



Delibera n. 174/2021

30 Settembre 2021

Allegato N al Verbale n. 05/2021

Oggetto: TCS Near-Fault Observatories -NFO Governance and Coordination Collaboration Agreement 2021-2023.

IL CONSIGLIO DI AMMINISTRAZIONE

VISTO il Decreto legislativo 29 settembre 1999, n. 381, concernente la costituzione dell'Istituto Nazionale di Geofisica e Vulcanologia (INGV);

VISTO lo Statuto dell'INGV, approvato con Delibera del Consiglio di Amministrazione n. 114/2020 del 19 giugno 2020, emanato con Decreto del Presidente n. 78/2020 del 27/10/2020, pubblicato sul Sito WEB istituzionale - Avviso di emanazione di cui al Comunicato su Gazzetta Ufficiale della Repubblica Italiana - Serie generale - n. 264 del 24 ottobre 2020;

VISTO il Regolamento di Organizzazione e Funzionamento dell'Istituto Nazionale di Geofisica e Vulcanologia emanato con Decreto del Presidente n. 36/2020 del 22/04/2020, pubblicato sul sito istituzionale;

VISTO il Regolamento di Amministrazione, Contabilità e Finanza, adottato con Delibera del Consiglio di Amministrazione n. 145/2020 del 22 luglio 2020, ed emanato con Decreto del Presidente n. 75/2020 del 21 ottobre 2020;

VISTA la decisione di esecuzione (UE)n. 2018/1732 della Commissione Europea, del 30 Ottobre 2018 relativa all'istituzione del Sistema di osservazione della placca tettonica europea — Consorzio per un'infrastruttura europea di ricerca (ERIC EPOS), notificata con il numero C(2018) 7011;

VISTA la nota del 05.07.2021, con la quale il dott. Lauro Chiaraluce, rappresentante INGV delle attività nell'ambito del TCS Near Fault Observatories, ha precisato che il Collaboration Agreement finalizzato alla gestione della Governance and Coordination del TCS Near Fault Observatories, rappresenta la formalizzazione del rapporto di collaborazione tra INGV ed EPOS ERIC al fine di garantire un coordinamento tra i Near Fault Observatories (NFO) Europei all'interno del framework organizzativo dei servizi gestiti nel contesto EPOS, trasmettendo lo schema del Collaboration Agreement;

VISTO lo schema del Collaboration Agreement nonché le disposizioni in esso contenute;

VALUTATE le esigenze scientifiche e tecnologiche dell'Istituto;

Su proposta del Presidente

DELIBERA

E' approvato lo schema del TCS Near-Fault Observatories - NFO Governance and Coordination Collaboration Agreement 2021-2023, allegato alla presente, quale parte integrante e sostanziale (All.1).

Viene dato mandato al Presidente alla sottoscrizione definitiva degli atti.

Firmato il 11/10/2021

Depositato presso la Segreteria del Consiglio in data 11/10/2021

La segretaria verbalizzante
(Dott.ssa Maria Valeria INTINI)

IL PRESIDENTE
(Prof. Carlo DOGLIONI)



**TCS Governance and Coordination
Near-Fault Observatories
COLLABORATION AGREEMENT
2021-2023**

NUMBER 07 – CA-TCSGOV-NFO

**Version 5.0
(28 May 2021)**



This Collaboration Agreement (hereinafter "Agreement") is made by and between:

- (1) The European Plate Observing System European Research Infrastructure Consortium established by Commission Implementing Decision (EU) 2018/1732 of 30 October 2018, having its headquarters and statutory seat at Via di Vigna Murata, 605 - 00143 Rome, Italy (hereinafter "**EPOS ERIC**"); and,
- (2) Istituto Nazionale di Geofisica e Vulcanologia (INGV) established in Via di Vigna Murata 605 00143, Rome, Italy (hereinafter "**TCS Coordinator**");

Hereinafter collectively referred to as the "**Parties**" and individually as "**Party**".

1. Preamble

Whereas EPOS ERIC is a single, but distributed, sustainable research infrastructure with its overarching goal being to establish a comprehensive multidisciplinary research platform for the solid Earth science in Europe;

Whereas EPOS ERIC's governance model relies on a federated approach to engage scientific communities, committed to ensuring data and service provision through different Thematic Core Services (TCS);

Whereas the TCS are in charge of coordinating the community efforts to enable the data and service provision within the EPOS Research Infrastructure;

Whereas the TCS are in charge of coordinating the data and service provision through a shared legal and governance framework which implies the adoption of the EPOS data policy and access rules to endorse data redistribution;

Considering that the participation of research organizations in the TCS is governed by a Consortium Agreement to facilitate the establishment, administration, governance and operation of the TCS (attached as **Annex 1** to this Agreement);

Considering that according to the relevant Consortium Agreement the TCS Coordinator was appointed as the Consortium's representative for the purpose of this Collaboration Agreement and is acting on behalf of the members of the Consortium it represents;

Considering that the TCS Coordinator is supported by the TCS Participants to carry out the activities detailed in the annual Work Programmes;

Considering that the Resolution of the EPOS ERIC General Assembly N°10 (December 2020) concerns the approval of the eligibility for operation of TCS Governance and Coordination.

Considering that the EPOS ERIC General Assembly instructed the EPOS ERIC Executive Director to sign this Collaboration Agreement;

The PARTIES HEREBY AGREE AS FOLLOWS:

2. Definitions and interpretation

The words and phrases below shall have the following meanings:

“Effective Date” means the last date of signature by the Parties.

“EPOS” means European Plate Observing System Research Infrastructure.

“EPOS Delivery Framework” means the EPOS framework where the relationships among the key actors are regulated by specific rules and procedures. It includes the EPOS ERIC legal seat (represented by the ECO), the Integrated Core Services (ICS) and Integrated Core Services Central Hub (ICS-C) and the Thematic Core Services (TCS).

“GDPR” means the General Data Protection Regulation (EU) 2016/679.

“General Assembly” means EPOS ERIC General Assembly.

“Intellectual Property Rights” means patents, rights to inventions, utility models, trademarks, service marks, registered designs, copyrights and related rights, database rights, design rights, rights to use and protect confidential information, in each case whether registered or unregistered, including rights to apply for and be granted and applications for any of the above and any continuations, continuations-in-part, divisional applications, renewals or extensions of, and rights to claim priority from, those rights, and any similar right recognised from time to time in any jurisdiction, together with all rights of action in relation to the infringement of any of the above.

“Internal Agreement” means the Agreement between the TCS Coordinator and TCS Participants.

“Statutes” means the Statutes of EPOS ERIC.

“TCS” shall have the same meaning provided to it in the Statutes.

“TCS Consortium Agreement” means the agreement signed by each representative of the TCS attached as Annex 1.


“TCS Coordinator” means the Executive Management - Hosting Organization as identified in the NFO TCS Consortium Agreement (Annex 1).

“TCS Participant” means a signatory to the NFO TCS Consortium Agreement, other than the TCS Coordinator (Annex 1).

“Work Programme”: means the activities and related costs agreed by the parties for each calendar year for the purpose of achieving the objectives of common interest specified in the Preamble. The 2021 Work Programme is included in the Annex 2 of this Agreement. The following years' Work Programmes will be agreed by the Parties by the end of each precedent year.

In this Agreement, unless otherwise expressly provided or unless the context otherwise requires:

- References to the singular include the plural and vice versa.
- References to words denoting any gender shall include all genders.
- References to persons include companies, partnerships, government departments and agencies and all other forms of body corporate or unincorporate.
- References to Clauses and Annexes are to Clauses of, and Annexes to, this Agreement.
- References to laws and statutory provisions shall include reference to any subordinate legislation made pursuant thereto and shall be construed as referring to those laws, provisions and subordinate legislation as respectively amended or re-enacted from time to time.
- The headings of this Agreement are for ease of reference only and are not part of this Agreement for the purposes of construction.

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- Any undertaking by a Party not to do an act or thing shall be deemed to include an undertaking not to permit or suffer such act or thing to be done by another person.
 - References to the Parties include their respective successors in title, permitted assigns and legal personal representatives.
 - Any activities performed by the Parties are not intended as provision of services. Therefore, cash contribution shall not be construed as a service price remuneration. The parties shall be obliged to comply with the cost principle in evaluating the resources provided in kind to the Work Programme.
 - The Annexes and Recitals form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and accordingly any reference to this Agreement includes the Annexes and Recitals.

3. Purpose

This Agreement sets out the collaborative framework defining the terms and conditions under which the Parties shall work in collaboration for their mutual benefit and for guaranteeing the functioning of the governance and coordination of the TCS NFO as a key component of the EPOS Delivery Framework. In particular, the Agreement addresses the:

- sharing of resources for implementing the governance and coordination of the TCS;
- coordination and contributions to the EPOS Delivery Framework;
- activities aimed at the engagement of the communities to foster “open access” in solid Earth science;
- any further purposes set out in the Work Programme.

