

Deliverable 2.5: Agreement template for integrating the distributed facilities

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Cooperation Agreement

Parties to the agreement

ACTRIS ERIC

and

Names of the Host Institutions of the Central Facility

hereinafter referred to individually or collectively as the “Host Institution” or the “Host Institutions”

The Host Institutions represent the [name of the Central Facility] hereinafter referred to as the “Central Facility”.

ACTRIS ERIC and the Host institutions may hereinafter also be referred to individually or collectively as the "Party" or the "Parties".

Background

The Aerosol, Clouds and Trace Gases Research Infrastructure, ACTRIS, is a pan-European research infrastructure producing high-quality data and information on short-lived atmospheric constituents and on the processes leading to the variability of these constituents in natural and controlled atmospheres.

ACTRIS ERIC, established **[To be filled in]** is the legal entity of ACTRIS which coordinates and facilitates the establishment and the operations of ACTRIS.

ACTRIS includes 8 Central Facilities: 6 Topical Centres, the Data Centre and the Head Office, the latter comprising the Service and Access Management Unit SAMU. Each of the Central Facility consists of several units hosted by the ACTRIS member countries and responsible ACTIS research performing organisations. The 8 Central Facilities, operated by their respective hosting consortia, were approved by the Interim ACTRIS Council in December 2018 after an independent selection process taking into consideration their capacity, expertise and commitment for implementing the needed operation support and services.

The National Facilities which include observational and exploratory platforms, both within Europe and at selected global sites, are responsible for the acquisition of reliable accurate, and highly quality data to document the 4-D variability of aerosols, clouds and trace gases and their complex interactions.

Article 1. Definitions

“ACTRIS” means Aerosols, Clouds, and Trace gases Research Infrastructure.

"Agreement" means this agreement including its annexes as amended from time to time.

"Host Contributors" means the countries, ministries and national agencies that contribute to the Central Facility financing.

"Host Institution" means a legal entity where the Central Facility or part of the Central Facility is located.

“National Facility” means an observational or exploratory platform which has a contractual relationship with the ACTRIS ERIC and which provides data and/or physical access to its premises.

“SAMU” means the Service Access Management Unit of the ACTRIS Head Office.

“User” means a person, a team, or an institution from any sector, including public and private sector, making use of ACTRIS data or other ACTRIS services, including access to ACTRIS facilities.

Etc.

Article 2. Purpose

The purpose of this Agreement is to set out the rights and responsibilities of ACTRIS ERIC and the Host Institutions as part of the Central Facility in order to ensure proper running of ACTRIS.

The Parties agree to cooperate and fulfil their tasks pursuant to the provisions of this Agreement and as in more detail described in Annex 1 (Central Facility Deliverables) to realize the ACTRIS activities agreed by the General Assembly.

Article 3. Obligations of the Parties

Article 3.1. General Obligations

Each Party undertakes to take part in the efficient implementation of their responsibilities within the activities of ACTRIS, and to cooperate, perform and fulfil, promptly and on time, all of its obligations as may reasonably be required from it.

Each Party undertakes to notify promptly, to each other, any significant information, fact, problem or delay likely to affect the activities.

Each Party shall promptly provide all reasonably required information and materials having bearings on other ACTRIS activities.

Each Party shall take reasonable measures to ensure the accuracy of any information or materials it supplies to the other Parties.

Article 3.2. Obligations of the ACTRIS ERIC

In its function to coordinate the operations of ACTRIS, ACTRIS ERIC shall undertake all tasks and obligations specified in the ACTRIS ERIC statutes. More specifically, ACTRIS ERIC shall:

- ensure all necessary communication between the Central Facility and the entities involved in ACTRIS;
- provide all information needed for the realization of this Agreement;
- in accordance with the ACTRIS ERIC statutes, provide the financial contributions to the Central Facility for part of the costs of the work defined in Annex 1;

[Any other obligations to be listed]

Article 3.3. Obligations of the Host Institutions

The Host Institutions shall undertake all tasks and obligations specified in Annex 1 and financially contribute to them as hereinafter defined in Article 5.

The director of the Central Facility shall give a yearly report of the performed activities to the Director General to be presented to the General Assembly of the ACTRIS ERIC.

[Any other obligations to be listed]

Article 4. Management and Coordination of the Central Facility

To realize the ACTRIS activities, the Host Institutions shall set up their own management structure for their responsibilities as described in more detail in Annex 2 (Management of the Central Facility).

The Host Institutions shall appoint a director to be in charge of coordinating and managing the Host Institutions' activities of the Central Facility. The name and contact information of the director shall be communicated to the Director General of the ACTRIS ERIC, as soon as possible after its designation. The Host Institutions can change the director as agreed upon between the Host Institutions.

A list of all Central Facilities' directors shall be kept and updated by the Director General of the ACTRIS ERIC.

Article 5. Financial Contributions

Article 5.1. Financial Principles

The financial contributions of the Host Institutions of the Central Facility may be in-kind and/or in cash.

The funding principles and processes of ACTRIS are laid down in the internal financial rules of the ACTRIS ERIC which shall apply to this cooperation and this Agreement. The provisions of the rules are complemented with article 5.

Article 5.2. Financial Contributions from the ACTRIS ERIC

In accordance with the decisions made by the General Assembly of the ACTRIS ERIC the financial contributions related to the Host Institutions' activities of the Central Facility are distributed by the ACTRIS ERIC to the Host Institutions.

The financial contributions will be transferred in **[may be defined in Internal financial rules, if not to be defined]** instalments **[define in more detail if needed]**.

Article 5.3. Financial Contributions from the Host Institutions

The Host Institutions of the Central Facility shall contribute to all expenditures relating to ACTRIS activities which are not covered by the ACTRIS ERIC for the performance of the Central Facility's activities as described in Annex 1.

In case of not obtaining the sufficient financial contribution from the Host Contributors involved in the Central Facility, which may affect the performance of the Central Facility, the director of the Central Facility shall notify the Director General of the ACTRIS ERIC. In this case the Director General shall negotiate the case with the Host Institutions and the respective Host Contributors. The Director General shall then report the situation to the General Assembly of the ACTRIS ERIC for further actions.

The director of the Central Facility shall annually report the total budget of the Central Facility to the ACTRIS ERIC.

Article 6. Rights and Obligations Concerning Data and Access

Article 6.1. General Principles

The principles and process of handling data, access to data and services and intellectual property rights within the activities of ACTRIS are laid down in the ACTRIS data policy and access and services policy which shall apply to this cooperation and this Agreement. The provisions of the policies are complemented with article 6.

Article 6.2. Joint Ownership

In case of joint ownership between the ACTRIS ERIC and one or more Host institutions each of the joint owners shall be entitled to use their jointly generated and jointly owned property, whether patentable or not, for non-commercial research and teaching activities on a royalty-free basis, and without requiring the prior consent of the other joint owner(s). Each of the joint owners shall be entitled to otherwise exploit the jointly owned property and to grant non-exclusive licenses to third parties if the other joint owners are given prior notice and compensation.

Article 6.3. Data Transfer from the National Facilities and Access to the National Facilities

The National Facilities transfer data to the Data Centre and give access to Users as defined in the ACTRIS data policy and access and service policy.

Article 6.4. Data Transfer from the Central Facility to the ACTRIS ERIC

Data transfer from the Host Institutions of the Central Facility to the ACTRIS ERIC shall be provided in accordance with the ACTRIS data policy, ACTRIS access and services policy and as described in more detail in the ACTRIS Data Management Plan.

Article 6.5. Access to Services

The Host Institutions of the Central Facility shall provide [Physical Access/Remote Access/Both Physical and Remote Access **to be defined**] in accordance with the ACTRIS Access and services policy and as in more detail described in the ACTRIS Access Management Plan. Access shall be provided through the SAMU and the ACTRIS ERIC shall be responsible of handling all applications and other processes before access is granted.

Article 7. Monitoring the Tasks

[If wanted here could be described something about how the ACTRIS ERIC / Director General can monitor that things go smoothly. Or leave this to be defined in other, internal documents.]

Article 8. Confidentiality

Article 8.1. General Principles

All information in whatever form or mode of communication, which is disclosed by a Party (the “Disclosing Party”) to any other Party (the “Recipient”) in connection with the activities under this Agreement and which has been explicitly marked as “confidential” at the time of disclosure, or when disclosed orally has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within 15 calendar days from oral disclosure at the latest as confidential information by the Disclosing Party, is “Confidential Information”.

Article 8.2. Obligations

The Recipients hereby undertake, for a period of 3 years after the termination of this Agreement:

- not to use Confidential Information otherwise than for the purpose for which it was disclosed;
- not to disclose Confidential Information to any third party without the prior written consent by the Disclosing Party;
- to ensure that internal distribution of Confidential Information by a Recipient shall take place on a strict need-to-know basis; and
- to return to the Disclosing Party on demand all Confidential Information which has been supplied to or acquired by the Recipients including all copies thereof and to delete all information stored in a machine readable form. The Recipients may keep a copy to the extent it is required to keep, archive or store such Confidential Information because of compliance with applicable laws and regulations or for the proof of on-going obligations.

Article 8.3. Employees and Third Parties

The Recipients shall be responsible for the fulfilment of the above obligations on the part of their employees or third parties they involve and shall ensure that they remain so obliged, as far as legally possible, during and after the end of this Agreement and/or after the termination of the contractual relationship with the employee or third party.

Article 8.4. Exceptions

Article 8.2 shall not apply for disclosure or use of Confidential Information, if and in so far as the Recipient can show that:

- the Confidential Information becomes publicly available by means other than a breach of the Recipient’s confidentiality obligations;

- the Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential;
- the Confidential Information is communicated to the Recipient without any obligation of confidence by a third party who is to the best knowledge of the Recipient in lawful possession thereof and under no obligation of confidence to the Disclosing Party;
- the Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Party;
- the Confidential Information was already known to the Recipient prior to disclosure; or the Recipient is required to disclose the Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order.

Article 8.5. Notifications

Each Party shall promptly advise the other Party in writing of any unauthorised disclosure, misappropriation or misuse of Confidential Information after it becomes aware of such unauthorised disclosure, misappropriation or misuse.

If any Party becomes aware that it will be required, or is likely to be required, to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, it shall, to the extent it is lawfully able to do so, prior to any such disclosure

- notify the Disclosing Party, and
- comply with the Disclosing Party's reasonable instructions to protect the confidentiality of the information.

Article 9. Liability

Article 9.1. No Warranties

In respect of any information, data, samples or materials supplied by one Party to another under this Agreement, no warranty or representation of any kind is made, given or implied as to the utility, the sufficiency, the merchantability, the non-toxicity, the safety, the fitness for a particular use nor as to the absence of any infringement of any proprietary rights of third parties.

Therefore, the recipient Party shall in all cases be entirely and solely liable for the use to which it puts such information, data, samples and materials, and no Party granting any kind of rights to its intellectual property shall be liable in case of infringement of proprietary rights of a third party resulting from another Party exercising its rights.

Article 9.2. Limitations of Liability

A Party's aggregate liability towards the other Parties shall be limited to **[to be discussed]**, provided such damage was not caused by a wilful misconduct or gross negligence.

No Party shall be responsible to any other Party for any indirect or consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue or loss of contracts, provided such damage was not caused by a wilful misconduct.

The terms of this Agreement shall not be construed to amend or limit any Party's statutory liability.

Article 9.3. Exceptional Circumstances

No Party shall be considered to be in breach of this Agreement if it is prevented from fulfilling its obligations under the Agreement by circumstances beyond its reasonable control. Each Party will notify to the other any such circumstance beyond its reasonable control without undue delay.

Article 9.4. Injury to the Personnel

Each Party is responsible for having the insurance coverage for its own staff in accordance with applicable legal requirements.

As a consequence, each Party must fulfil the required formalities and sustain all the costs, if any, involved in the insurance policies underwritten to cover its own staff against the risks.

Article 9.5. Damages to Third Parties

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

Article 9.6. Insurance

Each Party shall comply with the foregoing requirements by providing financial protection through governmental indemnities or private insurance, or any other appropriate financial protection.

Article 10. Termination

Article 10.1. Right to Terminate

This Agreement may be terminated in case of:

- a Party wants to withdraw from its obligations under this Agreement;
- a breach which the Parties have not been able to remedy; or
- the winding-up of ACTRIS ERIC.

Article 10.2. Termination Period and Obligations during the Period

In case of a breach this Agreement is terminated by a **[to be discussed]** months' written notice.

