

TEMPLATE – Version 17.1 of 21.12.2022 (LUI)

(Note: words in italics are instructions to the user who has to adapt the template to the situation at hand)

RESEARCH INFRASTRUCTURE ACCESS AGREEMENT N° [contract number JIPSY] / [call reference]

between

The **Joint Research Centre of the European Commission**, represented for the purpose of signing this **Agreement** by [name], Director of the Directorate for [to be added] of the Joint Research Centre, [address], *[to be added if more than one Director signs the RIAA]* and by [name], Director of the Directorate for [to be added] of the Joint Research Centre, [address] (hereinafter referred to as the ‘**JRC**’), on the one side,

And, on the other side, [name and address of the Lead User Institution], represented for the purpose of signing this Agreement by [name and function], hereinafter referred to as the ‘**Lead User Institution**’, representing as the case may be the other User Institutions, and the team of Users listed in Annex 2.

Hereinafter referred to individually as ‘**the Party**’ or collectively as ‘**the Parties**’

WHEREAS

The JRC delivers access to external users for conducting research, undertaking experimental development, and providing education and training;

The "Framework for Access to the Physical Research Infrastructure of the Joint Research Centre (JRC)"¹ ("the Framework") adopted by the Director General of the JRC on 7 November 2022 defines the principles and modalities under which the JRC opens its facilities to external users, following an open access policy. In particular, *[FOR NON-NUCLEAR RESEARCH INFRASTRUCTURE: the Framework sets out that the JRC will open its non-nuclear Research Infrastructures to User Institutions in the EU Member States, and in countries associated to the Horizon Europe programme²,] [FOR NUCLEAR RESEARCH INFRASTRUCTURE: the JRC will open its nuclear Research Infrastructures to User Institutions in the EU Member States and in countries associated to the Euratom research programme³. The scope of the work for nuclear Research Infrastructures must be in line with the activities defined in Annex I of Council Regulation (Euratom) 2021/765,]*

Within the Framework, the Lead User Institution has replied to the call for expressions of interest Nr [to be added] and submitted a proposal relating to the User Access Project entitled [to be added] (hereinafter referred to as the ‘**User Access Project**’),

¹ <https://ec.europa.eu/jrc/en/research-facility/open-access/framework>

² Regulation (EU) 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe – the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination, and repealing Regulations (EU) No 1290/2013 and (EU) No 1291/2013

³ Council Regulation (Euratom) 2021/765 of 10 May 2021 establishing the Research and Training Programme of the European Atomic Energy Community for the period 2021-2025 complementing Horizon Europe – the Framework Programme for Research and Innovation and repealing Regulation (Euratom) 2018/1563

This proposal has been short-listed by the User Selection Committee and subsequently selected by the JRC,

The User Access Project foresees access for the Users, listed in Annex 2, to the JRC research infrastructure(s) [name of research infrastructure(s)], hereinafter referred to as ‘**Research Infrastructure**’,

The Parties wish to lay down their rights and obligations relating to the access and use of the Research Infrastructure for the execution of the User Access Project.

THEREFORE, THE PARTIES AGREE AS FOLLOWS:

Article 1 – Definitions

1.1 Words beginning with a capital letter shall have the same meaning defined either herein or in the ‘**Framework**’.

1.2 Any reference to the User or the Users in this Agreement shall mean a reference to one or more member(s) of the team of Users, as listed in Annex 2.

Article 2 – Subject

2.1 This Agreement sets out the terms and conditions under which the User will have access to the Research Infrastructure with the aim of executing the User Access Project described in Annex 1. [for projects involving the user of the ELSA Research Infrastructure: The User Access Project will be executed in accordance with the “Work instruction – Experimental activities on large structures in the ELSA laboratory” (see Attachment 2)]

2.2 The work under this Agreement will be implemented such as to exclude that the User will be integrated in the organisation of the European Commission. If she/he has an employment relation with the Lead User Institution or the User Institution, that employment relation will continue to exist. If she/he has other contractual arrangements with the Lead User Institution or the User Institution, such arrangements will be deemed to continue to exist.

Article 3 – Entry into force, duration, changes and termination

3.1 This Agreement shall take effect from the date of its signature by the last Party. It shall last for a period necessary to carry out the User Access Project. This period shall not exceed [maximum duration as announced in the call for proposals], when it shall automatically lapse. It may be extended or amended by written agreement signed by the duly authorised representatives of both Parties, unless otherwise provided in this Agreement.

3.2 The number of Access Units and estimated time-schedule are described in Annex 1. The exact schedule will be agreed in writing between the Lead User Institution and the JRC and shall be within the period mentioned in Article 3.1 of this Agreement.

3.3 Access to the Research Infrastructure is only allowed for the Users appointed by the User Institutions and listed in Annex 2.

Any change in the designation of Users must be requested by the User Institution that appointed the original User and wishes to replace him or her with a new User. The request must be submitted for approval to JRC by the Lead User Institution. The request must be sent to the contact person in JRC empowered to supervise the performance of this Agreement for technical questions, who will reply in writing to the contact person in the Lead User Institution empowered to supervise the performance of this Agreement for technical questions, as designated in Article 13 on Administrative Provisions.

JRC may authorise the change of Users where JRC is satisfied that the change of Users does not entail changes to the Agreement that would call into question the selection of the proposal or breach the principle of equal treatment of applicants.

3.4 JRC may refuse Access to the Research Infrastructure to individual Users appointed by User Institutions, in particular in case of breach by the User of his/her obligations. In that case, the User Institution may request a change in the designation of Users in accordance with Art. 3.3.

3.5 Either Party may terminate this Agreement at any time upon reasonable prior written notice to the other Party giving justified reasons for doing so. This shall inter alia be the case where research programmes and budget allocations are no longer compatible with the continuation of the work or if access to the site of the JRC can no longer be granted for security reasons.

3.6 The JRC may also terminate this Agreement by written notice in the following circumstances:

- (i) any of the User Institutions is being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations; or
- (ii) where the JRC has evidence or seriously suspects any of the User Institutions or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Commission's interests.
- (iii) if any of the User Institutions or any natural person with the power to represent it or take decisions on its behalf has been found guilty of professional misconduct proven by any means;
- (iv) if any of the User Institutions is not in compliance with its obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which it is established or with those of the country of the applicable law of this Agreement;
- (v) if any of the User Institutions is unable, through its own fault, to obtain any permit or licence required for performance of the User Access Project;
- (vi) if a change to any of the User Institutions' legal, financial, technical or organisational or ownership situation is likely to affect the performance of the User Access Project substantially;

(vii) if the JRC has evidence that any of the User Institutions or natural persons with the power to represent it or take decisions on its behalf have committed substantial errors, irregularities or fraud in the negotiations leading to the conclusion of this Agreement or the performance of the User Access Project, including in the event of submission of false information;

(viii) if it identifies a breach by any of the Users of their obligations.

In such cases, the User Institutions may not claim any damages suffered due to the termination of the Agreement.

Article 4 - Responsibilities of the Parties

4.1 Each Party undertakes to notify promptly to the other any significant information, fact, problem or delay likely to affect the User Access Project.

4.2 Each Party shall provide promptly all information reasonably required by the other Party in order to carry out its tasks.

4.3 The JRC:

- will provide access to the Research Infrastructure as needed for the User Access Project, as specified in Annex 1. Such access will include all infrastructural, logistical, technical and scientific support (including training courses) as necessary to execute the User Access Project;
- does not guarantee specific results or outcomes arising from the use of the Research Infrastructure for the User Access Project.
- under specific circumstances and depending on budgetary availability, may provide a financial or in-kind contribution to some Users for their travel and accommodation expenses

4.4 The Lead User Institution:

- *(include only if access is against payment as specified in article 5.2)* shall provide to the JRC the contribution in cash specified in Article 5;
- *(include only if in-kind contributions are provided as specified in article 5.2 and Annex 4)* shall coordinate the provision of in-kind contribution(s) by User Institution(s) referred to in Article 5.2 and described in Annex 4;
- shall appoint the Lead User and shall take the necessary measures to ensure that the Lead User:
 - o coordinates the User Access Project, in close cooperation with the Research Infrastructure;
 - o reports to the JRC on the progress of the work, when requested by the JRC contact point identified in Article 13.2;
 - o acts as a single point of contact between all User Institutions and JRC;

- supervises the performance of this Agreement together with JRC, as indicated in Article 13;
 - completes a user questionnaire, in order to enable the JRC to evaluate, monitor and improve the services provided through access to the Research Infrastructure.
 - submits the User Access Report under Article 10, except otherwise agreed in writing between the Parties.
- Shall take the necessary measures to ensure that each and every User Institution:
- complies with the provisions of the "Framework" and of the European Code of Conduct for Research Integrity of ALLEA (All European Academies)⁴;
 - allows the JRC to publish information on the User Institutions;
 - does not use the name of the JRC or the European Commission on any advertisement, product or service that is directly or indirectly related to this Agreement, nor imply in any way that the JRC or the European Commission endorses its products or services.
 - ensures during the whole duration of this Agreement that the Users it has appointed have full insurance coverage for health care, accident as well as for third party civil liability, which will cover the Users' activities during their stay at JRC; and that each and every User Institution provides proof of this coverage.
 - during the Users' presence on the site of the JRC, the Users comply with the rules and regulations (including the ones concerning health and safety and radiation protection) in force at JRC and follow the instructions given by the Director of the JRC-Directorate of [to be added] or by her/his designated representative.

Article 5 – Contributions

5.1 The User Institutions are granted access to the Research Infrastructure through the *(please mark the appropriate mode)*:

- relevance-driven access mode⁵
- market-driven access mode⁶

5.2 Access to the Research Infrastructure is provided *(please mark the appropriate mode)*

- against payment
- free of charge *(In the relevance-driven mode in the following cases:*

⁴ <http://archives.esf.org/coordinating-research/mo-fora/research-integrity.html>

⁵ As defined in Section 5.a. of the Framework

⁶ As defined in Section 5.a. of the Framework

- for nuclear facilities: if indicated as free of charge in the call,
- for non-nuclear facilities, if
 - indicated as free of charge in the call; or
 - the Lead User Institution and 2/3 or more of the User Institutions (including the Lead User Institution) are located in a country eligible for the “Widening participation and spreading excellence” action of Horizon Europe . In case of only two User Institutions (including the Lead User Institutions), this requirement is only applied to the Lead User Institution.; or
 - The total amount for the contribution is less than 5000 euros)

(please add this sentence if payment of a contribution in cash is provided) The Parties agree that the Lead User Institution provides to the JRC the following contribution in cash: total amount of EUR xxx,xxx (value in letters)

(please add this sentence if in-kind contribution is provided or remove if no in-kind contribution is provided) Parties agree that the User Institution(s) provide(s) to the JRC in-kind contributions, as described in Annex 4.

(please add paragraphs 5.2.1 to 5.2.3 if payment is provided or remove if access is given free of charge)

5.2.1 Payment amount: The total amount of EUR xxx,xxx (value in letters) shall be paid by the Lead User Institution under this Agreement. The payment will be done in EUR.

(please add this paragraph for value of at least €15.000 or remove for value less than €15.000) 5.2.1.a Advance Payment: Following signature of this Agreement by the last contracting party the JRC will issue the relevant debit note of an advance payment for the value of EUR xxx,xxx (value in letters) representing the 50% of the total amount referred in Article 5.2.1.

(please add this paragraph if the agreement is to last more than one year) 5.2.1.b Intermediate payments: each year from the date in which the Agreement takes effect the JRC could request an intermediate payment. Were an intermediate payment to take place the JRC will inform the Lead User Institution. The amount of the intermediate payment would be proportional to the period elapsed since the entry into force of the Agreement and its duration, as in Article 3.1.

5.2.2 Payment of the balance: The JRC will issue the request for payment of the balance upon usage of the Access Units agreed or upon termination of this Agreement for whatever reason.

5.2.3 Payment settlement and interests: Payments under the present Agreement will be made within thirty (30) days of receipt of the debit note. The JRC will issue a debit note for each payment, including the advance or intermediate payments.

Payments shall be made to the account indicated in the relevant debit note issued by the JRC. Costs of the payment transfer shall be borne in the following way:

a) costs of transfer charged by the bank of the Commission shall be borne by the Commission;

b) costs of transfer charged by the bank of the Lead User Institution shall be borne by the Lead User Institution

c) all costs of repeated transfers caused by one of the parties shall be borne by the party which caused the repetition of the transfer.

In the event of late payment the JRC may claim default interest. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations ('the reference rate') plus three and a half percentage points. The reference rate in force on the first day of the month in which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the European Union. Interest shall be payable for the period elapsing from the calendar day following expiry of the time-limit for payment up to the day of payment.

5.3 *(please add this paragraph if material from the User Institution is tested or remove if no material from the User Institution is tested at JRC)* Test material or specimens supplied by the User Institution to the JRC for testing purposes shall remain the ownership of the User Institution. For identification purposes, when possible, the ownership and the exclusive use of the material for the purpose of implementing the present Agreement shall be marked clearly and indelibly by the User Institution on all material. All costs (packaging, shipping, insurance and customs duties) incurred during transport of the test material to and from the JRC shall be the responsibility of the User Institution. After the finalisation of the execution of the tasks the test material will be returned by the JRC, unless otherwise agreed between the JRC and the User Institution. For that purpose the User Institution shall communicate to the JRC the shipping address and the name and address of the shipping agent used for the return shipment. Once the test material is ready for collection, the JRC shall inform the User Institution thereof. The User Institution will also be responsible for the costs associated to the demolition and disposal of any test material or specimen.

5.4 *(please add this paragraph for the relevance-driven mode and update to 5.3 in case the article above is deleted)* The JRC may provide a financial or in-kind contribution to support Users to cover their costs of travel and subsistence for the Access to the Research Infrastructure, subject to the availability of funds, personnel and other resources, under the conditions laid out in the Framework, if applicable.

Article 6 – Liability

6.1 Any loss, damage or injury of non-nuclear origin suffered by one Party in connection with the performance of this Agreement shall be borne exclusively by it.

However, by way of exception to the previous paragraph:

- if the loss, damage or injury is caused by a User, the Lead User Institution shall be liable for it;
- each Party shall be liable for the loss, damage or injury caused to the other Party by wilful misconduct or gross negligence.

No Party shall be responsible to the other Party for indirect or consequential loss or similar damage. This exclusion of liability shall not apply in the case of damage caused by wilful misconduct or gross negligence.

6.2 Each Party shall be exclusively liable for any loss, damage or injury of non-nuclear origin caused by its personnel to third parties, arising out of the performance of this Agreement.

6.3 The Lead User Institution shall indemnify the JRC for all liability in respect of any action for damages brought by third parties and caused by the User in the course of this Agreement.

6.4 Any liability for loss, damage or injury of nuclear origin will be determined by the legislation of the state in which the installation, which is at the origin of the loss, damage or injury, is located.

6.5 The JRC is not liable for damage caused to any test material or objects supplied by the Lead User Institution where such damage results from the correct performance of work and testing according to established test procedures.

6.6 The JRC is not liable for damage arising out of the use of the results of the work or tests forming the subject matter of this Agreement except in the event of wilful misconduct or gross negligence on the part of the JRC.

Article 7 – Intellectual Property Rights

7.1 Intellectual Property Rights will be allocated in accordance with the Annex to the Framework on Intellectual Property Rights (IPR Annex"⁷, see Annex 3 to the present RIAA).

7.2 Intellectual Property Rights are allocated according to *[in case of relevance-driven access, indicate Option 1 or Option 2: Section II, Option [1 or 2]; in case of market-driven access: Section III]* of Annex 3.

Article 8 – Confidentiality

8.1 The Parties undertake to keep confidential any information, documentation, data, reports or any other material communicated to them by the other Party (i) as confidential or (ii) the disclosure of which may clearly be prejudicial to the other Party, until the information legitimately becomes publicly available through other parties or through work or actions lawfully performed outside the activities under this Agreement or has been made available to the receiving Party by another party without any confidentiality restrictions. This confidentiality obligation applies also to information communicated orally when such information shall be kept confidential.

8.2 Confidentiality of information exchanged orally or in writing in connection with this Agreement shall be maintained for a period of five years after its expiry or termination. Notwithstanding the foregoing, any Party may indicate when communicating information

to the other Party that the confidentiality of such information shall be maintained even after the said five-year period.

Article 9 - Data Protection when processing personal data

9.1 Where the JRC processes personal data included in or related to this Agreement, it will do so in accordance with Regulation (EU) 2018/1725.

9.2 Where the User Institution processes personal data included in or related to this Agreement, it will do so in accordance with applicable data protection rules, notably Regulation (EU) 2016/679 GDPR for User Institutions established in the EU.

9.3 Details concerning the processing of personal data will be made available to data subjects by each Party in the corresponding data protection notices.

[INSTRUCTION:

- *the JRC data protection notice related to the processing of personal data for contractual purposes (Data protection notice on “Database of open access to JRC physical Research Infrastructures” – see Attachment 1) should always be attached to the present contract. That notice refers to the processing of personal data by different Units of JRC (Scientific Development Unit, different units responsible for the Research Infrastructure) for the purposes of complying with the administrative and legal procedures relevant for concluding, managing and monitoring the implementation of this Agreement (i.e. the establishment and management of its execution, including drafting, approving and ensuring legal execution of the Agreement and compliance with ancillary legal obligations).*

- *If personal data are processed by JRC under this Agreement for other purposes (e.g. to carry out research activities linked to the Work under the Agreement), the responsible JRC Unit processing personal data should produce a record of processing activities to be published in the public register of the Commission’s Data Protection Officer. It should also produce a data protection notice and make it available to data subjects in order to inform them about the data processing and about their data protection rights. Guidance on the record and on the data protection notice can be provided by the JRC’s Data Protection Coordinator (JRC-DATA-PROTECTION-COORDINATOR@ec.europa.eu).*

Article 10 – Reports

10.1 Within [specify the number of months, up to a maximum of 6 months] following usage of the Access Units agreed, the Lead User shall provide the JRC, except otherwise agreed in writing between the Parties, a User Access Report describing the results from the test campaign, in accordance with the provisions contained in Annex 3.

10.2 The User Access Report will be authored by the Lead User and co-authored by the JRC, except otherwise agreed in writing between the Parties.

Article 11 - Severability Clause

In case of invalidity of a clause of this Agreement the validity of the remaining clauses will not be touched. The invalid clause has to be replaced by a valid one which corresponds as far as possible with the economic and legal content of the invalid one.

Article 12 – Applicable law and jurisdiction

12.1 This Agreement shall be governed by European Union law, complemented, where necessary, by the national substantive law of [country where the Research Infrastructure is based to be added] [In case of international organisations please check with the JRC Legal Unit].

12.2 Any dispute between the JRC and any of the User Institutions or any claim by one Party against the other under this Agreement, which cannot be settled by the Parties out of court, shall be brought before the courts of [country where the Research Infrastructure is based to be added] [In case of international organisations please check with the JRC Legal Unit].

12.3 All provisions of this Agreement apply without prejudice to the applicable law, including without limitation the law governing the right of public access to documents. Neither Party can claim any damages or breach of this Agreement in cases where the other Party acts according to its obligations resulting from the applicable law.

Article 13 - Administrative provisions

13.1 All correspondence concerning the performance of this Agreement, including supporting documents, shall be addressed exclusively between the Lead User Institution on behalf of User Institutions and JRC as follows:

European Commission Joint Research Centre Directorate for ... Address	[NAME AND ADDRESS OF LEAD USER INSTITUTION]
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13.2 The following persons are empowered to supervise the performance of this Agreement:

For the Joint Research Centre

For technical questions:

Name
Directorate/Unit
Telephone
e-mail

For administrative questions:

Name
Directorate/Unit
Telephone
e-mail

For the Lead User Institution:

For technical questions (Lead User):

Name
Institution/Department
Address
Telephone/Fax
e-mail

For administrative questions:

Name
Directorate/Unit
Telephone
e-mail

Article 14 – Annexes and Attachments

The following documents are joined to the present Agreement. Documents indicated as Annexes shall form an integral part of this Agreement:

- **Annex 1** – Description of work
- **Annex 2** – List of Users (this annex may be amended by written agreement between the persons identified in Article 13.2).
- **Annex 3** – Intellectual Property Rights
- *(Please add if in-kind contribution is provided)* **Annex 4** – In-kind contributions by the User Institutions
- **Attachment 1** – Data protection notice on “Database of open access to JRC physical Research Infrastructures”
- *(For projects involving the user of the ELSA Research Infrastructure)* **Attachment 2** – Work instruction – Experimental activities on large structures in the ELSA laboratory

[Please provide instructions for signature to the counterpart in the e-mail requesting them to sign according to the workflow. The workflow may take into account if there is a Qualified Electronic Signature, and the practical arrangements to address restricted presence of JRC staff during the COVID emergency]

For the JRC	
<p>.....</p> <p>[name of the Director]</p> <p>Director of the Directorate [name]</p> <p>Date:</p> <p>Place:</p>	<p>(In case of two Directorates)</p> <p>.....</p> <p>[name of the Director]</p> <p>Director of the Directorate [name]</p> <p>Date:</p> <p>Place:</p>
<p>For the Lead User Institution [NAME OF THE LEAD USER INSTITUTION]</p> <p>.....</p> <p>Name:</p> <p>Position:</p> <p>Date:</p> <p>Place:</p>	

Annex 1 – Description of Work

Annex 2 – List of Users

	Full Name	Gender	Nationality	Position⁸	User Institution appointing the User	User Institution country
Lead User						
User No 2						
(add one row for each User)						

⁸ PhD student, Researcher, Professor, Technician, Other

Annex 3 – Intellectual Property Rights

The present document defines the allocation of the Intellectual Property Rights ('IPR') created in the performance of the Framework for Access to the physical Research Infrastructures of the Joint Research Centre (JRC) ('Framework').

The principles of this Annex may be derogated from, in particular and justified cases, in the provisions of the Research Infrastructure Access Agreement ('Access Agreement') or the User Access Agreement ('User Agreement'). In such cases, the provisions respectively of the Access Agreement or User Agreement prevail over the provisions of this Annex. In case the deviations from the provisions of this Annex included in the User Agreement contradict the deviations in the Access Agreement, the later shall prevail.

I Definitions

1. **Access** – shall mean every case of access to the JRC physical Research Infrastructures as defined in the Framework;
2. **User Access Report** – shall have the meaning defined in Article 10 of the Access Agreement;
3. **Documentation Data** - shall mean information that ensures that the generated data can be understood and interpreted by any person using the data. It explains how the data was created, the context, structure of the data and its contents, and any manipulations done to the data. It may include reports, CAD files, drawings, photos, etc.;
4. **Embargo Period** - shall mean the period that starts on the date of submission of the User Access Report and during which the Treated Data, Documentation Data or Simplified Data shall not be released to the public. The Embargo Period in principle lasts 18 months but may be extended or shortened in accordance with the provisions of this Annex;
5. **Entitled Party** – shall mean the Lead User, the User, the Lead User Institution or the User Institution in the meaning of the Framework, that is entitled to the ownership or the co-ownership of the IPR, in accordance with their contractual arrangements in particular resulting from the relationship of employment;
6. **Entitled Party's Background** - any Entitled Party's data, know-how or information, whatever their form or nature as well as any IPR, that pre-exist to the Access;
7. **IPR** – shall mean all intellectual property rights such as copyright, industrial property, patent, or rights on databases;
8. **JRC's Background** – any JRC's data, know-how or information, whatever their form or nature as well as any IPR, that pre-exist to the Access;
9. **Market-driven Access** – shall have the meaning defined in Article 5a of the Framework;

10. **Raw data** (also known as primary data) – shall mean unprocessed data collected from the experimental facilities, equipment and associated software of a JRC research infrastructure;
11. **Relevance-driven Access** – shall have the meaning defined in Article 5a of the Framework;
12. **Results** – shall mean all results generated during the Access and in particular Raw Data, Treated Data, Documentation Data, and any other deliverables, documents, software, inventions, products, methods resulting from the Access;
13. **Simplified Data** – shall mean data formats for analysis in outreach and training exercises;
14. **Treated data** – shall mean reconstructed data and simulations as well as the analysis level software to allow a full scientific analysis of the access project.

