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**In this Agreement the following terms, except so far as the context otherwise requires, have the following meanings:**

**"Associate Member"** is any ministry or funding agency/other legal entity appointed by the relevant ministry which has the intent and ability to coordinate parties in its country interested in the purposes of the Company, and with the further intent of becoming a Shareholder according to their local standard scientific and strategic selection criteria, and has been elected to membership of the Company as an Associate Member.

**"Budget"** means the total amount of the Contributions provided to the Company by all Shareholders and the Associate Members within a year.  
As far as the votes in Art. 13 to 16 are concerned, the budget only consists of the Contributions (cash or in-kind) provided by the Shareholders up to the respective record date starting with the incorporation of the Company.

**"Budgetary Accounting"** means the preparation of the yearly expected expenditures and revenues of the Company.

**"Company"** means the CTAO gGmbH pursuant to Article 1 of the Articles of Association.

**"Confidential Information"** means any information of a confidential nature or any information explicitly identified as such disclosed (whether before or after the date of this agreement and whether in writing, verbally or by any other means and whether directly or indirectly) by a Shareholder or an Associated Member or by another person on behalf of the Shareholder or the Associated Member to another Shareholder or Associated Member or to another person on behalf of the Shareholder or Associated Member relating to the purposes of the Company including, without limitation, any information relating to the disclosing party's products, operations, processes, plans or intentions, product information, IP.

**"Contributions"** display the type of support to the non-profit Company, to further the purposes of the Company described in Art. 2 of the Articles of Association as defined in the budget of the Company. Within the Contributions, it is to differ between:

**"Contributions in cash"** are payments of the Shareholder or the Associate Member to the Company. The sum of the Contributions is the budget that is used to finance all activities that are related to achieving the purposes of the Company.

**"Contributions in kind"** are goods or services provided to the Company by one of its Shareholders or Associate Members, valued on the basis of the according expenses as described in the annual budget for this purpose. An in kind Contribution can consist either of the direct provision of a tangible asset to the infrastructure or of expenditure incurred directly by the Shareholder or the Associate Member, which benefits the infrastructure and satisfies its purposes. They include goods, use of services and facilities, professional services or expertise in the form of staff time, provision of or access to equipment, special materials.

**"Council"** means the Shareholders' Assembly as described in Art. 7-12 of the Articles of Association.

**"Country" or "countries"** in the sense of this Agreement include ESO with the exception of Art. 24.

**"ESO"** means the "European Organisation for Astronomical Research in the Southern Hemisphere".

**"ESO-CTAO Hosting Agreement for the CTA South Site"** is the Agreement on the Construction, Commissioning and Operation of the Cherenkov Telescope Array (CTA) at the

Paranal site of the ESO La Silla Paranal Observatory in Chile, signed 19 December 2018 by ESO and CTAO gGmbH.

**"GmbHG"** means the German Limited Liability Company law. It governs the incorporation of the GmbH (limited liability company), its bodies and its status in the legal relations.

**"gGmbH"** is a German limited liability company with a non-profit character. The "g" stands for the German word "gemeinnützig" which means non-profit. It is used to make the non-profit character recognizable for other parties. The Company is still governed by the GmbHG but also some provisions of the German Fiscal Code apply as well (see Art. 2, 3, 30 of these AoA).

**"HGB"** means the German Commercial Code.

**"Invention"** means the knowledge for which utility models or patents can be obtained, i.e. is industrial applicable, displays an element of novelty and exhibits an inventive step.

**"Majorities"** is defined as follows:

**"90 % Majority"** means 90% of the current allocated votes in accordance with Art. 14 and all Shareholders had the opportunity to vote.

**"Qualified Majority"** means a majority of at least 75% of the current allocated votes in accordance with Art. 14 and less than half of the countries represented by Shareholders voted against.

**"Simple Majority"** means at least 51% or more of the current allocated votes in accordance with Art. 14 and less than half of the countries represented by Shareholders voted against.

**"Nominal Amount"** means the amount of capital share paid by the Shareholder to the share capital.

**"Operative Fund"** means the fund set up by the Resource Board to enable the functioning of its advisory committees and to provide funds for critical elements of preparatory work which go beyond the aims of the EU grant for the Preparatory Phase. These financial requirements will be determined by the Resource Board. The contributions to the Operative Fund are provided on a voluntary basis by the members of the Resource Board.

**"Record Date"** is the date at which the Contributions in cash of a Shareholder has to be paid to the Company (credit on the bank account of the Company) respectively the agreement concerning the in kind Contribution has to be concluded between the Company and the respective Shareholder in order to be considered for annual re- evaluation of the appropriate votes according to Art. 15 (2) and (4).

**"Share Capital"** the share capital of the Company amounts to 25.000 EUR in the beginning. The share capital is provided by the Shareholders.

**"Share"** ("Geschäftsanteil" in the sense of the GmbHG) represents a fraction of the Company which a Shareholder has subscribed by paying the nominal value of the Shares to the Company.

**"Shareholder"** is any legal entity that legally owns at least one Share of the Company.

**"Straw Vote"** is a vote with nonbinding results. Straw votes are taken to see if there is enough support for a motion, including opinions of Associate Members.

## **Preamble**

The present generation of Cherenkov telescopes has opened a window in the domain of very high-energy gamma-ray observations. The first detailed observations of the sky at TeV energies have revealed Galactic sources with complex and resolved structures as well as numerous extragalactic sources. The scientists cooperating within the Cherenkov Telescope Array Consortium and the shareholders and associate members of the Cherenkov Telescope Array Observatory gemeinnützige GmbH (CTAO gGmbH) have the ambition to provide the science community with a worldwide unique and technically innovative Atmospheric Cherenkov Telescope Observatory. With its largely improved sensitivity and spatial resolution, CTA will serve a wide astrophysics community, it will provide a deep insight into the non-thermal high-energy universe, and will enable scientists to tackle a variety of fundamental open questions. The CTAO gGmbH will advance this undertaking. Its goals are to prepare the design and the implementation of the CTA Observatory (hereinafter referred to as "CTAO Facility") and to prepare a founding agreement for the construction and operation of the CTAO Facility. In that agreement, the ministries or funding agencies/ other legal entities, which are appointed by the relevant ministry and which have the capability to meet the financial obligations arising from such construction and operation will determine when to start with the construction and operation of the CTAO Facility. At that time, there will also be the need for a resolution regarding the future of this Company.

## CHAPTER I – GENERAL PROVISIONS

### **Article 1 Name, registered office, business year**

(1) The Company is a limited liability company (*Gesellschaft mit beschränkter Haftung – GmbH*) with the name

**“Cherenkov Telescope Array Observatory gemeinnützige GmbH” (CTAO gGmbH)**

-hereinafter referred to as **“Company”**.

(2) The Company shall have its registered office in Heidelberg, Federal Republic of Germany.

(3) The business year shall be the calendar year. The first year of the business shall be a short business year ending on 31 December of that year.

### **Article 2 Purpose**

The Company exclusively and directly pursues not-for-profit purposes in the field of science and research in the sense of the section “Objects qualifying for tax relief” (“*Steuerbegünstigte Zwecke*”) of the German Fiscal Code (*Abgabenordnung – AO*), namely within the domestic territory and abroad. The purposes of the Company are particularly as follows:

- a) to prepare the design and to prepare the implementation of the CTAO Facility and to prepare a founding agreement for the construction and the operation of the CTAO Facility;
- b) to select and equip the final sites of the telescopes array;
- c) to design and develop as well as construct and operate prototype telescopes, associated instruments and infrastructure for tests and use of scientific research to demonstrate the performance and functionality required for a full scale CTAO Facility;
- d) to provide arrangements for enabling programs of scientific research to be conducted with the CTAO Facility;
- e) to ensure that new technologies and methods of the Company are made available to its Shareholders;
- f) to foster general public outreach and knowledge transfer; and
- g) to do all such other acts and things as the Management Board may consider necessary or desirable in connection with the development, construction, operation or promotion of these purposes of the Company.

The company may provide other tax-privileged corporations, institutions or foundations, or an appropriate public body with financial means and material resources, if these establishments invest the means to support objectives according to Art. 2.

### **Article 3 Non-profit character**

(1) The Company acts in a non-profitable way; it does not primarily aim at its own

economic interests.

(2) The Company's funds and resources must be used exclusively for the purposes set out in Art. 2. The Shareholders shall not receive any share of profit and shall not in their capacity as Shareholders receive any other allotment out of the entity's funds.

(3) In the event of a Shareholders withdrawal or the dissolution of the Company or the discontinuation of its tax-deductible objects, the respective Shareholder can only claim the nominal value of his Shares.

(4) Nobody may be favoured through expenditures not related to the purposes of the Company or through disproportionately high remunerations.

#### **Article 4 Share Capital**

The share capital ("*Stammkapital*" in the sense of the *GmbHG*) of the Company amounts to € 25.000,- (in words: twenty-five thousand EURO).

#### **Article 5 Shareholders**

Shareholders can be ministries or funding agencies/other legal entities appointed by the relevant ministry (up to two per country) which have the intent and ability to coordinate parties in their country interested in the purposes of the Company, and which have the capability to meet the funding obligations imposed on the Shareholders by joining the company; because of the commitments ESO assumed in the ESO-CTA Hosting Agreement for the CTA South Site, ESO can be a Shareholder without meeting the aforementioned conditions.

#### **Article 6 Organs of the Company**

The organs of the Company shall be:

(a) the Shareholders' Assembly ("*Gesellschafterversammlung*" in the sense of the *GmbHG*),

-hereinafter referred to as "**the Council**" and

(b) the Management Board ("*Geschäftsführung*").

### CHAPTER II – THE COUNCIL

#### **Article 7 Members of the Council**

(1) Each Shareholder is a member of the Council. The membership is not transferable. Each Shareholder may be represented in the Council by up to two delegates. In the exceptional case of two Shareholders per country, up to two delegates (one for each Shareholder) will represent the country. Delegates to the Council shall be appointed and have their appointments terminated by the respective Shareholder. The Shareholders shall inform the Chairperson of the Council in writing of any appointment or termination of appointments of its delegates to the Council without delay.

(2) The delegates shall be duly authorized by the appropriate Shareholder to act on his behalf, to exercise all relevant rights of membership on -his behalf including (but not limited to) attending Council meetings and to vote at the meetings on behalf of such Shareholder

according to Art. 8 and 13.

### **Article 8 Voting Procedure within the Council**

- 1) Decisions and resolutions of the Council must be taken and passed:
  - a) at a Council meeting (present or submitted by proxy); or
  - b) in the form of a Shareholders' written resolution.

Any Shareholder may propose a Shareholders' written resolution by giving notice of the resolution to all of the Shareholders. The notice of a proposed Shareholders' written resolution must include the proposed resolution, the time by which it is proposed that the Shareholders should adopt it and the manner in which Shareholder can indicate their agreement in writing to it (including by electronic means).

- (2) The Council may take straw votes, in which the Associate Members of the Council may participate. The results of such straw votes are not legally binding for the Company.

### **Article 9 Associate Members of the Council**

(1) Any ministry or funding agency/other legal entity appointed by the relevant ministry which has the intent and ability to coordinate parties in its country interested in the purposes of the Company, and with the further intent of becoming a Shareholder subject to their countries' standard procedures for scientific and strategic evaluation, shall be eligible for election to membership of the Company as an Associate Member. Any ministry or funding agency/other legal entity appointed by the relevant ministry seeking election to an associate membership shall make a written application to the Chairperson of the Council. The Council will decide on this application with a Qualified Majority.

(2) Each Associate Member shall nominate one person as its representative, duly authorized to act on its behalf and may also appoint an alternate to act in the absence of the nominated representative.

(3) Each Associate Member shall be entitled to receive the minutes of the Council meetings and the according handouts and the annual report. The Associate Member shall be entitled to attend Council meetings but shall not be entitled to vote (with the exception of straw votes) and shall be subject in each case to any confidentiality restrictions imposed by the Council.

(4) Any Associate Member may apply to become a Shareholder at any time by giving one month's written notice to the Company.

(5) Each Associate Member must follow the confidentiality clause according to Art. 25.

### **Article 10 Chairperson and Vice-Chairperson of the Council**

(1) The Council shall elect a Chairperson and a Vice-Chairperson from the delegations of the Shareholders for a period not exceeding two years. Re-election is possible.

(2) The Chairperson and the Vice-Chairperson shall not be representatives of Shareholders from the same country. With their election the Chairperson and Vice-Chairperson become *supra partes* and leave their delegations. The appropriate Shareholder may appoint a new representative to the Council.

(3) The Chairperson leads the Council meetings. Upon approval of the Council the

Chairperson is allowed to invite guests to the meeting provided that their presence is considered necessary with regard to the agenda.

(4) The Council may terminate the Chairperson's and Vice-Chairperson's appointment at any time without prior notice.

### **Article 11 Meetings of the Council**

(1) The Council shall meet at least once a year, generally within the first six months of the business year.

(2) Meetings of the Council shall be convened by the Chairperson of the Council with at least one-month notice.

(3) Extraordinary meetings of the Council shall also be convened at the request of at least two Shareholders from different countries. They may also be convened at the request of the Chairperson or the Management Board, if it is required in the interest of the Company. The extraordinary meeting will be called with at least two weeks' notice.

(4) Council meetings shall only be quorate if two thirds of the votes and the Shareholders of not less than half of the countries are represented.

If less than two thirds of the votes are represented, a new meeting of the Council with the same agenda shall be called immediately. This new meeting of the Council shall be quorate regardless of the proportion of votes and Shareholders represented, but only if this is explicitly stated in the invitation to such new meeting of the Council.

### **Article 12 Powers of the Council**

(1) The Council shall be responsible for all matters provided by law, unless this agreement provides otherwise. The Council may issue instructions to the Management Board.

(2) The following matters shall require the approval of the Council by a 90% - Majority:

- a) admission of new Shareholders;
- b) amendment of these Articles of Association;
- c) mergers or splits of the Company;
- d) dissolution of the Company;
- e) arrangements for long-term use of the CTAO Facility;
- f) implementation of and amendments to an IP-Policy and an Inventions-Policy;
- g) share capital increases;
- h) the transfer of shares,
- i) annual Budgetary Accounting and medium-term financial estimates and
- j) the annual budget of the Contributions according to Art. 16 para (1), 17 para (1), especially any in-kind Contributions to the annual budget
- k) rules for in-kind Contributions
- l) change of the record date

- (3) The following matters require the approval of the Council by a Qualified Majority:
- a) implementation of and amendments to the financial rules of the Company;
  - b) the election of the Associate Members;
  - c) the agreement of additional Contributions (cash or in kind) pursuant to Art. 16 para (2);
  - d) election of the Chairperson and Vice-Chairperson of the Council;
  - e) adoption of the annual financial statement ("Jahresabschluss" in the sense of the HGB);
  - f) appointment, employment and termination of the appointment of the managing director(s) as well as any amendment or enlargement of their contracts of employment;
  - g) establishment of committees and their terms of reference;
  - h) short and medium-term arrangements for use of the Company's scientific equipment and facilities by national or international scientific organizations;
  - i) procurement rules;
  - j) Rules of Procedure of the Council;
  - k) redemption ("Einziehung" in the sense of the GmbHG) or assignation of Shares or parts thereof;
  - l) instructions to the Management Board;
  - m) appointment and termination of the appointment of a proxy holder ("Prokurist" in the sense of the HGB);
  - n) the use of the assets of the Company according to Art. 30.
- (4) All other resolutions of the Council shall require the Simple Majority unless mandatory law or this agreement provides otherwise.

### CHAPTER III VOTES

#### **Article 13 Votes**

- (1) The number of votes depends on the amount of accumulated Contributions (cash or in kind) provided by the specific Shareholder. There is no restriction of the number of votes a Shareholder may gain. The provisions of this section do not apply to ESO.
- (2) Each vote has the same weight within the ballot.
- (3) Each Shareholder may only cast all of his votes indivisibly and combined.

#### **Article 14 Distribution of Votes**

(1) Out of the votes in the Council ESO holds 8% (eight percent). The remaining Shareholders hold 92% (ninety-two percent) of the votes. The totals of the accumulated Contributions of the remaining Shareholders to the Budget determine the distributions of the 92% (ninety-two percent) of the votes held by the same.

(2) The Contributions in cash are to be paid in EURO. The evaluation of in-kind Contributions is regulated in detail in Art. 16 (3). In kind Contributions shall be based on an agreement between the Company and the respective Shareholder which specifies the terms of the in-kind Contribution. In the case of changes of in-kind Contribution within the business year, the votes shall be adapted in accordance to the changes as an exception to Art. 15 (2).

(3) Payments to the Operative Fund 2014 will be taken into account upon request.

(4) The calculation of the votes for each Shareholder with the exception of ESO will be as follows:

accumulated contributions of the respective Shareholder/ budget \* 1000.  
The total number of votes calculated according to this formula corresponds to 92% (ninety-two percent) of the votes in the Council.

(5) In the case, the result of (4) is not an integer number, the votes will be rounded to the nearest integer value.

#### **Article 15 Record Date**

(1) The amount of votes of each Shareholder pursuant to Art. 14 will be re-evaluated after each record date, this rule, however, not applying to ESO.

(2) Crucial for the re-evaluation of the votes is the total amount of Contributions provided by the Shareholder – with the exception of ESO - up until the Record Date. The date of the credit on the bank account of the Company is the decisive date for the Contributions in cash, with regard to the in-kind Contribution the decisive date is the date the agreement concerning the in kind Contribution is concluded. Payments/conclusions of agreements after this Record Date will be considered in the following year.

(3) The same applies to the providing of additional Contributions according to Art. 16 (2).

(4) Record Date is March 31 of each year. Council can deviate from the record date by resolution.

#### **Article 16 Contributions of the Shareholders**

(1) Each Shareholder must provide its Contribution – cash or in-kind - to the Company as set out in the budget. The Contribution shall amount to at least 2% of the annual budget. The annual budget is proposed by the Management Board. The proposed budget becomes effective upon approval by the Council.

(2) Each Shareholder may provide additional funding (cash or in-kind) to the purposes of the Company as approved by the Council. However, no Shareholder is obliged to provide additional funding.

(3) Any in kind Contribution will be accounted for as a Contribution only if it corresponds to an item specified in the approved budget. It will be accounted for the value specified in the annual approved budget.

(4) A Contribution register shall be maintained and any changes in the accumulated Contributions, any additional cash funding and any in kind Contributions may be taken into account when determining the future arrangements for the CTAO project.

(5) If a Shareholder fails to make its Contribution, his Share(s) can be redeemed (see Art. 27 (2) c))

(6) A new Shareholder who becomes a Shareholder in the course of the year shall be required to provide his Contribution to the Company in the same amount as if he would have been a Shareholder from the start of the business year. In exemption of Art. 15, in the year of the accession of the new Shareholder the Record Date is four weeks after his accession.

(7) The provisions of sections (1) to (6) do not apply to ESO.

### **Article 17 Contributions of Associate Members**

(1) Each Associate Member must pay Contributions – cash or in-kind – as approved by the Council.

(2) As long as the Associate Member stays an Associate Member, the payments do not cause any votes (with the exception of straw votes). Only in the event that the Associate Member becomes a Shareholder, the Contributions it has paid up to this date will be recognized by the Council and converted into votes pursuant to the provisions in Art. 14 - 16.

## CHAPTER IV – MANAGEMENT OF THE COMPANY

### **Article 18 Management Board**

(1) The Management Board of the Company is composed of up to two managing directors ("Geschäftsführer" in the sense of the GmbHG).

(2) The division of responsibilities between the Management Board and their duties to report (etc.) to the Council shall be established by the Council in Rules of Procedure for the Management Board.

(3) The Managing Director(s) shall be appointed for a period not exceeding three years. Reappointment is permitted. Appointment, employment and termination of the appointment of the Managing Director(s) as well as any amendment or enlargement of their contracts of employment shall be subject to the approval by the Council and shall be signed by the Chairperson of the Council on behalf of the Company.

### **Article 19 Representation of the Company**

(1) In case only one managing director is appointed, he acts individually on behalf of the Company. If two managing directors are appointed, either two managing directors or one managing director jointly with a proxy are entitled to act on behalf of the Company.

(2) The Council may release all or certain managing directors generally for an individual case from the restriction of Sec. 181 of the German Civil Code, in order to authorize them to act on behalf of the Company with themselves in person or with themselves as representative of a third party. The Council may also assign power of attorney to certain or all of the managing directors.

- (3) Those regulations also apply for the liquidator.
- (4) The Council can determine in the Rules of Procedure for the Management Board that certain measures need the prior approval of the Council.

### **Article 20 Remit of the Managing Director**

- (1) The Managing Directors are obliged to manage the Company conscientiously and with due diligence in the interest of the Company, and in accordance with:
- a) the statutory law of the Federal Republic of Germany, the relevant valid version of these Articles of Association,
  - b) the Rules of Procedure for the Management Board decreed by the Council and
  - c) the instructions and resolutions of the Council.
- (2) The authorization of the Management Board comprehends all activities entailed by standard operation of the Company. Management activities beyond such authorization shall be in each case subject to a resolution of the Council.

## CHAPTER V – COMMITTEES

### **Article 21 Committees**

The Council may appoint advisory committees as appropriate. The Council will establish the according terms of reference for each committee.

## CHAPTER VI – FINANCIAL MATTERS

### **Article 22 Annual financial statements**

- (1) Within three months after the end of the business year, the Management Board must prepare the annual financial statement and the management report ("*Lagebericht*" in the sense of the *HGB*) pursuant to §§ 264 ff. of the *HGB*. The rules of the *HGB* regarding the preparation and audit of the annual financial statement and the management report for large-scale corporations shall apply *mutatis mutandis*.
- (2) The annual financial statement and the management report must be verified by a certified independent auditor ("*Abschlussprüfer*" in the sense of the *HGB*). The auditor shall be appointed by way of a resolution of the Council before the end of the business year to be audited. The appointment of the auditor shall be made on an annual basis. An auditor may be reappointed.
- (3) Within five months after the end of the business year, the Managing Directors must present to the Council a copy of the annual financial statement, the original of which must bear the legally binding signatures of the Managing Directors, as well as the management report together with the audit report ("*Prüfbericht*" in the sense of the *HGB*) including a written statement. The Council decides upon the adoption of the annual financial statement within the first six months after the end of the business year.

CHAPTER VII – RELATION BETWEEN THE COMPANY AND THE SHAREHOLDERS

**Article 23 Intellectual Property**

- (1) The Management Board shall with the approval of a 90 % Majority of the Council develop and implement a policy relating to the use and licensing of the Company IP by the Shareholders ("**IP Policy**").
- (2) In the event of the usage of the Company IP by any third party, the Management Board has to ensure that a contract is concluded regarding the IP. The contractual regulations have to meet the requirements set out in the Company's IP Policy.
- (3) The Council shall establish and the Managing Director(s) shall maintain a register of intellectual property recording the licensing by the Company of any of its IP to any third parties in accordance with the IP Policy ("**IP Register**") under the Articles of Association.

**Article 24 Inventions**

- (1) In the case of Inventions made by the Company's staff, the Company shall apply the German rules of the 'Law on inventions by employees'. If the Company decides not to apply for a patent in one or more countries, the employee who obtained the Invention may, with the consent of the Company, apply for such protection in his or her own name, at his or her own cost and for his or her own benefit.
- (2) The Management Board shall with the approval of a 90 % Majority of the Council develop and implement a policy relating to the Inventions made together by Company's staff and staff seconded to the Company or staff from a third party ("**Inventions Policy**").
- (3) If Company's staff and any third party's staff (including staff seconded to the Company by a Shareholder) are working together this collaboration shall have a contractual basis. The contractual regulations have to meet the requirements set out in the Company's Invention Policy.

**Article 25 Confidentiality**

- (1) Any information regarding the CTAO project is confidential unless the Council decides otherwise.
- (2) Each Shareholder and Associate Member are obliged as follows:
  - a) to keep confidential any Confidential Information including, without limitation, taking the measures set out in paragraph 3;
  - b) not to use any Confidential Information other than as permitted by these Articles;
  - c) not to disclose any Confidential Information to another person and to make all reasonable efforts to prevent any such disclosure except as permitted under paragraph 4, 5 and 6.
- (3) Each Shareholder and Associate Member shall exercise, in relation to Confidential Information, no lesser security measures and degree of care than those which it applies to its own confidential information.
- (4) Each Shareholder and Associate Member may disclose the Confidential Information of

another Shareholder and Associate Member:

- a) with the prior written consent of the relevant Shareholder and Associate Member;
- b) under the provisions stated in paragraph 5, to its group undertakings, government departments and agencies of such Shareholder and Associate Member, its employees, professional advisors, authorised representatives and sub-contractors in each case only to the extent necessary in connection with the Project; or
- c) where disclosure is required by law, by a court of competent jurisdiction or by another appropriate regulatory body provided that the receiving Shareholder and Associate Member shall, where possible, give to the disclosing Shareholder and Associate Member not less than two business days' notice of such disclosure.

(5) Prior to disclosure of the Confidential Information to a third person, the disclosing Shareholder and Associate Member, where possible, shall ensure that the third person enters into a confidentiality undertaking in a form no less onerous than that contained in this Article.

(6) This Agreement does not apply to Confidential Information:

- a) to the extent that the Confidential Information is or comes into the public domain (other than by breach of this Agreement); or
- b) which the receiving Shareholder and Associate Member can show by its written or other records was in its possession prior to receipt from the disclosing Shareholder and Associate Member and which had not previously been obtained from the disclosing Shareholder and Associate Member or another person under an obligation of confidence.

(7) Obligations under this Article will stay in force even when a Shareholder ceases to be a Shareholder or an Associate Member ceases to be an Associate Member or the Shareholders or parts of them pursue the purposes of the Company in any other legal form.

## CHAPTER VIII – CHANGES IN SHAREHOLDING

### **Article 26 Admission of new Shareholders**

(1) The Company shall be open to the admission of new Shareholders. In the event of the admission of new Shareholders, the Council decides about an adequate increase of the share capital.

(2) The transfer of Shares by a Shareholder shall be possible upon a 90% Majority of the Shareholders (ref. Art. 12 (2) h).

### **Article 27 Redemption of Shares**

(1) Any redemption of Shares is permitted subject to the agreement of the Shareholder.

(2) Any redemption of Shares without the agreement of the Shareholder is permitted, if

- a) the assets of the Shareholder become part of insolvency proceedings or the

petition to open insolvency proceedings has been dismissed due to the lack of assets,

- b) the Share of the Shareholder becomes the target of execution proceedings, provided that such proceedings have not been discontinued within a period of three months and/or the Share has not already been realized in that period, or
- c) the Shareholder violates his fundamental obligations under these Articles of Association including if he is in arrears with making his contributions even after two written reminders by the Company. The reminders shall be sent by registered letters and have to be carried out at intervals of two weeks.

(3) In these cases the Shareholder affected shall have no votes in the decision on redemption and his votes will not be taken into consideration when the achieved majority is determined. Nevertheless, the Shareholder is authorized to attend the respective Council meeting and has the right of justification before the resolution concerning the redemption or assignation is taken. After the resolution is taken his Shareholder rights – statutory and contractual- are suspended.

(4) Upon redemption the Shareholder concerned receives a settlement payment from the Company amounting to the nominal value of his Share. In the cases of 2 a) and 2 b), a potential acquirer shall not become Shareholder, but receive a settlement payment amounting to the nominal value of the respective Share.

(5) Instead of redemption of the Shares the Council may decide by Qualified Majority that the Shares be assigned:

- a) to the remaining Shareholders in equal parts or
- b) to a new Shareholder in the sense of Art. 26 (1).

against a settlement payment limited to the nominal value of its Shares. The settlement shall be paid by the Shareholders to which the Share or parts thereof are assigned.

(6) The validity of the redemption shall not be subject to the payment of the settlement.

(7) Any decision upon the redemption of the Shares shall become conclusive upon recording of the Council's resolution and be declared by the Managing Director.

### **Article 28 Withdrawal of a Shareholder**

(1) A Shareholder may withdraw from the Company with three months prior notice to the end of the business year. The written notice has to be given to the Company.

(2) The withdrawal has no effect on the existence of the Company. It will pursue its purpose.

(3) The Shares of the withdrawing Shareholder will be subject to redemption in the sense of Art. 27 or the Council may decide by Qualified Majority that the Shares may be assigned to the remaining Shareholders in equal parts or to a new Shareholder in the sense of Art. 26 (1).

(4) A Shareholder withdrawing from the Company without the Company being liquidated can only claim a settlement payment limited to the nominal value of his Shares.

(5) The withdrawal and thereby the redemption or the reassignment of the Shares come into effect with the end of the relevant business year irrespective of the settlement payment.

(6) In the case that any amendment of this Article will impede the right to withdraw, each Shareholder shall be entitled to withdraw in accordance to the previous stipulation.

#### CHAPTER IX – TERMINATION OF THE COMPANY

##### **Article 29 Duration of the Company**

The interested Shareholders and other interested parties will establish a new legal entity for the construction and the operation of the CTAO Facility. After the establishment of the new legal entity, the Company will be liquidated according to Art. 30. The new legal entity will enter into all rights and duties of the CTAO gGmbH. Notwithstanding the aforementioned, the Shareholders are not obliged to become shareholders of/parties to the new legal entity.

##### **Article 30 Liquidation of the Company**

On dissolution of the Company or discontinuation of its tax-deductible objects, the assets of the Company exceeding the paid in capital share shall be transferred to the Cherenkov Telescope Array Observatory ERIC domiciled in the European Union having the objective of promotion of science and research. Investments in kind contributed by shareholders or their fair market value substitutes shall not be restituted.

#### CHAPTER X – MISCELLANEOUS

##### **Article 31 Liability & Indemnity**

(1) The Company has to ensure that it has sufficient insurance which covers damages to persons or goods caused by its employees, by personnel seconded and scientists and experts invited to the Company, unless the liability is already covered through other insurances. Excluded are damages which are caused by willful misconduct or gross negligence.

(2) Concerning questions related to liability, which cannot be solved in the sense of (1), the Shareholders shall immediately consult each other for claim settlement.

##### **Article 32 Announcements**

Announcements of the Company required by law shall be published in the German Federal Gazette (*Bundesanzeiger*), on the website of the Company and in addition in an appropriate EU or international Gazette.

##### **Article 33 Public Corporate Governance Code**

(1) The Managing Directors shall declare each year that the recommendations of the Public Corporate Governance Code of the Federal Republic of Germany in its up-to-date version have been complied with, or declare which of these recommendations have not been or will not be complied with and the reasons why not. The declaration shall be accessible permanently (either via the website of the Company and/or the Federal Gazette) and be published as part of the Corporate Governance Report.

(2) Beside from the declarations according to (1) the annually published Corporate Governance Report, published by the Management Board, shall report the compensation of

every Managing Director individually, broken down by the various components in comprehensible format. For the Managing Directors those benefits shall also be indicated which are promised or granted during the business year to a Managing Director respectively a former Managing Director in case of their retirement.

#### **Article 34 Cost of Incorporation**

The Company shall bear all costs connected with its entry into the commercial register and its registration in an amount up to EURO 2.500,-.

#### **Art. 35 Applicable law**

- (1) This agreement shall be subject to the law of the Federal Republic of Germany.
- (2) The wording decisive for this agreement shall be the one written in German language. In case of different interpretation of the German and the English wording, the German wording shall take priority.

#### **Article 36 Severability Clause**

- (1) Should any provision of this agreement be or become void or invalid in whole or in part, the validity of the other provisions thereof shall not be affected.
- (2) The invalid provision shall be replaced by a valid provision that to the extent possible fully implements the spirit and purpose of the invalid provision.
- (3) The same shall apply in the event that these Articles of Association fail to cover an issue that was meant to be part hereof.

#### **Article 37 Entry into force**

This agreement shall enter into force upon signature by the Shareholders and notarization.