4. Obligations of the Parties

The Parties agree to fully collaborate for fulfilling their tasks under this Agreement.

Each of the Parties shall carry out the tasks allotted to it in the Work Programme to be defined for each calendar year, and will provide the financial, human and other resources, facilities and equipment which are designated as its responsibility in the Work Programme. The Work Programme shall be carried out under the direction and supervision of the TCS Coordinator.


Each Party will use its reasonable endeavours to make available adequate resources to carry out the work diligently within the scope of this agreement (i.e. referred to each Party decision to participate to the execution of the Work Programme).

The Parties shall agree and implement an Annual Work Programme setting out detailed activities and related contributions. The first Work Programme, included as Annex 2 of this Agreement, shall take effect from the last date of signature by the Parties until the 31st of December 2021. For 2022 onwards, the Annual Work Programme shall be defined and agreed for each calendar year separately not later than the 30th of November of each year. Then these Work Programmes shall be annexed to this Agreement.

The Parties acknowledge that the TCS Coordinator is supported by the TCS Participants for implementing the activities described in the Work Programmes, provided that TCS Coordinator and TCS Participants will sign Internal Agreements. However, the overall responsibility for implementing the Work Programme activities lies with the TCS Coordinator. The activities shall be performed under the direction and supervision and responsibility of the TCS Coordinator.

The Parties shall hold regular meetings to discuss operational, financial and management issues.

Each of the Parties shall obtain and maintain all regulatory and ethical licences, consents and approvals necessary to allow it to carry out the tasks allotted to it in the Work Programme and will carry out its tasks in accordance with all laws and regulations which apply to its activities under or pursuant to this Agreement.



Each of the Parties will ensure that its employees, consultants and students (if any) involved in the performance of this Agreement abide by the terms of this Agreement and comply with the other Party's health and safety and security policies and procedures (including information security policies and procedures) when working on or visiting the other Party's premises or when accessing or using the other Party's information systems.

5. Financial and in-kind contributions by the Parties

- 5.1 EPOS ERIC will contribute to the implementation of this Agreement's activities either in cash and in-kind. The levels of cash and in-kind contributions shall be set out in the annual Work Programme.
- 5.2 EPOS ERIC cash contribution shall be allocated to the TCS Coordinator to sustain the direct costs (personnel and other direct costs) in accordance with the annual Work Programme. The level of direct costs shall be set out in the annual Work Programme.
- 5.3 The TCS Coordinator will contribute in-kind to this Agreement's activities. The in-kind contribution provided by the TCS Coordinator will correspond to the declared overhead, using the rate ordinarily applied by the TCS Coordinator for similar cases/circumstances. The TCS Coordinator will report these in-kind contributions to EPOS ERIC. The in-kind contribution shall be set out in the annual Work Programme.
- 5.4 The TCS Coordinator will also benefit from in-kind contributions to this Agreement's activities from the TCS Participants. The in-kind contribution provided by the TCS Participants will correspond to the declared overhead, using the rate ordinarily applied by the TCS Participants for similar cases/circumstances. The TCS Coordinator is responsible of reporting these in-kind contributions to EPOS ERIC. The level of in-kind contributions shall be set out in the annual Work Programme.
- 5.5 The TCS Coordinator will financially support activities performed by the TCS Participants using the EPOS ERIC cash contribution in accordance with the annual Work Programme. The TCS Coordinator will support the direct costs (personnel and other direct costs) declared by the TCS Participants set out in the annual Work Programme.
- 5.6 The TCS Coordinator may redistribute the cash contribution received by EPOS ERIC to the TCS Participants according to their efforts described in the annual Work Programme and in the same term and condition as in Clause 5.11.
- 5.7 The Parties agree with the rules and principles for this combination (cash and in-kind contribution) as represented in the annual Work Programme and to jointly act to support the agreed plan.
- 5.8 In order to allow the assessment and acknowledgment of the resources and costs declared in this Agreement, the TCS Coordinator agrees to use the actual cost model as regards to direct costs (personnel and other direct costs) and to calculate indirect costs using the ratio parameter ordinarily applied for similar cases/circumstances and provided that it is consistently with its respective usual accounting practices. The TCS Coordinator is responsible of the adoption of this cost model also by the TCS Participants. To report the costs of the resources contributed by both the TCS Coordinator and TCS Participants, the TCS Coordinator agrees to use the Annex - 3 - Cost statement template and Annex 4 – Activity Report template provided by EPOS ERIC.
- 5.9 In order to allow the acknowledgment of the cash contributed by EPOS ERIC, the TCS Coordinator agrees to provide to EPOS ERIC an internal certification issued by its financial department which will be referred to the costs statement of the Work Programme as well as to include in its report the internal certification issued by the TCS Participants involved in the annual Work Programme. The TCS Coordinator agrees to use the Annex – 5 - Internal certification template provided by EPOS ERIC.

5.10 The TCS Coordinator undertakes to transmit its internal certifications, including also the TCS Participants internal certifications, within 45 days from the completion date of each Work Programme, provided that the commitments as in the Work Programme has been fulfilled.

5.11 The EPOS ERIC cash contribution will be transferred to the TCS Coordinator according to the following:

- 5.11.1 a pre-financing payment of 70% of the provisional EPOS ERIC cash contribution requested by the TCS Coordinator, will be transferred to the TCS Coordinator within thirty [30] days from the starting date of the relevant Work Programme upon the receipt of a note of request for contribution;
- 5.11.2 a pre-financing payment of 70% of the provisional EPOS ERIC cash contribution requested by the TCS Participants, will be transferred to the TCS Coordinator within thirty [30] days from the starting date of the Internal Agreements the TCS Coordinator will sign with the TCS Participants, upon the receipt of a note of request for contribution;
- 5.11.3 a final payment, constituted by the remaining requested EPOS ERIC cash contribution deducted the pre-financing, will be transferred to the TCS Coordinator, after the presentation of the cost statements accompanied by the internal certifications in accordance with Clauses 5.8, 5.9 and 5.10 upon the receipt of a note of request of contribution.

5.12 The EPOS ERIC cash contribution to the TCS Coordinator shall be transferred to the bank account of the TCS Coordinator in Italy, IBAN: IT 72 G 03069 05020 100000046126 - Istituto di Credito: Intesa San Paolo S.p.A - Filiale HUB.

6. Contact persons

The Parties' respective representatives for the activities and arrangements covered by this Agreement are, until changed by notice given in accordance with this Clause 6, as follows:

For EPOS ERIC:	For the TCS Coordinator:
Name: Daniela Mercurio Position: Management and Operation Unit Email: management@epos-eric.eu	Name: Lauro Chiaraluce Position: Researcher Email: lauro.chiaraluce@ingv.it

7. Notices

All notices, requests, consents, claims, demands and other communications shall be in writing and addressed to the respective Party's contact person set out in this Agreement by email and confirmed by registered mail.

8. Duration

This Agreement shall come into force on the last date of signature by the Parties, here referred as "Effective Date", and will terminate on 31 December 2023, or until this Agreement is terminated in accordance with Clause 9.



9. Termination

A Party may terminate this Agreement at any time before the end of its term by giving a [6] months' notice to the other Party. In case of a serious breach of this Agreement by the TCS Coordinator, EPOS ERIC may terminate the Agreement by giving one [1] month notice to the TCS Coordinator.

10. Intellectual property rights

All Intellectual Property Rights which are owned by any Party as at the Effective Date shall remain vested in that Party and nothing in this Agreement shall transfer ownership of such Intellectual Property Rights to any other Party or any third party, unless agreed separately in writing.

The TCS Coordinator, even on behalf of the TCS Participants, shall ensure that it has the necessary operating software licenses in place, relevant copyright or otherwise Intellectual Property Rights required to enable it to carry out its obligations under this Agreement.

11. Confidentiality

The Parties acknowledge that during the term of this Agreement certain information may be disclosed by one Party to the other, which is and shall be treated as confidential by the recipient. In such circumstances the Party disclosing the confidential information shall make clear to the receiving Party that the relevant information is confidential. The receiving Party shall hold such relevant information in confidence and shall not use it for any purpose other than in accordance with this Agreement.

The receiving Party shall not disclose such confidential information, directly or indirectly or otherwise make available in whole or in part to third parties without the prior consent of the disclosing Party, except to the extent necessary by the recipient Party to its employees and officers and to its outside professional advisors.

The foregoing obligations shall not apply to any portion of the confidential information which the receiving Party can establish that it:

- was known to it prior to its receipt from the disclosing Party; or
- at the time of disclosure was, or thereafter becomes through no fault of the receiving Party, generally available to the public by publication or otherwise; or
- was received without any obligation of confidentiality from a third party which, to the best knowledge of the receiving Party, has the right to disclose the same; or
- was independently developed by the receiving Party without access or reference to the confidential information of the disclosing Party; or
- was disclosed in order to comply with applicable laws or regulations or with a court or administrative order.

The receiving Party shall, to the extent permitted by applicable law, impose the same obligations as set out above on all of its officers and employees and students (if any) having access to the confidential information, both during and following their retention by the receiving Party. Notwithstanding the foregoing, the receiving Party shall be liable for any breach of this obligation by its officers and employees.

12. Interpretation

The terms and conditions set out in this Agreement shall be subject to and interpreted in light of the Statutes of the EPOS ERIC and its Annexes. In case of contradiction between the wording of the Statutes and this Agreement, the wording of the Statutes and its Annexes shall prevail.



13. Warranties and liabilities

Each of the Parties warrants to the other that it has full power and authority under its constitution and has taken all necessary actions and obtained all authorisations, licences, consents and approvals, to allow it to enter into and perform this Agreement.

Each Party shall indemnify and hold harmless the other Party and its directors, officers, employees and affiliates from and against all claims and damages (including without limitation legal fees and costs) which arise out of, relate to or result from any act or omission of the indemnifying Party.

Parties are not liable towards each other for any claims, costs or damages that may result, directly or indirectly out of the performed activities under this Agreement, unless and to the extent that damage is caused by gross fault and/or due to wilful misconduct by a Party. A Party shall in no case be liable, towards the other Party, for any indirect, incidental or consequential damages (including without limitation, lost business or profits, loss of data or loss of use of equipment, loss of goodwill, loss of use).

Nothing in this Agreement limits or excludes any Party's liability for: (i) death or personal injury; or (ii) any fraud or for any sort of liability that, by law, cannot be limited or excluded.

14. Data protection

For the purposes of this Agreement, "controller", "data subject" and "personal data" shall have the meanings given under the GDPR; "processing" has the meaning given under the GDPR and "process", "processed" and "processes" shall be construed accordingly.

To the extent that one Party provides another Party ("the Receiving Party") with personal data in connection with the performance of this Agreement, the Receiving Party agrees that, unless the Parties specifically agree otherwise, each shall be independent controllers of the personal data in their own right. The Receiving Party shall comply with applicable data protection and privacy laws in relation to the personal data, including the GDPR.

15. Force majeure

If the performance by a Party of any of its obligations under this Agreement (except a payment obligation) is delayed or prevented by circumstances beyond its reasonable control, that Party will not be in breach of this Agreement because of that delay in performance. However, if the delay in performance lasts for more than [6] months, the other Party may terminate this Agreement with immediate effect by giving written notice to the Party whose performance is delayed or prevented.

16. No agency

Nothing in this Agreement creates, implies or evidences any partnership or joint venture between the Parties, or the relationship between them of principal and agent. Neither Party has any authority to make any representation or commitment, or to incur any liability, on behalf of the other.



17. Amendments

Amendments to or changes of this Agreement shall, in order to be valid, be made in writing and signed by authorized representatives of both Parties and shall be clearly stated as amendments to, or changes of this Agreement.

18. Governing law and dispute resolution

18.1 Governing Law

This Agreement shall be governed by and construed in accordance with the substantive laws of Italy.

18.2 Disputes

The Parties shall endeavor to settle their disputes amicably.

In the case of any dispute or difference of opinion between the Parties arising out of or in connection with this Agreement the Parties will attempt in good faith to settle it by negotiations. Either Party to the dispute may refer the issue to the respective Parties' contact persons who will then resolve the issue together. If the contact persons fail to agree the matter shall be transferred to executive level in the Parties' respective organizations, and in the case of EPOS ERIC, the Executive Director.

If the Parties are unable to settle any dispute by negotiation within thirty [30] days of notification of a dispute by one Party to any other Party, the Executive Director may escalate the dispute to the General Assembly, who shall make a decision on how to settle the dispute. If no decision is made within [30] or [45] days, the disputes shall be finally settled under the law of Italy and the competent Court is the Court of Rome.



19. SIGNATURES

EXECUTED as an agreement:

SIGNED for and on behalf of **EPOS ERIC**

Name: Carmela Freda

Position: Executive Director

Date:

Signature:

SIGNED for and on behalf of **INGV**

Name: Carlo Doglioni

Position: President

Date:

Signature: