

October 2013

Memorandum of Understanding
for the establishment and operation of
the Sponsoring Consortium for Open Access Publishing in Particle Physics
(hereinafter SCOAP³)¹
(hereinafter the “MoU”)

between

THE EUROPEAN ORGANIZATION FOR NUCLEAR RESEARCH (“CERN”), an Intergovernmental Organization with its seat at Geneva, Switzerland, as the Host Organization of SCOAP³ and SCOAP³ Partner, represented by its Director-General, Rolf-Dieter Heuer,

on the one hand

and

THE REPRESENTATIVES OF THE SCOAP³ PARTNERS (THE “REPRESENTATIVES”)
(as listed in Annex 1 to the MoU),

on the other hand

hereinafter individually referred to as “Party” and collectively as “Parties”.

Preamble

(a) In line with its mission of “[...] *sponsoring of international co-operation in nuclear research, including co-operation outside the Laboratories [which] may include in particular [...] the dissemination of information*”, and in accordance with the principle of openness “[...] *the results of its experimental and theoretical work shall be published or otherwise made generally available*”, both enshrined in its Convention², CERN has initiated a process to pursue open access to peer-reviewed literature in the Field. First, broad consultation in 2005 and 2006 between researchers, publishers and funding agencies identified author fees as a barrier to open access and suggested that open access to existing high quality peer-reviewed journals in the Field should be introduced by a redirection of subscription fees. In 2007, an international working party delivered a report (in Annex 8) describing a

¹ <http://www.scoap3.org>

² <http://council.web.cern.ch/council/en/Governance/Convention.html>

possible business model for a future consortium to be called SCOAP³ (*Sponsoring Consortium for Open Access Publishing in Particle Physics*) to achieve this redirection, inspired by the collaborative models that the HEP community has used for decades to design, build, operate and exploit global research infrastructures. From 2007 to 2010, libraries and funding agencies from 25 countries signed Expressions of Interest to support the future SCOAP³ consortium (template in [Annex 7](#)). In 2011, representatives of these stakeholders agreed that CERN should start a formal procurement process for peer-review, open access and other publication services, pending new commitments to join SCOAP³. A Steering Committee was formed to guide this process.

- (b) In its capacity as Host Organization and acting for the benefit of SCOAP³, CERN has issued the *invitation to tender IT-3827/GS for the award of contracts to publishers, for the provision of peer-review, open access and other publication services* for the benefit of SCOAP³ (technical specification in [Annex 5](#)). The completion of the tendering process based on the said invitation to tender resulted in the identification of the publishers listed in [Annex 3](#) for a potential collaboration with SCOAP³ for a first tendering cycle.
- (c) The SCOAP³ operation is intended as a continuing going concern for the provision of open access to the literature of the Field. The contracts awarded to publishers for the first tendering cycle will cover the three-year period from 1 January 2014 until 31 December 2016 (form of contract with Publishers in [Annex 4](#)). It is intended to issue a new invitation to tender during that period for the award of contracts to publishers for a second tendering cycle, and then regularly afterwards.
- (d) SCOAP³ Partners (as listed in [Annex 2](#)), represented in the MoU by the Representatives, will make annual payments into the SCOAP³ Fund which will be used to pay the Publishers. SCOAP³ Partners will recover monies through reductions in the subscription and licensing fees of HEP journals that publish articles falling within the framework of SCOAP³, as provided in the contracts with the Publishers.
- (e) Capitalized terms shall have the meaning assigned to them hereunder:
 - “Addendum” means the document specific and confidential to each Representative that defines the details of the participation in SCOAP³ of the SCOAP³ Partners listed within it;
 - “Field” means the field of high-energy physics;
 - “HEP” means high-energy physics, also called particle physics;
 - “Host Organization” means CERN as the legal entity which leverages its resources to build and operate the SCOAP³ infrastructure, including but not limited to: financial, legal and administrative procedures; implementation and maintenance of the SCOAP³ Repository; the management of the contracts with the Publishers;
 - “Major Amendment” means an amendment that affects the rights and/or obligations of the Parties;

- “MoU” means this Memorandum of Understanding, including its Annexes and Addenda, each of which forms an integral part of it;
- “Publishers” means the publishers to whom a contract has been awarded for the provision of the Services;
- “Reconciliation Facility” means the secure online database provided by CERN which records names of SCOAP³ Partners and enables Representatives and Publishers to upload details of subscription reductions;
- “Repository” means the digital library operated by CERN where Publishers will timely deposit all articles published in the SCOAP³ framework, for further redistribution, in addition to publishing them Open Access on their own platform;
- “Representative(s)” means the entity(ies) signing the MoU for the benefit of SCOAP³ Partners in its (their) country;
- “SCOAP³” means the Sponsoring Consortium for Open Access Publishing in Particle Physics, established by the MoU;
- “SCOAP³ Fund” means a common fund set up as a dedicated account at CERN in order to pay for the Services;
- “SCOAP³ Partners” means CERN as well as the funding agencies, research institutions, libraries and library consortia contributing funds to SCOAP³ and hereby represented by the Representatives, all as named in the corresponding Addenda;
- “Services” means the peer-review, open access and other publications services provided by the Publishers.

(f) The Parties have now agreed to sign the MoU in order to establish SCOAP³, the *Sponsoring Consortium for Open Access Publishing in Particle Physics*.

THE PARTIES AGREE AS FOLLOWS:

Clause 1: Parties

The Parties to the MoU shall be (i) CERN as the Host Organization of SCOAP³ and a SCOAP³ Partner (ii) the Representatives of the SCOAP³ Partners.

Clause 2: The MoU and its purpose

2.1 The MoU establishes SCOAP³ and defines the rights and responsibilities of the Parties in its operation.

2.2 The priority between the Annexes shall be in decreasing order, starting from Annex 1.

Annex 1: The Parties to the MoU

Annex 2: The SCOAP³ Partners

Annex 3: List of Publishers and Journals

Annex 4: Form of Contract with Publishers

Annex 5: Technical specification

Annex 6: Expanded list of share of HEP literature by country, calculated in accordance with the method set out in Annex 8

Annex 7: Template Expression of Interest

Annex 8: SCOAP³ Working Party Report

2.3 The details of the participation of the SCOAP³ Partners in SCOAP³, in particular the amounts payable into the SCOAP³ Fund, the expected reductions agreed with the Publishers, and the contact persons, shall be set out in the Addenda.

2.4 Except for Clause 9, the MoU is not legally binding, but the Parties recognize that the long term success of SCOAP³ depends on all Parties adhering to the provisions of the MoU and acknowledge the commitments taken by and towards the Publishers under the contracts concluded by CERN for the benefit of SCOAP³.

Clause 3: SCOAP³ Governance

The Parties herewith formally establish the *Sponsoring Consortium for Open Access Publishing in Particle Physics* (SCOAP³). The governance of SCOAP³ shall consist of the following entities, in accordance with their respective composition, terms of reference and procedure as defined below, and without prejudice to the mechanism defined in Clause 7.3:

- A. the SCOAP³ Forum,
- B. the SCOAP³ Governing Council,
- C. the SCOAP³ Executive Committee, and
- D. the SCOAP³ Consortium Manager.

The official language of SCOAP³ shall be English.

A. The SCOAP³ Forum

i. Composition

The SCOAP³ Forum:

- shall comprise representatives of all the SCOAP³ Partners who contribute to the SCOAP³ Fund pursuant to Clause 4;
- may invite observers such as libraries, library consortia, research institutions and funding agencies that are considering joining SCOAP³ as well as publishers, to attend all or parts of its meetings.

ii. Terms of reference

The SCOAP³ Forum:

- shall hear about and debate the progress of SCOAP³ and discuss possible future strategies and developments;
- may propose strategies and policies to the SCOAP³ Governing Council;
- may propose any other matters for consideration to the SCOAP³ Governing Council and the SCOAP³ Executive Committee.

iii. Procedure

The SCOAP³ Forum:

- shall meet at least once a year at CERN and may hold additional meetings in other geographical regions of the SCOAP³ membership;
- shall allow remote participation in its meetings;
- shall not require a quorum in its meetings;
- shall be convened and chaired by one of its members, who shall be appointed Chairperson for three years by the SCOAP³ Governing Council;
- shall be convened and chaired for its first meeting, before the start of the SCOAP³ operations, by the CERN Director-General or by a person to whom he/she has delegated this task;
- shall make the minutes of all of its meetings publicly available.