In case of winding up of the ACTRIS ERIC or withdrawal this Agreement is terminated by a **[to be discussed]** months' written notice.

Article 10.3. Obligations during the Termination Period

During the termination period all Parties shall take care of all of their obligations unless otherwise agreed in writing during the period.

Article 11. Contractual Documents

This agreement consists of this core text and the following annexes:

Annex 1. Central Facility Deliverables

Annex 2. Management of the Central Facility

[More annexes to be listed when it is decided what to include]

[Personal information shall most likely be processed and processing shared regarding these activities and it should be studied and defined which organisation/organisations are controllers and which processors according to the present data protection regulation of EU. According to the regulation the controller has to make an agreement with the processor if the processing is made by another organisation than the controller. The regulation also defines what must be included in the agreement. So it needs to be discussed whether this issue should be covered in these agreements, for example in an annex, or would it be better to make separate agreements.]

[Order of the documents]

Amendments and modifications to the text of this Agreement or its annexes require a separate written agreement to be signed between all Parties.

However, it is herein agreed between the Parties that amendments and modifications to Annexes XXX **[to be discussed if some annexes could be approved without new signatures of this Agreement]**.

Article 12. Miscellaneous

Article 12.1. Subcontracting

A Party that enters into a subcontract or otherwise involves third parties notifies the other Party and remains responsible for carrying out its obligations and for such third party's compliance with the provisions of this Agreement. It has to ensure that the involvement of third parties does not affect the rights and obligations of the other Parties under this Agreement.

Article 12.2. No Entity

Except specified in writing no Party shall be entitled to act or to make legally binding declarations on behalf of any other Party. Nothing in this Agreement shall be deemed to constitute a joint venture, agency, partnership, interest grouping or any other kind of formal business grouping or entity between the Parties.

Article 12.3. Communication

Communication between the Parties may be effected by means of e-mail with acknowledgement of receipt, which fulfils the conditions of written form.

Article 12.4. Severability

If any article, or part of an article of this Agreement, is found by any court or administrative body of competent jurisdiction to be illegal, invalid or unenforceable, and the provision in question is not of a fundamental nature to the Agreement as a whole, the legality, validity or enforceability of the remainder of this Agreement (including the remainder of the article or paragraph which contains the relevant provision) shall not be affected, unless otherwise required by operation of applicable law.

If the foregoing applies, the Parties shall use all reasonable endeavours to agree within a reasonable time upon any lawful and reasonable variations to the Agreement which may be necessary in order to achieve, to the greatest extent possible, the same effect as would have been achieved by the article, or the part of the article, in question.

Article 12.5. Entire Agreement

This Agreement, including the annexes, constitutes the Parties' entire agreement and supersedes all prior agreements, written or oral, between the Parties in the subject matter hereof.

Article 13. Entry into Force and Duration

This Agreement shall come into force DATE ("Effective Date") by the signature of all Parties and shall continue to be in force unless terminated in accordance with this Agreement.

Duration of the Agreement is five (5) years from the establishment of ACTRIS ERIC. After that the Agreement is automatically renewed under the same conditions to be a continuing agreement unless a Party has notified its wish to withdraw or terminate in accordance with the Article X.

Article 14. Language, Applicable Law and Disputes

Article 14.1. Language

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

Article 14.2. Applicable Law

This Agreement shall be construed in accordance with and governed by the laws of Finland. (The country hosting the statutory seat of the ACTRIS ERIC.)

Article 14.3. Disputes

The Parties shall endeavour to settle their disputes amicably.

A dispute shall be first handled by the Director General and the director of the Central Facility in association with a representative of the involved Host Institution according to the nature of the dispute.

If no solution to the dispute is found in sixty (60) days, it shall be handled in the General Assembly of the ACTRIS ERIC. In this meeting the involved Host Institution(s) shall have the right to be present and express opinions.

If no settlement can be achieved, or at the request of one of the Parties, the disputes shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the said Rules. The language of the arbitration shall be English and the place of the arbitration Helsinki, Finland, if not otherwise agreed by the conflicting Parties. The award of the arbitration shall be final and binding upon the Parties.

This Agreement has been drawn up in [As many as the amount of Parties] original copies, each Party receiving one duly signed copy hereof.

Signatures:

Date:

Name:

Organisation: