

DATED

2013

SKA ORGANISATION

(1)

and

[CONSORTIUM NAME]

(2)

CONSORTIUM AGREEMENT

For the consortium delivering Work Package [] of
the SKA Pre Construction Phase

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Reference PD/SKA.26-4

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DATE OF

2013

PARTIES

- (1) **THOSE PERSONS** set out in Schedule 1 ("**Consortium Members**");
- (2) **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 ("**SKA Organisation**").

each such person being a "**Party**" (and together the "**Parties**").

INTRODUCTION

- A. The Parties aim to ensure that the Consortium will successfully complete the work agreed in the Statement of Work as part of Stage 1 & Stage 2 of the SKA Pre Construction Phase.
- B. The SKA Organisation is not a member of the Consortium however will be invited as an observer on the Consortium Board.
- C. The Consortium Members will maintain knowledge, expertise, facilities and infrastructure necessary to contribute to the Work Package in accordance with the Statement of Work.
- D. Consortium Members will contribute means and infrastructure to further the goals of the Work Package in accordance with the Statement of Work.
- E. Consortium Members will carry out technical research and pre competitive development in preparation of the [SKA Construction and Operational Phases].

The Parties therefore agree to the following:

1 DEFINITIONS

Any capitalised terms and phrases used in the Agreement shall have the meanings assigned to them below, unless elsewhere defined in the Agreement:

["Affiliated Company" means any legal entity that:

- (a) is directly or indirectly owned or controlled by a Party; or
- (b) is under the same direct or indirect ownership or control as any Party; or
- (c) directly or indirectly owns or controls any Party; and

"Ownership" or "control" shall exist through the direct or indirect ownership of more than 50% of the nominal value of the issued share capital;][*Not used at present*]

"Background IPR" means IPR owned by a Consortium Member 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 Consortium Member;

"Consortium" means the consortium comprised of the Consortium Members;

"Consortium Board" means the body to be put in place by the Consortium as set out at clause 11.1;

"Consortium Lead Organisation" means the Consortium Member identified as such in Schedule 1;

"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.

"Defaulting Party" means as set out at clause 6.1;

"Effective Date" means [];

"Force Majeure" means in relation to a Party any cause beyond the reasonable control of that Party including, without limitation, any of the following:

- (i) act of God;
- (ii) war, insurrection, riot, civil disturbance, acts of terrorism;
- (iii) fire, explosion, flood, storm;
- (iv) theft or malicious damage;
- (v) strike, lock-out, or other industrial dispute (whether involving the workforce of the party so prevented or any other party), third party injunction;
- (vi) national defence requirements, acts or regulations of national or local governments; or
- (vii) inability to obtain essential fuel, power, raw materials, labour, containers or transportation, accident, malfunction of machinery or apparatus, denial of export or import licences;

"Foreground IPR" means IPR owned by Consortium Member which have been created as a result of work done for, or in connection with, the SKA Project after its creator became a Consortium Member;

"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;

"Programme of Activities" means a detailed description of the steps and resources needed to accomplish the tasks set out in the Statement of 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;

"Proprietary Information" means information of whatever kind and in whichever form which is disclosed by one SKA Contributor (a **"disclosing party"**) to another SKA Contributor (a **"receiving party"**), whether directly or indirectly via another SKA Contributor and whether or not marked as confidential upon its disclosure, which is not generally available to the public and which contains trade secrets or technical, commercial or financial information which is known only to the disclosing party and to the receiving party and to other parties to whom it has been disclosed by the disclosing party;

"RFP" means [Request for Proposals, as issued by the SKA Organisation on xx March 2013];

"RFP Response" means the response to the RFP by the Consortium dated [];

"SKA" means the Square Kilometre Array;

"SKA Brand Use Policy" means the policy governing the manner in which the SKA name and any associated logo may be used by SKA Contributors, which is accessible on the SKA Organisation website at [insert url], as that policy may be amended and published by the SKA Organisation from time to time.

"SKA Contributors" means entities, including the Consortium Members, which have contracted to provide funding, products or services in connection with the delivery of the SKA Project under the terms of an agreement to which the SKA Organisation is a party;

"SKA Document Access Policy" means the policy governing access to and use of Project Information, which is accessible on the SKA Organisation website at [insert url], as that policy may be amended and published by the SKA Organisation from time to time;

"SKA Pre Construction Phase" means [];

"SKA Project" means all aspects of the design, construction, installation, operation and maintenance of the Square Kilometre Array;

"Statement of Work" means the description of the work as set out at Schedule 4 as amended from time to time;

"Square Kilometre Array" means an international radio telescope system, consisting of an array of dish receptors and mid frequency aperture arrays to be built and situated in Australia and South Africa with aggregate collecting area of approximately one square kilometer;

"Third Party IPR" means IPR owned by a party which is not an SKA Contributor;

"Work" means any and all work comprised in the Work Package;

"Work Package Management Team" or **"WPMT"** means the body identified in paragraph 2 of Schedule 2;

"Work Package Consortium Leader" means the role identified in clause 7.1;

"Work Package" means as set out in the RFP;

- 1.1 All references to time are time in London, England.
- 1.2 All references to "person" includes unincorporated organisations which have legal personality.
- 1.3 Any reference to a statute or statutory provision is to the same as amended, repealed or re-enacted from time-to-time.
- 1.4 Any reference to a document is a reference to that document as amended, varied or terminated in accordance with its terms and this Agreement.
- 1.5 In the event of any conflict between the body of this Agreement and the Schedules, the body of this Agreement shall prevail.

2 PURPOSE

The purpose of this Agreement is to specify with respect to the Work Package the relationship between the Parties, in particular concerning the organisation and management of the Work between the Consortium Members.

3 TERM

This Agreement shall come into effect on the Effective Date and unless terminated earlier in accordance with its terms, shall continue until [*longstop date to be inserted*] when it shall automatically terminate.

4 EVOLUTION OF THE CONSORTIUM

4.1 Addition of a Consortium Member

A person may be admitted as a member of the Consortium and become a Consortium Member and a Party to this Agreement upon the unanimous agreement in writing of the Parties and subject to any terms as may be agreed between the Parties.

4.2 Withdrawal of a Consortium Member

- (a) A Consortium Member (the **"Withdrawing Member"**) may, with the prior written consent of all Parties, withdraw from the Consortium and cease to be a Consortium Member and a Party to this Agreement on giving not less than twelve (12) months' notice in writing of the same to all other Parties. Such period of notice may, with the prior written consent of all Parties (not to be unreasonably withheld or delayed), be reduced in circumstances where the

Withdrawing Party reaches agreement with other Parties and/or new parties who collectively will take over its obligations under this Agreement;

- (b) On expiry of such notice this Agreement shall terminate in respect of the Withdrawing Member. During such period of notice the Withdrawing Member shall not be relieved of any of its obligations under this Agreement. The termination of this Agreement with respect to such Withdrawing Member shall not affect any rights or obligations of that Withdrawing Member or any other Party which may have accrued prior to such termination; and
- (c) Without prejudice to clause 14.9(a), the Withdrawing Member shall, after such termination, provide to a Party such information and documents concerning the Withdrawing Member's participation in the Consortium as may be reasonably requested by that Party.

5 RESPONSIBILITIES OF CONSORTIUM MEMBERS

5.1 The Consortium Lead Organisation shall:

- (a) inform the SKA Organisation of any event which might affect the implementation and/or execution of the Work Package;
- (b) during execution respond to requests for project modification from the SKA Organisation after due analysis of their impact;
- (c) record and track progress in all sub-contracts to be placed with industry within the context of the Work Package;

5.2 Each Consortium Member shall in respect of its own Work:

- (a) take all necessary and reasonable measures to ensure that the Work is carried out in accordance with the Statement of Work, the Statement of Work [and the RFP Response];
- (b) work with the SKA Organisation on sub-system definition and establishing a detailed work schedule;
- (c) make appropriate internal arrangements to ensure the efficient implementation of the Work Package, and shall ensure that any agreement concluded between itself and any of the Consortium Members does not conflict with the provisions of this Agreement;
- (d) provide all detailed data requested by the SKA Organisation in a timely manner for the purposes of the proper monitoring and completion of the Work Package;
- (e) ensure the efficient implementation of the Work Package, and cooperate, perform and fulfil, promptly and on time, all of its obligations under this Agreement and as may be reasonably required by the SKA Organisation;
- (f) notify the Parties promptly of any significant information, fact, problem or delay likely to affect the Work Package;

- (g) promptly provide all information reasonably required by the SKA Organisation or the Work Package Consortium Leader;
- (h) take reasonable measures to ensure the accuracy of any information or materials it supplies to the other Parties;
- (i) represents that it has available the funding as identified in Schedule 3 from the persons identified therein and undertakes to use the same for the completion of the Work Package in accordance with this Agreement and no other purpose.

5.3 No Party shall have any authority to bind any other Party.

6 TERMINATION

6.1 If any of the following events occurs in respect of a Consortium Member (the "**Defaulting Party**"), the SKA Organisation or the Consortium Lead Organisation (with the prior written consent of all the other Parties save for the Defaulting Party) may terminate the Agreement with respect to the Defaulting Party on written notice to that Party, giving such notice period as it deems appropriate in the circumstances:

- (a) any meeting of creditors of such Party is held or any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) is proposed or entered into by or in relation to the Defaulting Party (other than for the purpose of a bona fide reconstruction or amalgamation);
- (b) a supervisor, receiver, administrator, administrative receiver or other encumbrancer takes possession of or is appointed over or any distress, execution or other process is levied or enforced (and is not discharged within seven days) upon the whole or any substantial part of the assets of the Defaulting Party;
- (c) the Defaulting Party ceases or threatens to cease to carry on business or is or becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
- (d) a petition is presented, or a meeting is convened for the purpose of considering a resolution, for the making of an administrative order, the winding-up, bankruptcy or dissolution of the Defaulting Party;
- (e) any event analogous to any of the foregoing (a) to (e) occurs in any jurisdiction;
- (f) is affected by an event of Force Majeure for more than sixty (60) consecutive days which prevents it from carrying out all or a substantial portion of its obligations hereunder; or
- (g) is in material breach of its obligations under this Agreement and this breach is not remediable, or the breach is remediable, but has not been remedied within sixty (60) days after receipt by the Defaulting Party of a written notice from the SKA Organisation or the Consortium Lead Organisation (as the case may be) stating the breach and requesting its remedy.

- 6.2 In the event all the Consortium Members agree that this Agreement shall be terminated, the consent of the SKA Organisation shall be required for such termination, such consent not to be unreasonably withheld. The Consortium Lead Organisation shall notify the SKA Organisation in writing of such decision and in the event the SKA Organisation has not given or withheld its consent accordingly within six (6) months of receipt of such notice, the Consortium Members may terminate this Agreement without the consent of the SKA Organisation and such termination shall be effective on receipt of written notice of the same from each Consortium Member by the SKA Organisation.

7 CONSORTIUM COORDINATION

- 7.1 The Consortium Lead Organisation shall appoint a Work Package Consortium Leader, who shall be the intermediary between the Consortium Members and the SKA Organisation and the Consortium Lead Organisation shall procure that the Work Package Consortium Leader shall, on behalf of the Consortium Lead Organisation, carry out the tasks and duties given to it in this Agreement. The initial Work Package Consortium Leader as at the date of this Agreement shall be the person identified in Schedule 1 as such. The Consortium Lead Organisation may change the identity of the Work Package Consortium Leader from time to time on written notice to all Parties.
- 7.2 The Work Package Consortium Leader shall be responsible for coordinating the execution of this Work Package as set out by this Agreement including but not limited to the tasks set out in clause 7.3.
- 7.3 The Work Package Consortium Leader shall:
- (a) ensure that the tasks identified in the Statement of Work are carried out in a timely manner;
 - (b) be the intermediary for communication between the Parties and SKA Organisation in accordance with the provisions in the Statement of Work, with the exceptions foreseen in the Agreement;
 - (c) prepare the reports and deliverables required by the Statement of Work;
 - (d) collect from all Parties the progress statements for submission to SKA Organisation;
 - (a) monitor compliance by the Parties with the Agreement and the Statement of Work;
 - (b) keep the address list of Consortium Members and other contact persons updated and available to all Parties;
 - (c) collect, reviewing and submitting information on the progress of the Work Package and reports and other deliverables to SKA Organisation;
 - (d) prepare the meetings, proposing decisions and preparing the agenda of Consortium Board meetings, preparing the minutes of the meetings and monitoring the implementation of decisions taken at meetings;

