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ISTITUTO NAZIONALE
DI GEOFISICA E VULCANOLOGIA

**Istituto Nazionale di Geofisica
e Vulcanologia**
AOO INGV
Protocollo Generale - U
N. 0000711
del 23/01/2017



Direzione centrale
Affari amministrativi
e del Personale

Gestione WEB

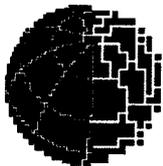
All'UPGP
Al Sig. Pier Giorgio DE SIMOME
Ai Direttori di Struttura

Oggetto: Pubblicità atti

Si trasmette copia dell'allegata delibera con richiesta di procedere alle prescritte notifiche.

Delibera n. 297/2016 del 20/12/2016 – Allegato L al Verbale n. 14/2016: Approvazione schema Memorandum of Understanding tra l'Agencia Spaziale Sudafricana (SANSA) e l'INGV.

IL DIRETTORE
Tullio PEPE



Istituto Nazionale di Geofisica e Vulcanologia

Delibera n. 297/2016

Allegato L al Verbale n. 14/2016

Oggetto: Approvazione schema Memorandum of Understanding tra l'Agenzia Spaziale Sudafricana (SANSA) e l'INGV

IL CONSIGLIO DI AMMINISTRAZIONE

- Visto il Decreto legislativo 29 settembre 1999, n. 381, concernente la costituzione dell'Istituto Nazionale di Geofisica e Vulcanologia (INGV);
- vista la Legge 27 settembre 2007, n. 165, concernente la "Delega al Governo in materia di riordino degli Enti di Ricerca";
- visto il Decreto legislativo 31 dicembre 2009, n. 213, concernente il "Riordino degli Enti di Ricerca in attuazione dell'art. 1 della Legge 27 settembre 2007, n. 165";
- visto il Decreto legislativo 25 novembre 2016, n. 218, concernente "Semplificazione delle attività degli Enti Pubblici di Ricerca ai sensi dell'art. 13 della Legge 7/08/2015, n. 124";
- visto lo Statuto dell'Istituto Nazionale di Geofisica e Vulcanologia emanato con Decreto del Presidente n. 90 del 21 marzo 2011 e pubblicato sulla Gazzetta Ufficiale della Repubblica Italiana - Serie Generale n. 90 del 19 aprile 2011, in particolare, l'art. 6, comma 8, lettera s), il quale prevede che il CdA *...approva le convenzioni e gli accordi quadro con le Università e con gli altri enti e organismi pubblici e privati, nazionali e internazionali;*
- visto il Regolamento di Organizzazione e Funzionamento dell'Istituto Nazionale di Geofisica e Vulcanologia emanato con Decreto del Presidente n. 503 del 14 ottobre 2016 e pubblicato sul Sito WEB istituzionale;
- visto il Regolamento di Amministrazione, Contabilità e Finanza pubblicato sulla Gazzetta Ufficiale della Repubblica Italiana - Serie Generale n. 113 del 18 maggio 2009;
- valutata l'opportunità di intraprendere un rapporto di collaborazione scientifica con l'Agenzia Spaziale Sudafricana (SANSA);
- considerato che l'attività da espletare rientra tra i compiti scientifici e istituzionali dell'INGV;
- su proposta del Presidente,

DELIBERA

L'approvazione dello schema di Memorandum of Understanding tra l'Agenzia Spaziale Sudafricana (SANSA) e l'INGV allegato alla presente quale parte integrante e sostanziale (allegato 1).

Viene dato mandato al Presidente alla sottoscrizione dell'atto in questione.

Letto, approvato e sottoscritto seduta stante.

Roma, 20/12/2016

La segretaria verbalizzante
(Sig.ra Silvana TUCCI)

Silvana Tucci

IL PRESIDENTE
(Prof. Carlo DOGLIONI)

ef

MEMORANDUM OF UNDERSTANDING

Made and entered into by and between

SOUTH AFRICAN NATIONAL SPACE AGENCY

Hereinafter referred to as "SANSA"

And

The Istituto Nazionale di Geofisica e Vulcanologia-Sez. di Roma2

Hereinafter referred to as "INGV "

1 PREAMBLE

WHEREAS

- 1.1 The Parties have recognised and established their mutually shared interests in the areas of Geomagnetism, Aeronomy, Data Management and Space Weather and wish to explore the creation of a mutually beneficial relationship for the purpose of enhancing research programmes;
- 1.2 The parties are desirous of concluding this Memorandum of Understanding to establish the parameters of the relationship they wish to develop with each other for their mutual benefit, outlining the roles and responsibilities of each party.

NOW THEREFORE the parties are desirous of recording the terms of their Memorandum as follows:

2 PARTIES

The Parties to this Memorandum are:

- 2.1 The South African National Space Agency, hereafter named SANSA, a juristic person established in terms of the South African National Space Agency Act 36 of 2008, acting through its Space Science Directorate, represented herein by Dr Lee-Anne McKinnell in her capacity as the Managing Director for Space Science, warranting that she is duly authorised; and
- 2.2 The Istituto Nazionale di Geofisica e Vulcanologia, hereafter named INGV, with address in Roma, Via di Vigna Murata, 605, 00143 Roma, represented herein by President Prof. Carlo Doglioni

3 INTERPRETATIONS

The heading of the clauses in this Memorandum are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Memorandum, nor any clause hereof, unless a contrary intention clearly appears: -

- 3.1 Words importing:-

- 3.1.1 Any one gender includes the other gender;
- 3.1.2 The singular include the plural and vice versa; and
- 3.1.3 Natural persons include created entities (corporate or unincorporated) and the state and vice versa;

3.2 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:-

3.2.1 "Commencement Date" means the 1 January 2017;

3.2.2 "Confidential Information" refers to trade, commercial, financial and management secrets, as well as any other proprietary information howsoever such confidential information may be disclosed or made available to the Recipient including, without limiting the foregoing, whether direct or indirect, orally, visually or in electronic format or by reason of inspection of documentation or by reason hereof. Without limiting the generality of the foregoing, "Confidential Information" shall include any information that falls within the definition of 'Personal Information' (as defined in the Protection of Personal Information Act) ("PPI") once in force);

3.2.3 "Employees" means the permanent and/or casual and/or part-time employees of the Parties employed or otherwise retained by the Parties under and in terms of this Agreement, the names and designations of which will be provided to the other Party upon request;

3.2.4 "Formal Agreements" means those project specific agreements entered into between the Parties for the

purpose of regulating the terms and condition for Projects;

3.2.5 "Good Industry Practice"

means established practices, norms and standards in relation to this Memorandum, using standards, practices, methods and procedures conforming to applicable law and exercising the requisite degree of skill, care, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar undertaking under similar circumstances;

3.2.6 "Intellectual Property"

means all intellectual property rights related to the Assets or Businesses of either Party to this Agreement, as they are now or may in future exist or be conducted, including without limitation:

- (a) any and all rights, privileges and priorities arising under the laws or treaties of the Republic of South Africa, any territory or possession thereof, any other country or political subdivision or territory thereof, relating to intellectual property, including patents, copyrights, trade names, trademarks, service marks, mask works, trade secrets, inventions, databases, names and logos, trade dress technology, know-how, and other proprietary information and licenses from third persons granting the right to use any of the foregoing, including all registrations and applications for any of the foregoing that have been issued by or filed with the appropriate authorities, any common-law rights arising from the use of the



foregoing, any rights commonly known as "industrial property rights" or the "moral rights" of authors relating to the foregoing, all rights of renewal, continuations, divisions, extensions and the like regarding the foregoing and all claims, causes of action, or other rights arising out of or relating to any actual or threatened infringement by any person relating to the foregoing;

- (b) all computer applications, programs and other software, including without limitation operating software, network software, firmware, middleware, and design software, all design tools, systems documentation and instructions, databases, and related items except to the extent that they may be more specifically addressed in this Agreement; and
- (c) all cost information, sales and pricing data, customer prospect lists, supplier records, customer and supplier lists, customer and vendor data, correspondence and lists, product literature, artwork, design, development and manufacturing files, vendor and customer drawings, formulations and specifications, quality records and reports and other books, records,

3.2.7 "Law"

means the South African common law, Constitution of the Republic of South Africa 1996, any applicable South African statute, proclamation, regulation, rule, notice, judgment or order and any interpretation of



any of them by any Court or applicable tribunal, AND any applicable guidance, direction, code of practice or other determination to which the Parties are bound by;

- 3.2.8 "Memorandum" means this recordal, annexures thereto, amendments or modifications agreed to by the parties in a manner prescribed by this Memorandum
- 3.2.9 "Party" or "Parties" means collectively the parties to this Agreement being SANSA and the INGV; and
- 3.2.10 "Projects" means those projects that the Parties shall identify from time to time in furtherance of their Objectives as set out in clause 4 below;
- 3.3 any reference in this Memorandum to "date of signature hereof" shall be read as meaning a reference to the date of the last signature of this Memorandum;
- 3.4 any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;
- 3.5 when any number of days is prescribed in this Memorandum, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 3.6 when figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 3.7 expressions defined in this Memorandum shall bear the same meanings in schedules or annexures to this Memorandum which do not themselves contain their own definitions;
- 3.8 where any term is defined within the context of any particular clause in this Memorandum, the term so defined, unless it is clear from the clause in question that

the term so defined has limited application to the relevant clause, shall bear the meanings ascribed to it for all purposes in terms of this Memorandum, notwithstanding that, that term has not been defined in this interpretation clause; and

- 3.9 The expiration or termination of this Memorandum shall not affect such of the provisions of this Memorandum as expressly provided they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination notwithstanding that such clauses themselves do not expressly provide for this.

4 OBJECTIVES AND AREAS OF COLLABORATION

4.1 The Parties wish to record the following:

- 4.1.1 That they share an interest, and expert knowledge in Geomagnetism, Aeronomy, Data Management and Space Weather;
- 4.1.2 That they have agreed to utilize this joint interest and expertise for research collaborations that benefit both parties;
- 4.1.3 That they intend to facilitate the exchange of technical, scientific and other pertinent information related to the areas of interest listed in 4.1.1;
- 4.1.4 That they have agreed to collaborate on the following areas:
 - 4.1.4.1 Joint research collaborations within the areas of interest listed in section 4.1.1;
 - 4.1.4.2 Polar Science within the areas of interest listed in section 4.1.1;
 - 4.1.4.3 Joint submission of proposals within the areas of interest to international funding opportunities;
 - 4.1.4.4 Cooperation between the parties on the installation, operation and maintenance of joint equipment for the benefit of collaborative research in both countries;
 - 4.1.4.5 Jointly organised workshops that advance the identified collaborations;
 - 4.1.4.6 Establishing joint postgraduate projects between the parties such that students would benefit from access to both facilities;

5 FINANCIAL OBLIGATIONS

- 5.1 This Memorandum does not create any financial or other resource obligations on either of the Parties.
- 5.2 The Parties agree that the financial implications of Projects shall be regulated within a Formal Agreement that deals with the specific project.

6 DURATION

- 6.1 The Parties agree that the terms and conditions of this Agreement shall remain in force for a period of 5 (five) years from the date of last signature hereof.

7 TERMINATION

- 7.1 The Parties agree that either Party may terminate this Memorandum upon furnishing the other party with 1 (one) calendar month's written notice of its intention to do so, and upon expiry of the notice period the Parties rights and obligations in respect of each other shall duly terminate.
- 7.2 The termination of this Memorandum in terms of Clause 7.1 above shall not affect the validity of any Formal Agreement.

8 GOOD FAITH

- 8.1 In their dealings with each other in the implementation of this Memorandum, the parties undertake to observe the utmost good faith and to give full effect to the intent and purpose of this Memorandum and neither to do anything nor to refrain from doing anything which might in any way prejudice or detract from the rights, property or interests of the other of them.

9 CONFIDENTIAL INFORMATION

- 9.1. The Parties may exchange proprietary information if the disclosing Party considers an exchange necessary for the receiving Party to perform its tasks under this Agreement or under any separate agreement;
- 9.2. It should be noted that proprietary information includes data, data products and expertise;



9.3. The Parties agree that all information and details concerning any project that is discussed or forms part of any collaborative research project shall be kept confidential at all times, and not disclosed without the prior consent of the other Party;

9.4. It is, hereby, noted that information shared under research collaboration project shall be governed by a separate agreement which shall detail the considerations thereof. Under the separate agreement it may be a requirement that a Non-Disclosure Agreement ("NDA") be entered into between the Parties;

10 INTELLECTUAL PROPERTY

10.1 The ownership of any Intellectual Property and copyrights owned by either Party prior to the commencement of this Memorandum shall be and remain vested with that Party.

10.2 It is specifically recorded that this Memorandum will not have the effect of transferring or creating any rights in or obligations to the intellectual property rights of each of the Parties in favour of the other Party.

10.3 The Parties agree to stipulate the intellectual property provisions in the Formal Agreement applicable to each of the Projects.

11 DOMICILIUM AND NOTICES

11.1 For all purposes of this Agreement including, but not by way of limitation, the giving of any notice, the making of any communication, or the serving of any process, the Parties respectively choose *domicilium citandi et executandi* ("domicilium") at the addresses set out hereunder:

11.1.1 SANSA

For attention: Managing Director Space Science

At physical address: SANSA, Hospital Road, Hermanus, 7200, South Africa

Telefax: + 27 28 312 1196

E-mail: lmckinnell@sansa.org.za

11.1.2 INGV



For attention:

Prof. Carlo Doglioni

Presidente of INGV

At physical address: Via di Vigna Murata, 605 - 00143 Rome Italy

Phone: +3900651860465

E-mail: presidente@ingv.it

11.2 Each of the Parties, by written notice to the other party 2 (two) months prior to such change, shall be entitled from time to time to vary its *domicilium* to any other address within South Africa, provided that such address may not be a *poste restante*, or a post office box.

11.3 Any notice given and any communication or payment made by either Party to the other ("the addressee") which:—

11.3.1 Is delivered by hand or faxed by facsimile transmission during the normal business hours of the addressee at the addressee's *domicilium* for the time being, shall be presumed, until the contrary is proved, to have been received by the addressee at the time of delivery or on the first business day after the date of facsimile transmission;

11.3.2 Is posted by prepaid registered post from an address within South Africa to the addressee at the addressee's *domicilium* for the time being, shall be presumed, until the contrary is proved, to have been received by the addressee on the 7th (seventh) day after the date of posting.

12 DISPUTE RESOLUTION

12.1 In the event of any dispute or difference arising amongst the parties with regard to the interpretation, implementation or enforcement of this Memorandum, or as to whether or not this Memorandum has been terminated or is void or voidable and/or any other difference or dispute relating to or arising from this Memorandum or the enforcement thereof, then such dispute or difference will be referred to arbitration before an arbitrator appointed by and in accordance with such rules and procedures of arbitration as may be determined by and in accordance with the Arbitration Foundation of Southern Africa ("the Arbitration Foundation").

- 12.2 Notwithstanding anything to the contrary foregoing or stipulated by the Arbitration Foundation, the parties and the participants in the arbitration shall be obliged to maintain the utmost confidentiality with regard to all matters relating thereto or arising there from, save as otherwise expressly and peremptorily required by law.
- 12.3 This arbitration shall not preclude any of the parties from obtaining relief by way of motion proceedings on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 12.4 This arbitration clause is severable from the rest of this Memorandum and shall remain in effect even if this Memorandum is terminated for any reason.

13 CESSION AND ASSIGNMENT

- 13.1 Neither party may sell, cede, assign, pledge or transfer any rights to this Memorandum or its Interest without the prior written consent of other party, which consent shall not be unreasonably withheld or delayed.

14 INDEMNITY

- 14.1 With the exclusion of gross negligence, each party shall indemnify, defend and hold harmless the other party and its employees from and against any loss, cost, liability, claim damage, expense, penalty or fine incurred in connection with any claim or cause of action arising from or in connection with this Memorandum to the extent caused by the negligence, fault or conduct of the indemnifying party.

15 NO DISPARAGEMENT AND USE OF NAME

- 15.1 The Parties undertake not to do anything that may disparage the good name of the other party, and any such action or omission occasioned by the defaulting party or its employees, acting in the course and scope of their employment, will be deemed a breach of this Memorandum.
- 15.2 The Parties shall not utilise the name of the other Party in conjunction with its marketing, research, development or other business activities without the prior written consent of the other Party, who, in its sole discretion, may grant or refuse.



16 CO-OPERATION

- 16.1 Each party shall co-operate fully with the other party and supply any information and support required to fulfill its obligations in terms of this and related Agreements.
- 16.2 The Parties shall be responsible for coordinating and engaging with each other, as appropriate and necessary, for the completion of the tasks designated pursuant to this Memorandum.
- 16.3 The Parties agree all activities conducted in accordance with this Memorandum shall be done according to Good Industry Practice.

17 GENERAL PROVISIONS

- 17.1 The Laws of the Republic of South Africa shall govern this Memorandum and the relationship between the parties created by this Memorandum.
- 17.2 This Memorandum contains all covenants, stipulations and provisions agreed to by the parties and the parties shall not be bound by or be liable for any statement, representation, promise or agreement not set forth herein. No variation, modification, consensual cancellation or waiver of any provision of this Memorandum, or consent to any departure therefore, will in any way be of any force or effect unless confirmed in writing and signed by the parties.
- 17.3 No indulgence granted by a party shall constitute a waiver of any of that party's rights under this Memorandum; accordingly, that party shall not be precluded, as a consequence of having granted such indulgence, from exercising any rights against the other which may have arisen in the past or which may arise in the future.
- 17.4 This Memorandum constitutes the whole of the agreement between the parties relating to the subject matter thereof, and no amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the parties.
- 17.5 This Memorandum supersedes and novates any prior or contemporaneous oral or written agreements.
- 17.6 The parties agree that no other terms or conditions, whether oral or written, and whether express or implied, apply.

- 17.7 The parties hereby expressly warrant and represent to each other that each of them has taken or caused to be taken all steps and actions necessary to give full and legal effect to this Memorandum and to make this Memorandum binding upon each of them. Either party shall, if so requested by the other party, furnish sufficient evidence of the authority of the person or persons, who will, on behalf of that party, take any action or execute any documents required or permitted to be taken or executed by such person under this Memorandum.
- 17.8 Each party shall be liable to pay the costs of its own legal representatives and/or other advisors relating to the drafting, negotiation, conclusion and implementation of this Memorandum.
- 17.9 If any term of this Memorandum should be held to be invalid, unenforceable or unlawful, then such term shall be severable from the balance of this Memorandum and be treated as *pro non scripto* without invalidating or affecting the enforceability of the remaining provisions, and the remaining terms of this Memorandum shall continue in full force and effect.

SIGNED BY THE PARTIES AT THE PLACES AND ON THE DATES SET OUT BELOW.

PLACE _____

For and on behalf of SANSA

DATE _____

WITNESS _____

Dr Lee-Anne McKinnell, Who warrants authority to execute this Agreement

WITNESS NAME _____

PLACE _____

For and on behalf of INGV

DATE _____

WITNESS _____

Prof. Carlo Doglioni , who warrants authority to execute this Agreement

WITNESS NAME _____