

NOT Charter

concerning the operation of the Nordic Optical Telescope (NOT) on La Palma in the Canary Islands, Spain

(the 'Charter')

November 2019

Preamble

The Nordic Optical Telescope (NOT) is a 2.56-m telescope located at the Spanish "Roque de los Muchachos" Observatory (ORM), La Palma, Canarias, Spain. The telescope is a facility exclusively intended for scientific research and education. Through a transfer agreement, the ownership of the telescope has been transferred by the Nordic Optical Telescope Scientific Association, to Aarhus University (AU), Denmark and the University of Turku (UTU), Finland, who share ownership. The shared ownership is regulated via an agreement concerning the ownership and operations of the Nordic Optical telescope signed by AU and UTU on 1 April 2019. The University of Turku (UTU) is the legal entity behind the telescope and its facilities located at the ORM, and Aarhus University (AU) is the legal entity behind the organizational structure (including hiring of staff, scientific instrumentation and maintenance). Henceforth, AU and UTU are referred to jointly as the 'Owners' and separately as an 'Owner'. The Owners provide the legal capacity to enter into agreements and contracts, take legal care of long-term funding, liabilities and assets, and define a management structure.

To be able to operate the telescope at the ORM, UTU has entered in to an agreement with the observatory host organization, the Instituto de Astrofísica de Canarias (IAC).

The operations of the NOT are managed jointly by the two Owners on the terms set out in this Charter. In the following, the functions and rules of this management are defined.

The Nordic Optical Telescope

1.1 Objective

The collaboration on NOT between the Owners (in the following referred to as the 'Organization') is an infrastructure collaboration between the two universities. The objective of the Organization is to operate the NOT at the ORM exclusively intended for scientific research and education, with the aim of providing observing time and access to high quality scientific instrumentation on equal terms for each of the Owners and each of the other participating partners primarily in the Nordic countries.

1.2 Participation

A country, university, research organization, and/or research group can collaborate with the Organization through an agreement with the Owners based on this Charter, in which access to telescope time is provided in return for a contribution to the operational costs of the telescope. This can either be a longer-term commitment to support the operations of the NOT, or be a time-limited agreement which defines the specific conditions, and duration over which access is provided. Approval of new partners will be done by the Owners based on advice by the Council.

Existing partners have provided commitments for funding in 2020 and 2021. Hereafter, further funding commitments from all partners must be given to the Owners at least 12 months in advance. Partners cannot be required to provide funding at a level above their commitment. All partners will follow the Charter and any specific agreement between partners and the Owners in relation to the use of the facility and appointment of members to the relevant committees and advisory bodies.

1.3 Scope

In order to achieve the objective set out in 1.1, the Owners can jointly:

- enter into an arrangement with a country, university, research organization, research group or other third party that makes a commitment to supporting the operations, in return for access to telescope time; and
- do all such other things regarding the Organization as they deem beneficial to attaining the objective set out in 1.1.

Each Owner manages and is responsible for its own participation in the Organization. Matters relating to the tangible NOT facilities owned by UTU shall be handled by UTU. The day-to-day management of NOT and staff relations are handled by AU.

Notwithstanding the above, any decision about the Organization concerning the following requires consent by both Parties:

- Agreements with third parties on observing time or other use of the NOT
- Decisions regarding a Party's budget, work or liability in the Organization
- Approval of yearly budget and accounts
- Appointing and dismissing a director of the NOT (the 'Director')

No Owner has a power of attorney to enter into agreements or to make binding commitments on behalf of the other.

2 Governance

2.1 Structure

The Owners make their decisions concerning the Organization – including the decisions outlined in 1.3 – through a management board (the 'Board'). The Board is assisted in its decisions by an advisory body (the 'Council'). The Director manages and is responsible for the daily operations of the NOT.

2.2 The Board

The Board consists of one representative of AU and one representative of UTU. Each Owner appoints and dismisses its representative in the Board as it deems necessary. An Owner's representative must have the legal capacity to enter into agreements on behalf of that Owner.

The Board decides on any matters concerning the Organization that require a formal signature.

Any decision by the Board must be unanimous.

2.3 The Council

The advisory body of the Organization is the Council. The Council's main tasks are the following:

- Defining the boundary conditions for peer review of telescope time applications
- Defining general strategies for the NOT
- Advising the Board and the Director

2.3.1 Appointment

The number of and rules for appointing members of the Council are set out and adjusted as necessary by the Board taking into account the need for equal representation in the Council of each of the partners that make a longer-term commitment for supporting the operations of the NOT. The Board may in addition allow short-term partners to appoint a member for the duration of their commitment. Any party eligible for appointing a member will decide on whom to appoint. Notwithstanding this, the Council must approve any individuals appointed as members

of the Council. Each partner covers the cost for its own member's participation (including travel and accommodation costs).

2.3.2 Responsibilities of the Council

The Council shall be responsible for advising the Owners on decisions concerning the Organization and doing the following:

- Appoint and dismiss as it deems necessary a Chair and a Vice-Chair of the Council that cannot be employees of the Owners. A Chair and a Vice-Chair are appointed every three years and individuals may be re-appointed.
- Develop suggestions for plans concerning the use of the telescope, operational modes, priorities in terms of research and education, student programmes, observing schools, new instruments and instrument upgrades as well as long term strategies.
- Discuss and review proposals for new partners and advise the Board in this regard.
- Discuss the operational budget for the NOT.
- Follow the financial rules as defined by the Owners.
- Suggest to the Owners how observing time should be allocated based on peer evaluation of the scientific or educational value of programmes proposed and submitting these to the Director.
- Ensure that NOT is managed in accordance with the Organization's objective.
- Report to and advise the Board.
- Prepare an annual budget in collaboration with the Director.

2.3.3 Council meetings

The Council shall meet in person or by teleconference at least once a year. The Chair shall decide on the date and draft an agenda for each meeting.

2.3.4 Council decisions

The Council will strive to reach consensus in its decisions. Decisions shall be taken by simple majority with no quorum requirement. The Chair of the Council has a decisive vote in case of a tie.

2.3.5 Committees

The Council may set down any committees it deems necessary consisting of several of its members or individuals outside the Council. The Council may appoint the Director as member of any committee. Members of these committees, including a Chairperson and possibly a Vice-Chairperson, are appointed by the Council, which also decides the duration of their appointment. Members must approve their own appointment.

Committees may include the following:

- An Executive Committee for assisting in the regular operation of the telescope, and providing a liaison between the Council and the operational level of the Organization.
- An Observing Programmes Committee (OPC) for the peer review, discussion and prioritizing applications.

2.4 The Director

The Director will manage the daily operations of the NOT and is responsible for scheduling and facilitating observing time. The Director shall take into account any priority set by the Council or one of its committees but the final decision over scheduling is with the Director.

3 Funding

The funding for the ongoing operations and maintenance of the NOT facility is provided via the following two sources:

1. Yearly contributions to operational costs by the participating partners.
2. Case-by-case donations and contributions to operational costs from research projects or external parties.

The one-time initial donations from NOTSA that follow from the transfer agreement between the Owners and NOTSA are intended to cover telescope decommissioning and staff contract termination costs.

3.1 One budget

The Owners shall make and keep a joint budget covering both Owners' participation in the Organization. This budget will cover both the operations and the maintenance of the NOT, instruments, buildings and the related installations. The budget will include the necessary insurances to cover these assets, the staff, the operations and the payments to be made to the IAC (incl. ORM Common Services and the costs related to the IAC-NOT Support Astronomer) as detailed in the agreement between UTU and the IAC. In the budget a reasonable amount of money shall be allocated to the maintenance of the telescope, instruments, buildings and the related installations in order to keep the operational reliability of the NOT. Repairs and replacements of hardware, software or other equipment as well spare parts for the telescope, instruments and other equipment are funded from the budget or cash reserves of the Organization. The maintenance and operational costs are adjusted to the funding available meaning that none of the Parties are obliged to cover any costs not covered by the budget, including the cash reserves held by the Organization. As stated in 4.5 below, the Owners agree to run the Organization such that there is alignment (balance) between the income budget (including relevant parts of the reserve) and the spending budget. If the costs, including repairs and replacements cannot be covered by the budget, including the cash reserves held by the Organization, the Owners will discuss how the deficit can be covered if possible.

If alternatives cannot be found to cover a deficit, the Owners shall initiate a closedown of the Organization as described in clause 4.4.

3.2 Agreements with partners

The Board can make separate collaborative agreements with a country, university, research organization, and/or research group to contribute to the funding and be granted access to observing time at the NOT for scientific research or education. Such an agreement will include the period over which access to observing time is granted, the distribution of the granted observing time over this period, the type of access (as for the observing mode) to the granted observing time, and how the corresponding funding is provided to the Organization. The Board will decide how any income received through such agreements will be used.

3.3 In-kind contributions

Financial contribution is the primary way for a partner to contribute to the NOT, however, in-kind components may be included in the contributions, provided that their nature and value are clearly specified and approved by the Board.

4 Financial Provisions

4.1 Financial year

The financial year shall begin on 1 January and end on 31 December.

4.2 Accounting unit

The accounting unit of the Organization is the Euro (€).

4.3 Assets

Title to funds contributed by the members and to all property acquired or manufactured with the funds of the Organization shall be vested in the Organization.

4.4 Annual budget

The annual budget for the upcoming financial year shall be prepared by the Director no later than 01 October in a format approved by the Board, and in accordance with legal requirements as defined by the Owners. It shall show all expenses and sources of income expected during the budget year as well as forecasts for the three following years.

The budget requires approval by the Board. If there is no approved budget for the Organization at the latest by 01 December, it will be the responsibility of the Owners to decide upon the actions in accordance with the rules set out in the agreement between them concerning the ownership and operations of the NOT. The budget for close down will be the reserves and any available contributions and donations from the participating partners.

4.5 Budget balance

The Owners agree to run the organization such that there is alignment (balance) between the income budget (including relevant parts of the reserve) and the spending budget. The Board will decide on, and prioritize the Organization's activities, including aspects of staff size and

composition, maintenance of buildings, telescope and instrumentation, upgrade of the facility and instrumentation and decommissioning of specific instruments and eventually the facility. The requirement on keeping a balance between spending and income (including the reserve) will be maintained in all phases of the activities including the decommissioning phase.

4.6 Auditing of the accounts

The Director is responsible for maintaining the accounts. The accounts are presented quarterly to the Council or a suitable committee set down by it. The Owners audit the annual accounts, and they verify that the accounts of the Organization are kept in accordance with legal requirements. An audit report will be presented to the Board each year, and on the basis of the report the annual accounts shall be approved by the Board, and the Director shall be discharged of liability for that year. In addition, any country, university, research organization, and/or research group represented in the Council has the right to perform an audit at their own expense.

5 Telescope observing time

5.1 Allocation of observing time

The Owners agree to honor the agreement with the IAC (including mandatory observing time for IAC) as provided in the draft included as Appendix 1. Any changes to this agreement requires approval by the Board after consultation with the Council as it deems necessary.

Access to observing time at the NOT not set aside as detailed in the agreement with the IAC, or allocated in existing agreements on guaranteed observing time, instrument commissioning time, or technical time, is distributed among the partners and the Owners in proportion to the share of the contribution from each to the funding of NOT taking into account the prioritizing by the Council or a committee set down by it and subject to decision and day-to-day planning by the Director.

5.2 Time exchange

The Owners may negotiate arrangements with other observing facilities to exchange observing time. Any such arrangement shall require a written agreement specifying the amount and distribution of observing time required, and any other conditions that may be applicable in each case. Each such agreement requires the approval of the Board.

6 General Provisions

6.1 Effect

This Charter defines the way operations of the NOT is managed, and may be included in any agreement between the Owners and it may be included in any agreement with any third parties. In such cases, this Charter shall constitute an integral part of the relevant agreement.

6.2 Amendments

This Charter may be amended by the Board.

6.3 New Members

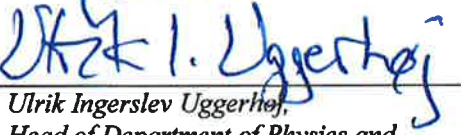
Applicants to become a member shall submit a written application to the Board describing their intended financial contribution and other contributions to NOT and how they will fulfill these obligations.

7 Disputes


The Organization shall endeavor to settle any dispute which may arise in the interpretation or application of this Charter through negotiation in the Board with assistance as it deems necessary by the Council.

SIGNATURES BY THE OWNERS:

Aarhus University:

Date: 25.11.19

Ulrik Ingerslev Uggerhøj
Head of Department of Physics and
Astronomy

Turku University:

Date: 4.12.19

Jukka KOLA
Rector
University of Turku