and use of, Project Information is managed appropriately, and that the confidentiality of Project Information is maintained where it is appropriate to do so, all SKA Contributors must comply with SKA Organisation's Document Access and Use Policy, under which:
  - (A) all Project Information will be allocated a particular access and use classification; and
  - (B) the allocated classification will determine the mandatory rules of access, use/non-use and disclosure/non-disclosure which will apply to that information and which will apply to SKA Contributors and third parties alike.

- 4.3 SKA Organisation will permit deviation from these principles on an exceptional basis only. Potential SKA Contributors who intend to negotiate the exclusion or limitation of any of these principles, particularly in relation to aspects of the SKA Project for which there is likely to be significant competition (whether in terms of technology or supplier), may adversely affect their prospects of being selected or approved by SKA Organisation.

## 5 **Status of the SKA IP Policy**

- 5.1 This SKA IP Policy does not have contractual effect and will not be binding on any potential SKA Contributor unless and until they enter into an agreement which expressly makes it binding.
- 5.2 The precise contractual framework within which the SKA IP Policy may be made binding on different SKA Contributors will differ depending on the nature of the contribution which is likely to be made by the SKA Contributor in question and the stage of the SKA Project at which that contribution is to be made. It is also possible that the precise terms of the relevant agreements within that framework will differ from country to country, depending on differences between local laws and practices.
- 5.3 The SKA Project is and will continue to be a dynamic enterprise, and its management and governance will need to be sufficiently flexible to meet new and developing challenges. It is therefore to be expected that new IPR related issues may emerge as work on the SKA Project progresses, and that it may be appropriate to modify this SKA IP Policy to address them. Potential SKA Contributors should expect that to be the case.

## 6 Definitions

6.1 In this SKA IP Policy the following terms shall bear the following meanings:

“Background IPR” means IPR owned by a SKA Contributor which have not been created as a result of work done for, or in connection with, the SKA Project, or which were created before its creator was a SKA Contributor.

“Consortium Member” means an entity which has entered into a Memorandum of Understanding with SKA Organisation relating to the provision of Work Package deliverables.

“Construction Phase” means the phase of the SKA Project concerned with the development and construction of the component parts of the Square Kilometre Array, its installation in situ at the selected sites, and all aspects of its commissioning to achieve full operational status.

“Design Work” means work undertaken at any stage during the full life-cycle of the SKA Project in connection with the design of any aspect of the Square Kilometre Array, including but not limited to the design of its component software and hardware, its construction, its installation, its operation and its maintenance.

“Document” means a document which records (in any medium) Project Information.

“Document Access and Use Policy” means the policy governing the access and use of Documents, including but not limited to Documents which record confidential information and trade secrets relating to Design Work, which is set out at Appendix 1 to this SKA IP Policy.

“Foreground IPR” means IPR owned by an SKA Contributor which have been created as a result of work done for, or in connection with, the SKA Project after its creator became a SKA Contributor.

“Intellectual Property Rights” and “IPR” means intellectual property rights of any nature anywhere in the world and including but not limited to rights in patents, inventions, trade marks, designs, copyright works (including rights in computer software and moral rights), database rights, trade secrets and other confidential information, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.

“Pre-Construction Phase” means the phase of the SKA Project concerned with all aspects of the SKA Project which it is necessary or appropriate to undertake before the commencement of the Construction Phase, including but not limited to much of the Design Work.

“Project Information” means information of any nature pertaining to the SKA Project, including but not limited to details of contributions made or proposed to be made by SKA Contributors.

“SKA” means the Square Kilometre Array”

“SKA Contributors” means entities which provide funding, products or services or otherwise undertake work in connection with the delivery of the SKA Project, including but not limited to Consortium Members.

“SKA Organisation” means a company limited by guarantee and incorporated in England and Wales under company number 07881918.

“SKA Project” means all aspects of the design, construction, installation, operation and maintenance of the Square Kilometre Array.

“Square Kilometre Array” means an international radio telescope system, consisting of an array of dish receptors and aperture arrays to be built and situated in Australia and South Africa with an aggregate collecting area of approximately one square kilometre.

“Third Party IPR” means IPR owned by a party, whether or not an SKA Contributor, which has not entered into an agreement which makes the terms of this SKA IP Policy binding upon it.

“Work Package” means a particular sub-set of deliverables for the SKA Project.

“Work Package Consortium” means a group of SKA Contributors tasked with delivery of a particular Work Package.

## Appendix 1 – Document Access and Use Policy

[DAUP to be inserted]