B. The SCOAP³ Governing Council

i. Composition

The SCOAP³ Governing Council:

- shall comprise a maximum of 45 members. CERN as the Host Organization of SCOAP³ shall have one seat. The remaining seats shall be allocated to countries represented by at least one SCOAP³ Partner that has settled its contribution to the SCOAP³ Fund pursuant to Clause 4. The distribution of seats shall be based on each country's percentage contribution to the SCOAP³ Fund provided for in Clause 4, as follows³:

Percentage:	Number of seat(s):
>10%	4
5%-10%	2
0.5%-5%	1
<0.5%	5 seats shall be distributed annually to 5 countries in rotation, with seats being allocated in the order of their accession to the MoU.

- may decide to add additional seats for international or non-profit entities wishing to make a contribution to SCOAP³.

ii. Terms of reference

The SCOAP³ Governing Council:

- shall be the decision-making body of SCOAP³ and shall as such be responsible for its overall governance;
- shall review and debate the progress of SCOAP³ and discuss and decide on possible future strategies and developments, and receive proposals by the SCOAP³ Forum concerning strategies, policies and other matters;
- shall oversee the operation of SCOAP³ and shall delegate the day to day operation of SCOAP³ to the SCOAP³ Executive Committee;
- in its financial oversight capacity, shall (i) approve the annual income budget, pursuant to Clause 4, (ii) approve possible additional

³The Representatives of each country that is entitled to be represented in the SCOAP³ Governing Council shall select the members representing their country in accordance with their own rules.

expenditure other than expenditure in the execution of the contracts with the Publishers, (iii) approve the annual accounts, (iv) decide on and approve the use of any yearly positive balance within the framework of SCOAP³, (v) determine the strategy for each subsequent tendering cycle, and (vi) approve the expected contributions per country to the SCOAP³ Fund for each subsequent tendering cycle;

- shall define and adopt its own terms of procedure, laying down the rules for its own functioning;
- shall appoint the members of the SCOAP³ Executive Committee;
- shall appoint the chairperson of the SCOAP³ Forum;
- shall delegate to the SCOAP³ Executive Committee such matters as outreach strategy, relations with publishers, relations with prospective partners;
- may decide to appoint any additional committees or working groups as deemed necessary, and shall in particular appoint an audit committee;
- shall, together with CERN, agree on amendments to the main body of the MoU for signature by the Parties;
- shall approve the compensation proposed by the SCOAP³ Executive Committee in the event of a withdrawal from SCOAP³ as set out in Clause 8.4;
- shall engage in dispute resolution in accordance with Clause 9.1;
- shall inform the other SCOAP³ entities of its decisions in a timely manner;
- may decide to dissolve SCOAP³, after broad consultation.

iii. Procedure

The SCOAP³ Governing Council:

- shall hold its sessions at CERN, and shall strive to facilitate participation of its members irrespective of their geographical location;
- shall meet at least once a year for an ordinary session;
- may be convened in extraordinary session by its Chairperson and on the request of 2/3 of its members;
- shall grant one vote to each member;

- shall have a quorum of 50%+1 members for decisions that must be taken by simple majority, and a quorum of 2/3 of members for decisions that must be taken by a 2/3 majority. In addition, at least one member of each of the geographical regions represented in the SCOAP³ Governing Council must be present to constitute a quorum of the SCOAP³ Governing Council. Those geographical regions are: (i) the Americas, (ii) Europe, Africa and Middle East and (iii) Asia and the Pacific;
- shall take decisions by simple majority of members, except for the following decisions that shall be taken by a 2/3 majority of members: (i) approval of the annual budget of income, (ii) approval of the expected contributions per country to the SCOAP³ Fund for each subsequent tendering cycle, (iii) approval of amendments to the main body of the MoU, (iv) decision to add additional seats for international or non-profit entities wishing to make a contribution to SCOAP³ and (v) dissolution of SCOAP³;
- shall be convened and chaired by one of its members, who shall be elected as Chairperson for three years;
- the first SCOAP³ Governing Council meeting shall be convened and chaired by the CERN Director-General or by a person to whom he/she has delegated this task. This meeting shall take place after signature of the MoU by Representatives from countries representing in aggregate a financial contribution above 50% of the SCOAP³ yearly budget, and before signature of the contracts between CERN and the Publishers.

C. The SCOAP³ Executive Committee

i. Composition

The SCOAP³ Executive Committee:

- shall comprise (i) 4 to 6 members from among the SCOAP³ Partners, appointed by the SCOAP³ Governing Council that shall strive to appoint at least one member of each geographical region (as set out in Clause 3.B.iii); these members shall act in the overarching interest of SCOAP³, and (ii) 1 member appointed by CERN as the Host Organization of SCOAP³.

ii. Terms of reference

The SCOAP³ Executive Committee:

- shall regularly report to the SCOAP³ Governing Council;
- shall oversee the day to day operation of SCOAP³ on behalf of the SCOAP³ Governing Council;

- shall provide advice and guidance to the SCOAP³ Consortium Manager as the need arises and oversee the execution of his/her duties;
- shall decide or make recommendations on such matters as outreach strategy, relations with publishers, relations with prospective partners;
- shall make proposals to the SCOAP³ Governing Council for the use of any yearly positive balance within the framework of SCOAP³;
- shall submit proposals to the SCOAP³ Governing Council concerning compensation in the event of a withdrawal from SCOAP³ as set out in Clause 9.4;
- shall engage in dispute resolution in accordance with Clause 9.1.

iii. Procedure

The SCOAP³ Executive Committee:

- shall meet at least once a month;
- shall be convened and chaired by one of its members, who shall be elected as Chairperson for one year;
- its first meeting shall be convened and chaired by its member appointed by CERN;
- shall strive to take decisions by consensus⁴;
- shall allow remote participation in its meetings.

D. The SCOAP³ Consortium Manager

CERN shall appoint a SCOAP³ Consortium Manager, who shall be a CERN staff member.

The SCOAP³ Consortium Manager shall provide regular reports to the SCOAP³ Executive Committee and shall under its oversight:

- ensure the day-to-day operation of SCOAP³, including but not limited to:
 - o management of the SCOAP³ contracts between CERN and the Publishers, in particular the timely and correct execution by the latter of all deliverables;

⁴ Consensus is defined as « *lack of sustained opposition* ».

- management of the SCOAP³ Repository and other services to the SCOAP³ Partners;
 - management of the SCOAP³ cash flow, including ensuring timely payments by the SCOAP³ Partners and timely payments to the Publishers;
 - management of the SCOAP³ partnership;
 - management of the SCOAP³ Fund;
 - representation of SCOAP³ to relevant external parties;
- support and organize meetings of the SCOAP³ Governing Council and SCOAP³ Forum;
 - bring issues to the SCOAP³ Executive Committee for deliberation and decision as needed;
 - implement the decisions of the SCOAP³ Governing Council and the SCOAP³ Executive Committee;
 - ensure that the information contained in the Addenda to the MoU is kept up-to-date, and review that information in time for the meetings of the SCOAP³ Governing Council.

Clause 4: Finances

- 4.1 The SCOAP³ Partners shall make an annual payment into the SCOAP³ Fund to cover their share of the agreed payments to the Publishers. The amounts due shall be specified in the Addenda.
- 4.2 The first tendering cycle covers the period starting on 1 January 2014 and ending on 31 December 2016. The amounts of payments for the first tendering cycle are calculated according to the method described in Annex 8, based on the share of HEP literature for all countries active in the Field as listed in Annex 6.
- 4.3 The amounts of payments for each subsequent tendering cycle shall be decided by the SCOAP³ Governing Council, taking into account the volume of articles published in the SCOAP³ framework over a specified two-year reference period (e.g. contribution for 2017-2019 calculated from SCOAP³ articles in 2014+2015). The SCOAP³ Governing Council may appoint a committee to this calculation task.
- 4.4 All SCOAP³ Fund operations shall be reviewed annually by an independent audit committee appointed by the SCOAP³ Governing Council, in accordance with CERN financial rules⁵.

⁵ Available at <http://council.web.cern.ch/council/en/FC/CERN%20Financial%20Rules%202008.pdf>

Clause 5: Rights of the SCOAP³ Partners

In consideration for their contribution to the SCOAP³ Fund, the SCOAP³ Partners shall be entitled to:

- access to the Reconciliation Facility and to mediation by CERN with the Publishers in connection with reduction of subscriptions;
- assistance with the enforcement of subscription reductions as captured in the Addenda;
- participation in the SCOAP³ Forum, subject to Clause 3.A.i;
- representation in the SCOAP³ Governing Council, subject to Clause 3.B.i;
- eligibility for appointment to the SCOAP³ Executive Committee, subject to Clause 3.C.i;
- push/pull from the SCOAP³ Repository of articles by authors of a given institution into the SCOAP³ Partner's own repository, and/or specific API access.

Clause 6: Use of resources

- 6.1 CERN shall place, sign and manage the contracts for the provision of the Services, charged to the SCOAP³ Fund, with the Publishers in accordance with CERN Financial Rules. A list of the Publishers and journals providing the Services is set out in Annex 3.
- 6.2 Any yearly positive balance shall remain in the SCOAP³ Fund and shall be used for activities within the framework of SCOAP³, as approved by the SCOAP³ Governing Council.
- 6.3 In case of discontinuation of SCOAP³, the funds remaining in the SCOAP³ Fund will be used to pay all liabilities incurred by the operation of SCOAP³. Any monies that may then remain in the SCOAP³ Fund will be returned to the SCOAP³ Partners in proportion to their contribution.

Clause 7: Role of CERN as Host Organization

- 7.1 As the Host Organization of SCOAP³, CERN shall ensure its day-to-day operation, through the SCOAP³ Consortium Manager and its support services, including in particular its Finance and Procurement Department.

- 7.2 To this end, CERN shall contribute to SCOAP³ the costs of financial, personnel and other resources incurred by it in its hosting activities, over and above its contribution as a SCOAP³ Partner.
- 7.3 As the sole contract party, in its own name, to the contracts with the Publishers, CERN is exclusively liable for the proper execution of its contractual commitments to the Publishers, and more generally for compliance of SCOAP³ transactions with CERN Financial Rules. Therefore, any action, including any decision, by a SCOAP³ entity that in the view of CERN's representative in that entity, may have an adverse impact on the execution of its contracts with the Publishers or lead to financial or legal exposure, is subject to CERN's agreement. For the same reason, CERN is entitled to terminate the contracts with the Publishers, but only after having informed the SCOAP³ Executive Committee and the SCOAP³ Governing Council of its intention and motivation to terminate, and, where feasible under the circumstances, after consultation with the SCOAP³ Executive Committee and the SCOAP³ Governing Council.

Clause 8: Duration

- 8.1 The MoU shall become effective upon signature by the first Party to sign after CERN. Without prejudice to Clauses 8.3 and 8.4, it shall remain in force for as long as necessary to give effect to its provisions.
- 8.2 Any entity that wishes to join SCOAP³ after the conclusion of the MoU shall arrange for signature of the MoU and a new Addendum defining the details of its participation in SCOAP³.
- 8.3 CERN as Host Organization and any SCOAP³ Partner may withdraw from SCOAP³ at the end of each tendering cycle by giving notice in writing to the SCOAP³ Governing Council at the latest four (4) weeks after notification by the SCOAP³ Governing Council of its decision to start a subsequent tendering cycle.
- 8.4 In case of extraordinary circumstances, a SCOAP³ Partner may withdraw from SCOAP³ by giving not less than twelve (12) months notice in writing to the SCOAP³ Governing Council. The withdrawing SCOAP³ Partner shall agree with the SCOAP³ Executive Committee on a reasonable compensation to SCOAP³, which the SCOAP³ Executive Committee shall submit to the SCOAP³ Governing Council for approval.

Clause 9: Disputes

- 9.1 The primary mechanism for resolution of any disputes related to the subject matter of the MoU, including but not limited to disputes of financial nature, shall be discussion between the SCOAP³ Executive Committee and the party(ies) concerned. Should this not prove fruitful, the dispute shall be resolved by arbitration by the Chairperson of the SCOAP³ Governing Council.

9.2 It is understood and agreed, however, that the liability of each party to the MoU shall in no event exceed an amount equivalent to the amount of its annual payment to the SCOAP³ Fund, which was agreed upon before the dispute arose.

9.3 This provision shall survive termination of the MoU, howsoever caused.

Clause 10: Major amendments

Major Amendments to the main body of the MoU agreed upon by CERN and the SCOAP³ Governing Council pursuant to Clause 3.B.ii shall be subject to signature by the Parties.

Clause 11: Implementation of the MoU

11.1 For the avoidance of doubt, it is understood that the SCOAP³ Partners that are represented by the Representatives shall benefit from all rights set out in the MoU, and in particular in Clause 5.

11.2 An Addendum to the MoU will include a list of SCOAP³ Partners represented by each Representative.