- (e) transmit documents and information connected with the Work Package, including without limitation changes of contact information of the Parties;
- (f) provide, upon reasonable request, the Parties with official copies or originals of documents which are in the possession of the Consortium Lead Organisation.

7.4 The Consortium Lead Organisation may be replaced with a new Consortium Lead Organisation with the prior written agreement of all Parties (save for the outgoing Consortium Lead Organisation).

8 LIABILITY

8.1 Exclusion of implied warranties

Each Party shall carry out its obligations hereunder with reasonable skill and care. Subject to the foregoing and save as expressly set out elsewhere in this Agreement, all warranties implied by law are hereby excluded to the fullest extent permitted by law.

8.2 Limitations of contractual liability

- (a) Nothing in this Agreement shall exclude or limit a Party's liability for personal injury or death caused by that Party's negligence or for fraud or fraudulent misrepresentation.
- (b) No Party shall be responsible to any other Party for any loss of profit, loss of revenue, loss of contracts or any indirect or consequential loss or similar damage.
- (c) A Party's aggregate liability towards the other Parties collectively shall be limited to the sum set out in Schedule 3 in respect of that Party.
- (d) The terms of this Agreement shall not be construed to amend or limit any Party's non-contractual liability.

8.3 Damage caused to third parties

Each Party shall be solely liable for any loss, damage or injury to third parties resulting from the performance of the said Party's obligations by it or on its behalf under this Agreement.

8.4 Several Liability

Except as otherwise expressly provided in this Agreement, all representations, warranties, undertakings, agreements, covenants, indemnities and obligations made or given or entered into by a Party under this Agreement are assumed by each Party severally by each of them in relation only to itself and the liability of each Party in respect of any breach shall extend only to any loss or damage arising from its own breach and each Party shall be liable only for its share of the total loss or damage.

9 FORCE MAJEURE

9.1 No Party shall be deemed to be in breach of this Agreement or otherwise liable to the other Party for any delay in performance or any non-performance of any obligations under this agreement to the extent that the delay or non-performance is due to Force Majeure provided that:

- (a) the relevant Party has used reasonable endeavours to avoid and mitigate the effects of the Force Majeure and to carry out its obligations under this Agreement in any other way that is reasonably practical; and
- (b) the Party suffering a Force Majeure event has promptly given written notice to the other party containing full particulars of the nature and the extent of the circumstances giving rise to the Force Majeure event.

9.2 Upon notice by the Party suffering a Force Majeure event of the circumstances giving rise to Force Majeure to the other party, the party shall enter into bona fide discussions with a view to alleviating its effects or agreeing upon such alternative arrangements as may be fair and reasonable.

10 CHANGES TO THIS AGREEMENT

Changes to this Agreement must be approved in writing by all Parties.

11 GOVERNANCE OF THE CONSORTIUM

11.1 General structure

- (a) The Consortium Members and the SKA Organisation shall put in place and maintain at all times an organisational structure for the Consortium comprising the following:
 - (i) a Consortium Board (the composition of which is set out at [] below) as the ultimate decision-making body of the Consortium;
 - (ii) a Work Package Manager who shall supervise the execution of the Statement of Work which shall report to and be accountable to the Consortium Board;
 - (iii) [Task Groups as management groups for Sub Tasks].
- (b) The Consortium Lead Organisation shall be the intermediary between the Consortium Members and the SKA Organisation. The Consortium Lead Organisation shall, in addition to its responsibilities as a Consortium Member, perform the tasks assigned to it as described in the Statement of Work and this Agreement.

11.2 Consortium Board

- (a) The Consortium Board shall consist of one representative of each Consortium Member and the SKA Organisation (hereinafter "**Board Member**").

- (b) Subject to clause 10, each Board Member shall be deemed to be duly authorised to deliberate, negotiate and decide on all matters brought before the Consortium Board.
- (c) The chair and the vice-chair of the Consortium Board shall be elected by a simple majority decision among the Board Members for the duration of this Agreement.
- (d) The Consortium Members agree to abide by all decisions of the Consortium Board however this shall not prevent the Consortium Members submitting a dispute for resolution in accordance with the provisions of clause 14.3 of this Agreement.

11.3 Work Package Management

- (a) The Consortium shall prepare a management plan for its activities. The execution of this plan and resourcing is the responsibility of the consortium. Reporting and interactions with the SKA Organisation are identified in the Statement of Work.
- (b) The Consortium Members shall comply with the provisions of Schedule 2 (Operational Procedures).

12 INTELLECTUAL PROPERTY

12.1 Nothing in this Agreement shall operate to transfer ownership of any IPR from one Party to another Party.

12.2 Each of the Consortium Members warrants that it has, before entering into this Agreement:

- (a) used all reasonable endeavours to identify all Background IPR held by it, all Background IPR known to it which are held by other SKA Contributors, and all Third Party IPR known to it, in each case as at the date of it entering into this Agreement, which might, if not made the subject of an appropriate licence, make it unlawful for:
 - (i) another SKA Contributor to implement any submissions, proposals or recommendations made by that Consortium Member which relate to the potential design, construction, installation, operation and maintenance of the SKA;
 - (ii) another SKA Contributor to implement any other aspect of the SKA Project;
 - (iii) any user of the SKA to use the SKA and the outputs of such use; and
- (b) notified to the SKA Organisation, either as part of the RFP Response or otherwise in writing:
 - (i) all such IPR identified by it;

- (ii) in respect of any such Background IPR held by it, any terms (including payment terms and associated payment mechanisms) under which it would be willing to grant licences under the Background IPR for the purposes of the SKA Project;
- (iii) in respect of any such Background IPR held by another SKA Contributor and any such Third Party IPR, any terms (including payment terms and associated mechanisms) of which they are aware under which that other SKA Contributor or third party may be willing to grant a licence under such IPR for the purposes of the SKA Project; and
- (iv) any alternative solutions to their primary submissions, proposals or recommendations, which would not require a licence under any of the Background IPR or Third Party IPR identified by it, together with details of the relative advantages and disadvantages of those proposals.

12.3 Each Consortium Member hereby grants to the SKA Organisation, in respect of any Background IPR owned by it which is contemplated at clause 12.2(a) above and:

- (a) the existence of which has not been notified to the SKA Organisation as contemplated at clause 12.2(b) above; or
- (b) in respect of which no proposed licensing terms have been notified to the SKA Organisation as contemplated at clause 12.2(b) above;

a non-exclusive, worldwide, royalty-free, perpetual, and irrevocable licence to use the innovations and work products protected by that Background IPR for SKA Project purposes, and to grant sub-licences on the same terms to other SKA Contributors to use those innovations and work products without restriction for SKA Project purposes.

12.4 Each of the Consortium Members warrants that it has procured, as at the Effective Date, or undertakes that it shall procure, all necessary licences under Background IPR owned by other SKA Contributors and under Third Party IPR as may be required to make lawful:

- (a) its delivery of those aspects of the SKA Project which the Statement of Work requires it to deliver, and
- (b) the future use of those aspects of the SKA Project in the construction, installation, operation and maintenance of the SKA by other SKA Contributors and SKA users throughout the life of the SKA.

12.5 Each of the Consortium Members hereby grants to the SKA Organisation, in respect of all Foreground IPR which may be owned by it after the Effective Date, a non-exclusive, worldwide, royalty-free, perpetual, and irrevocable licence, to use the innovations and work products protected by that Foreground IPR for SKA Project purposes, and to grant sub-licences on the same terms to other SKA Contributors to use those innovations and work products without restriction for SKA purposes.

- 12.6 Each of the Consortium Members undertakes to use all reasonable endeavours to notify the SKA Organisation of all Foreground IPR created by it (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.
- 12.7 Each of the Consortium Members agrees that in respect of its innovations or work products which are the subject or potentially the subject of registered IPR protection, but in respect of which it does not propose to maintain or pursue registered IPR protection, the SKA Organisation may maintain or pursue registered IPR protection for that innovation or work product in its own name.
- 12.8 Each of the Consortium Members undertakes that it shall, promptly upon the written request of the SKA Organisation, provide the SKA Organisation with high level details of the nature and extent of their commercial exploitation, if any, of Foreground IPR outside the scope of the SKA Project. This obligation shall not extend to the provision of details of revenues or customers, but to the applications to which Foreground IPR has been put, so that the SKA Organisation can assess and (where appropriate) publicise the wider social, commercial and economic significance of the work undertaken on the SKA Project.
- 12.9 Each of the Consortium Members undertakes that it shall, promptly upon the written request of the SKA Organisation, execute all such documents and do all such things as the SKA Organisation may reasonably request to enable the SKA Organisation to give effect to the intention of the provisions of this clause 12, including but not limited to such documents and things as may:
- (a) Perfect any of the licences or sub-licences contemplated by this clause 12;
 - (b) facilitate the registration of such licences in all applicable registers; and
 - (c) facilitate the maintenance or procurement of registered IPR protection as contemplated at clause 12.7.
- 12.10 Each of the Consortium Members shall comply with all aspects of the SKA Brand Use Policy at all times both during and after the term of this Agreement.
- 12.11 The liability limits set out in this Agreement shall not apply in respect of any breach of a Consortium Member's obligations under this clause 12.

13 PROPRIETARY INFORMATION

- 13.1 Each Consortium Member undertakes that it shall, in respect of all Proprietary Information disclosed to it by other Consortium Members and other SKA Contributors, maintain the confidentiality of all such Proprietary Information and use and disclose it solely for the SKA Project purposes for which it is expressly authorised to use and disclose such Proprietary Information.
- 13.2 The obligation at clause 13.1 shall not apply or shall cease to apply in respect of information which:
- (a) is identified pursuant to the SKA Document Access Policy as information to which the requirements of clause 13.1 shall not apply, in which case the

receiving party shall comply with the rules of access, use and disclosure for such information as are set out in the SKA Document Access Policy;

- (b) a receiving party is required to disclose as a requirement of law or any regulatory body to whose rule either party is subject, provided that clause 13.1 shall not apply or shall cease to apply in such circumstances only insofar as the required disclosure is concerned;
- (c) is known to the receiving party prior to the date of this Agreement otherwise than as a result of being obtained directly or indirectly from the party disclosing such Proprietary Information;
- (d) is obtained from a third party who lawfully possessed such Proprietary Information and which has not been obtained in a breach of a duty of confidence owed to the disclosing party by any reason; or
- (e) is in the public domain in the form in which it is possessed by the receiving party other than as a result of a breach of a duty of confidence owed to the disclosing party by any person.

13.3 The liability limits set out in this Agreement shall not apply in respect of any breach of a Consortium Member's obligations under this clause 13.

13.4 The provisions of this clause 13 shall survive the expiry or termination of this Agreement.

14 MISCELLANEOUS

14.1 Severance

Should any provision of this Agreement become invalid, illegal or unenforceable, it shall not affect the validity of the remaining provisions of this Agreement.

14.2 No representation, partnership or agency

The Parties shall not be entitled to act or to make legally binding declarations on behalf of any other Party. Nothing in this Agreement shall be deemed to constitute a joint venture, agency, partnership, interest grouping or any other kind of formal business grouping or entity between the Parties.

14.3 Third party rights

No person who is not a party to this Agreement shall have any right to enforce this Agreement (or any agreement or document entered into pursuant to this Agreement) pursuant to the Contracts (Rights of Third Parties) Act 1999.

14.4 Entire agreement

This Agreement and any agreement or document entered into pursuant to this Agreement constitutes the entire agreement between the Parties and supersedes any previous agreement or arrangement between the Parties or any of them relating to the subject matter of this Agreement.

14.5 Counterparts

This Agreement may be executed in any number of counterparts and by the Parties to it on separate counterparts (which may be facsimile copies), but shall not take effect until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all counterparts together shall constitute a single agreement.

14.6 Notices and other communication

Any notice to be given under this Agreement shall be in writing to the addresses and recipients as listed in Schedule 1.

(a) Formal notices:

If it is required in this Agreement that a formal notice, consent or approval shall be given, such notice shall be signed by an authorised representative of a Party and shall either be served personally or sent by mail with recorded delivery or telefax or email with receipt acknowledgement.

(b) Other communication:

Other communication between the Parties may also be effected by other means such as e-mail with acknowledgement of receipt, which fulfils the conditions of written form.

Any change of persons or contact details shall be notified immediately by the respective Party to the Consortium Lead Organisation. The address list shall be accessible to all concerned.

14.7 Assignment and amendments

No rights or obligations of the Parties arising from this Agreement may be assigned or transferred, in whole or in part, to any third party without the other Parties' prior formal approval

14.8 Involvement of third parties

A Consortium Member may [with the prior written consent of the SKA Organisation] subcontract any of its obligations hereunder however shall remain solely responsible for carrying out its obligations under this Agreement.

14.9 Survival of Provisions

- (a) The provisions of this Agreement which are expressly or impliedly intended to survive the termination or expiry of this Agreement shall survive such termination or expiry including Clauses [].
- (b) This Agreement shall be binding upon and enure for the benefit of the successors in title and assigns of each of the Parties.

14.10 Mandatory national law

Nothing in this Agreement shall be deemed to require a Party to breach any mandatory statutory law under which the Party is operating.

14.11 Language

This Agreement is drawn up in English, which language shall govern all documents, notices, meetings, arbitral proceedings and processes relative thereto.

14.12 Applicable law

This Agreement shall be construed in accordance with and governed by the English law.

14.13 Settlement of disputes

Arbitration

Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, or the legal relationships established by this agreement, shall be referred to and finally resolved by arbitration under the UNCITRAL rules in force at the date of this Agreement, which rules are deemed to be incorporated by reference into this clause.

The Parties agree that:

- (a) [the tribunal shall consist of [one] arbitrator;]
- (b) in default of the parties' agreement as to the arbitrator(s), the appointing authority shall be 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.

Executed by
[]
for and on behalf of
SKA ORGANISATION

.....
Signature

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

.....
Signature

Executed by
[] for and on
behalf of
**[CONSORTIUM MEMBER
2]**

.....
Signature

Executed by
[] for and on
behalf of
**[CONSORTIUM MEMBER
3]**

.....
Signature

Executed by
[] for and on
behalf of
**[CONSORTIUM MEMBER
4]**

.....
Signature

**SCHEDULE 1
CONSORTIUM MEMBERS AND PERSONNEL**

1 MEMBERS

1.1 [INSERT LIST OF MEMBERS]

2 CONSORTIUM LEAD ORGANISATION

2.1 The Consortium Lead Organisation is [].

3 WORK PACKAGE CONSORTIUM LEADER

3.1 The Work Package Consortium Leader is []

CONTACT:

EMAIL:

FAX:

ADDRESS:

4 ADDRESSES AND RECIPIENTS FOR SERVICE OF NOTICES UNDER CLAUSE 14.6

4.1 SKA Organisation

CONTACT:

EMAIL:

FAX:

ADDRESS: Jodrell Bank Observatory, Lower Withington, Macclesfield, Cheshire,
United Kingdom, SK11 9DL

4.2 *[Insert contact name and details for each Consortium Member]*

5 NAMES OF OFFICIALS IN THE WORK PACKAGE MANAGEMENT TEAM

5.1 Work Package Project Manager:

Name:

Organisation:

Address:

Phone (office):

Phone (PA):

Mobile:

email

Fax:

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SCHEDULE 2 OPERATIONAL PROCEDURES

1 MEETINGS

1.1 Representation in Consortium Board meetings

All Board Members:

- (a) should be present or represented at every meeting of the Consortium Board;
- (b) may appoint a substitute or a proxy to attend and vote at any meeting;
- (c) shall participate in a cooperative manner in the meetings;
- (d) may come accompanied by an advisor (without voting rights).

1.2 Preparation and organisation of Consortium Board meetings

- (a) The Chair of the Consortium Board shall convene Consortium Board not less than every [] months.
- (b) The Work Package Consortium Leader shall support the chair in the preparation and documentation of the meetings (e.g. agenda, minutes)
- (c) Notice of a meeting:

The chair shall give notice in writing of a meeting to each Board Member as soon as possible and within at least thirty (30) calendar days preceding an ordinary meeting and fifteen (15) calendar days preceding an extraordinary meeting.

- (d) Sending the agenda:

The chair of the Consortium Board shall prepare and send a written agenda to each member no later than [] days preceding the meeting.

1.3 Voting rules and quorum

- (a) The quorum for the transaction of business at a Consortium Board meeting shall be a minimum of voting Board Members equal to not less than two-thirds (2/3) of all voting Board Members.
- (b) Each Board Member present or represented in the meeting shall have one vote.
- (c) Board Members of a Defaulting Party may not vote.
- (d) Decisions shall be taken by a majority of two-thirds (2/3) of the votes.

1.4 Minutes of meetings

- (a) The chair of the Consortium Board shall produce written minutes of each meeting which shall be the formal record of all decisions taken. The chair shall send the draft minutes to all Board Members within ten (10) calendar days of the meeting.
- (b) The minutes shall be considered as accepted if, within fifteen (15) calendar days from sending, no Board Member has objected in writing to the Work Package Consortium Leader with respect to the accuracy of the draft of the minutes.
- (c) The accepted minutes shall be made available to all Board Members and the Work Package Consortium Manager, who shall safeguard them. If requested the Work Package Consortium Manager shall provide authenticated duplicates to Parties.

2 WORK PACKAGE CONSORTIUM MANAGEMENT TEAM

- 2.1 The Consortium shall establish a Work Package Management Team ("**WPMT**") that as a minimum include the Leader & project manager. These members of the WPMT are obligatory for establishing the interface to SKA Organisation.
- 2.2 At the request of WPMT, representatives of the [Task Group] leaders can be invited to WPMT meetings.
- 2.3 The Work Package Consortium Leader is the head of the WPMT and shall also monitor the implementation by the heads of the Work Packages Tasks of decisions taken by the WPMT.
- 2.4 The WPMT :
 - (a) Implement the decisions of the Consortium Board;
 - (b) supervise that the Work Package is executed according to the Statement of Work;
 - (c) prepare the Programme of Activities;
 - (d) prepare progress reports on the state of advancement of the Work Package to the Consortium Board;
 - (e) help prepare the Work Package Deliverables.
 - (f) Concerning Intellectual Property:
[Any relevant activities to be inserted]
 - (g) Concerning Work Package monitoring:
 - (i) Make proposals to the Consortium Board to suspend all or part of the Work Package, or to request the Consortium Board to terminate the participation of one or more Consortium Members.

- (ii) In case of default by a Consortium Member including the Consortium Lead Organisation, review and prepare proposals for submission to the Consortium Board, concerning measures to be taken against the Defaulting Party;
- (h) Concerning the use of the reserves, prepare all decisions regarding the use for decision making process in the Consortium Board.
- (i) The WPMT shall more generally take any and all actions required for the proper conduct of the Work Package.
- (j) The secretary of the WPMT shall be appointed by the Consortium Lead Organisation.

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SCHEDULE 3

LIABILITY LIMITS AND FUNDING

1 LIABILITY LIMITS

1.1 [Limits for each Party to be inserted re clause 8.2(c).]

2 FUNDING

2.1 [Insert table showing funding for each Consortium Member and its source]

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**SCHEDULE 4
Statement of Work**

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