

MEMORANDUM OF UNDERSTANDING

BETWEEN

SKA ORGANISATION AND WORK PACKAGE CONSORTIUM MEMBERS

RELATING TO THE

WORK PACKAGE FOR THE STUDY, PROTO-TYPING AND DESIGN

OF THE

[INSERT NAME OF SKA ELEMENT/WORK PACKAGE]

This Memorandum of Understanding is made by and between:

- (1) SKA Organisation.
- [(2) [Insert name and, if appropriate, abbreviation]
- [(3) [Insert name and, if appropriate, abbreviation]
- [(4) [Insert name and, if appropriate, abbreviation]
- [(5) [Insert name and, if appropriate, abbreviation]
- [(6) [Insert name and, if appropriate, abbreviation]

(together the “**Parties**”).

This MoU defines the relationship between the SKA Organisation on the one hand, and work package consortium members (both collectively and individually) of the consortium which is tasked with the delivery of the work package to which this MoU relates on the other hand.

Full details of the Parties are provided in Appendix 1. Parties 2-6 inclusive are referred to as the “**Consortium Members**” in this MoU,

Background and Context

- A. The Square Kilometre Array project is a global scientific project to design, construct, and operate an advanced radio telescope in Australia and South Africa consisting of an array of dish receptors and aperture arrays with a combined collecting area of approximately one square kilometre, which will be used to carry out research on the cosmos (the “SKA Project”).
- B. The SKA Project comprises four main phases: (i) a preparatory phase (which has been completed), (ii) the current design and pre-construction phase, during which the elements of the Square Kilometre Array will be designed, (iii) a two-part construction phase during which those elements will be manufactured, installed, integrated and commissioned, and (iv) the operations phase.
- C. SKA Organisation is a not-for-profit company, comprising members from government departments, national funding agencies, and research organisations from around the

world. SKA Organisation has been mandated, amongst other things, with co-ordinating and administrating the pre-construction phase of the project.

- D. The work required in the pre-construction phase has been divided into work packages. The delivery of each work package will be entrusted to a consortium comprising research institutions and/or other not-for-profit organisations and/or commercial entities.
- E. It is essential for the successful delivery of the work package and the SKA Project as a whole that the Consortium Members have already entered into a binding agreement between themselves before the execution of this MoU (the “**Consortium Agreement**”). Under the terms of that agreement (to which SKA Organisation will not itself be a party), Consortium Members must have allocated amongst themselves the responsibility for delivery of each of the individual deliverables which together comprise the subject work package.

Each of the **Parties** agrees as follows:

1 Purpose and Scope of this MoU

- 1.1 The Parties agree to work together, in accordance with the terms of this MoU and using their best endeavours, to ensure the complete and timely delivery of the [name of work package] (the “Work Package”).
- 1.2 The Consortium Members also commit to SKA Organisation that they will:
 - (a) dedicate all appropriate resources and efforts to complying with their own obligations under their Consortium Agreement,
 - (b) strive to ensure that their fellow Consortium Members do likewise,
 - (c) establish and maintain an effective governance procedure to manage their performance under their Consortium Agreement and the ultimate delivery of the Work Package deliverables, and
 - (d) provide a copy of their Consortium Agreement to SKA Organisation upon request.

2 Term

- 2.1 In respect of each Party, this MoU shall come into effect on the date when it is signed by that Party. Save that Articles 3.2(f) and 4.2(a) shall remain in force in perpetuity, this MoU shall remain in force until the Work Package has been delivered and signed off by SKA Organisation or until all of the Parties agree otherwise.

3 Responsibilities of Consortium Members

- 3.1 The Consortium Members each commit to the SKA Organisation and to each other that:
 - (a) They will use their best endeavours, both individually and collectively, to deliver the Work Package deliverables set out in the statement of work attached at Appendix 2 to this MoU (the “Statement of Work”).

- (b) They will maintain and contribute knowledge, expertise, facilities, resource and infrastructure necessary to contribute to the Work Package in accordance with the Statement of Work.
- (c) If a Consortium Member indicates that it intends to withdraw as a Consortium Member or otherwise reduce or limit its involvement in the delivery of the Work Package deliverables, the remaining Consortium Members will use their best endeavours to reallocate the deliverables obligations and other obligations of that Consortium Member to other Consortium Members, or contract a new party which is acceptable to SKA Organisation to take on those obligations, in sufficient time to mitigate any risks to the timely delivery of the Work Package deliverables which may otherwise be caused.

3.2 Further, the Consortium Members each commit to the SKA Organisation and to each other that:

- (a) They will ensure that any deliverables which they do provide to SKA Organisation will be capable of lawful use by SKA Organisation and/or other SKA contributors for the purposes for which they were provided and without limitation (in time or otherwise) for those purposes.
- (b) They will appoint and notify to SKA Organisation a nominated consortium representative (“**Consortium Project Manager**”) who shall act as a single point of contact between the Consortium Members, as a collective, and SKA Organisation.
- (c) They will, via the nominated consortium representative:
 - (i) provide SKA Organisation with such information and documentation as it may reasonably request in relation to the delivery of the Work Package deliverables;
 - (ii) inform SKA Organisation of any event which might delay or prejudice the timely delivery of the Work Package deliverables as soon as they become aware of that event;
 - (iii) give reasonable notice to SKA Organisation of all proposed Consortium Members’ meetings (including all engineering meetings and all meetings of any governance board established by the Consortium Members) and allow a SKA Organisation representative to attend all such meetings as an observer.
- (d) They will, for as long as they remain a contributor to the SKA project and for a reasonable period afterwards (which shall not be less than 12 months in any case), provide SKA Organisation with such information and documentation as it may reasonably request about their contribution to the SKA project including, in particular, any Work Package deliverables to which they have contributed. In this respect, the parties acknowledge that SKA Organisation will, in the first instance, seek such information from the nominated consortium representative or his/her deputy.
- (e) If they intend to add a further party to the Consortium Agreement, they will:

- (i) Request approval of SKA Organisation, at least 14 days in advance of that addition, informing of the identity and proposed role of that further party. Such approval must be obtained before that addition can be made; and
 - (ii) If approval is obtained, ensure that the new party becomes a party to both the Consortium Agreement and (as a Consortium Member) this MoU with effect from the same date.
- (f) They will fully comply with the terms of the IP Policy which is attached at Appendix 3 to this MoU and will, without limitation:
- (i) upon request by SKA Organisation, a fellow Consortium Member, or another contributor to the SKA Project, enter into such further agreement as may be necessary to give effect to the terms and intentions of the IP Policy with prospective and/or retrospective effect;
 - (ii) not take any action or otherwise conduct themselves in a manner which is inconsistent with the terms of the IP Policy;
 - (iii) accept any reasonable modifications to the IP Policy which SKA Organisation may from time to time propose and which are consistent with its existing terms and intended to facilitate the achievement of its objectives; and
 - (iv) ensure that any sub-contractors who they engage in connection with the delivery of the Work Package deliverables also comply with this Article 3.2(f).
- (g) Accurate details of funding and in-kind provision by Parties for the purposes of the Work Package are provided in Appendix 4.
- (h) They will ensure that, under the terms of the Consortium Agreement, a Consortium Member domiciled in country which is a full member of SKA Organisation is allocated lead responsibility for co-ordinating the delivery of the Work Package.

3.3 The Consortium Members acknowledge that if they fail to deliver any Work Package deliverables in accordance with the Statement of Work, SKA Organisation may reduce or otherwise limit its allocation of value to the deliverables in question when assessing value for money in the Consortium Members' use of funding for the SKA project.

4 Responsibilities of SKA Organisation

4.1 SKA Organisation will use all reasonable endeavours to communicate openly and in a timely manner with Consortium Members in respect of all matters pertaining to the delivery of the Work Package deliverables and the SKA Project generally.

4.2 SKA Organisation commits to the Consortium Members that it will:

- (a) Fully comply with the terms of the IP Policy which is attached at Appendix 3 to this MoU. In this respect, SKA Organisation will, without limitation:

- (i) upon request by a Consortium Member or another contributor to the SKA project, enter into such further agreement as may be necessary to give effect to the terms and intentions of those paragraphs; and
 - (ii) not take any action or otherwise conduct itself in a manner which is inconsistent with the terms of the IP Policy.
- (b) Undertake prompt reviews of the work undertaken by the consortium according to the agreed upon schedule and provide quarterly reports to the SKA board and the consortium members on the earned value of the activities.
- (c) Use reasonable endeavours to provide such engineering and management support, and access to documentation and interfaces, as Consortium Members may reasonably require to assist execution of the work. This obligation shall not, however, require SKA Organisation to provide Consortium Members with access to the confidential information of other SKA Project contributors.
- (d) Provide unrestricted access to project level documentation (e.g. schedules, infrastructure plans, operations plans etc.), provided that this obligation shall not require SKA Organisation to provide Consortium Members with access to the confidential information of other SKA Project contributors.

5 Status of this MoU

- 5.1 The Parties acknowledge and agree that this MoU is not intended to create an exhaustive set of binding rights and obligations which be enforceable by or against them. However, they each recognise that certain of the commitments included in this MoU need to have contractually binding effect in the interests of the SKA Project as a whole.
- 5.2 With that in mind, the parties agree that the following provisions of this MoU will be binding: Articles 2, 3.2, 4.2, and 5-8.
- 5.3 The parties agree that the remaining provisions of this MoU are an expression of the current intentions of the parties, and that they are not intended to be legally binding or otherwise to give rise to any enforceable rights or obligations. Nevertheless, the Parties repeat and confirm their good faith intention to commit all necessary and appropriate effort and resource to comply with those provisions and achieve their objectives.
- 5.4 This MoU may be executed in any number of counterparts.

6 Amendments to this MoU

- 6.1 Any amendments to this MoU, including Appendix 1 and Appendix 3 but not Appendix 2, must be agreed in writing by SKA Organisation and all Consortium Members before they will be effective. Any amendment to the Statement of Work shall be governed by the change control procedure set out within it.

7 Assignment and Transfer

7.1 The rights and obligations created by this MoU are personal to the Parties and are not assignable or transferable without the written consent of the other Parties, save that SKA Organisation may assign its rights and obligations under this MoU to any entity which is appointed to replace SKA Organisation in respect of the whole or a substantial part of its role in the SKA Project.

8 Disputes Relating to this MoU

8.1 This MoU, and all aspects of the relationship between SKA Organisation and each of the Consortium Members, is governed by the laws of England.

8.2 If any disputes or claims arise under or in relation to this MoU, the Parties to the dispute or claim will enter into good faith negotiations in an attempt to resolve the matter amicably. Where initial attempts at negotiated settlement fail, the parties to the dispute or claim will each escalate the matter to board or senior management level, and make all reasonable attempts to arrange a face to face settlement meeting at that level before taking any further action.

8.3 The Parties agree that if a dispute or claim arises under or in relation to this MoU (whether of a contractual nature or otherwise and including disputes regarding its existence or validity) and is not settled by negotiation, it shall be referred to and finally resolved by arbitration under the UNCITRAL rules in force at the date of the MoU. For that purpose, they agree that:

- (a) The arbitration tribunal shall consist of [one] arbitrator;
- (b) If the parties cannot agree upon the identity of the arbitrator, it shall be appointed for them by the Institute of Arbitration in London;
- (c) The place of the arbitration shall be London; and
- (d) The language of the arbitration shall be English.

8.4 This Article 8 does not prevent Consortium Members from agreeing different dispute resolution procedures in respect of disputes which may arise among themselves in which SKA Organisation is not a prospective claimant or defendant.

Appendix 1

Party Details

The Parties to this Memorandum of Understanding are:

- (1) SKA Organisation, a company incorporated in England and Wales with registered number 07881918 whose registered office is at Jodrell Bank Observatory, Lower Withington, Macclesfield, Cheshire, United Kingdom, SK11 9DL.
- [(2) [Insert name, company number and address of consortium member]]
- [(3) [Insert name, company number and address of consortium member]]
- [(4) [Insert name, company number and address of consortium member]]
- [(5) [Insert name, company number and address of consortium member]]
- [(6) [Insert name, company number and address of consortium member]]

Appendix 2

Statement of Work for the [Insert name of Work Package]

DRAFT

Appendix 3

SKA Intellectual Property Policy

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Appendix 4

Funding and In-kind Provision

[Insert table showing funding and in-kind provision by each Consortium Member, including funding source]

DRAFT

Executed by
[]
for and on behalf of
SKA ORGANISATION

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Signature
Date:

Executed by
[]
for and on behalf of
**[CONSORTIUM MEMBER
1]**

.....
Signature
Date:

Executed by
[]
for and on behalf of
**[CONSORTIUM MEMBER
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**[CONSORTIUM MEMBER
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