II Allocation of the IPR and obligations of the Parties in case of a Relevance-driven Access

In case of Relevance-driven Access, the JRC decides and announces in the corresponding call for proposals which of the following two options is applicable with respect to the IPR, depending on the division of work between the JRC and the Entitled Party in each case of Access:

Option 1:

The JRC and the Entitled Party become co-owners in equal shares of all Raw Data, Treated Data and Documentation Data developed with respect to the Access.

Treated Data and Documentation Data will be made available to the public in accordance with the JRC Data Policy⁹ after the Embargo Period of 18 months from the submission of the User Access Report. Before the expiry of the Embargo Period, Treated Data and Documentation Data will not be made available to the public.

The Entitled Party may request before the expiry of the Embargo Period an extension of the Embargo Period for an additional 12 months. Such request must be motivated and fulfil jointly the following conditions:

- a) the request demonstrates that the dissemination jeopardises the protection or commercial exploitation of the Treated Data and Documentation Data in view of their nature;
- b) the request is limited to what is essential to protect those interests; and
- c) the request demonstrates that those interests override the values underlying the Data Policy of the JRC in the specific case.

In particular, where the Entitled Party wishes to submit a patent application and publication of the Treated Data and Documentation Data would jeopardise such an application, the

⁹ EUR 27163 EN – Scientific and Technical Research series – ISSN 1831-9424 (online)

justification for an exception is considered to cease once the application has been effectively submitted. Before each expiration of the additional 12-months Embargo Period, the Entitled Party may submit a new request, provided that the grounds for granting the exception still exist. The same rules shall apply to other Results, except for Raw Data.

Before the expiry of the Embargo Period the JRC may use the Treated Data and Documentation Data within its organisation. Before the expiry of the Embargo Period and with the consent of the Entitled Party, the JRC may use Simplified Data for the purposes of outreach and training activities, subject to the terms agreed with the Entitled Party.

The JRC and the Entitled Party may agree that the Treated Data and Documentation Data will be made available to the public before the expiry of the Embargo Period.

Raw Data will not be disseminated to the public in any manner. The JRC may use the Raw Data within its organisation without any time limitations.

Option 2:

Raw Data, Treated Data and Documentation Data will be solely owned by the Entitled Party and the JRC receives a non-exclusive, royalty free, unlimited and world-wide licence to use (meaning in particular to access, exploit, adapt, merge, translate, copy and store) the Raw Data, Treated Data and Documentation Data in all fields of exploitation. Where relevant, the licence will include all the data / information necessary to replicate the tests.

Treated Data and Documentation Data will be made available to the public in accordance with the JRC Data Policy after the Embargo Period of 18 months from the submission of the User Access Report. Before the expiry of the Embargo Period, Treated Data and Documentation Data will not be made available to the public.

The Entitled Party may request before the expiry of the 18-month Embargo Period an extension of the Embargo Period for an additional 12 months. Such request must be motivated and fulfil jointly the following conditions:

- a) the request demonstrates that the dissemination would jeopardise the protection or commercial exploitation of the Treated Data and Documentation Data in view of their nature;
- b) the request is limited to what is essential to protect those interests; and
- c) the request demonstrates that those interests override the values underlying the Data Policy of the JRC in the specific case.

In particular, where the Entitled Party wishes to submit a patent application and publication the Treated Data and Documentation Data would jeopardise such an application, the justification for an exception is considered to cease once the application has been effectively submitted. Before each expiration of the additional 12-months Embargo Period, the Entitled Party may submit a new request, provided that the grounds for granting the exception still exist. The same rules shall apply to other Results, except for Raw Data.

Before the expiry of the Embargo Period the JRC may use the Treated Data and Documentation Data within its organisation. Before the expiry of the Embargo Period and with the consent of the Entitled Party, the JRC may use Simplified Data for the purposes of outreach and training activities, subject to the terms agreed with the Entitled Party.

The JRC and the Entitled Party may agree that the Treated Data and Documentation Data will be made available to the public before the expiry of the Embargo Period.

Raw Data will not be disseminated to the public in any manner. The JRC may use Raw Data within its organisation without any time limitations.

III Allocation of the IPR and obligations of the Parties in case of a Market-Driven Access

Unless specified, by the Access Agreement or otherwise, the following provisions apply:

Raw Data, Treated Data and Documentation Data will be solely owned by the Entitled Party and the JRC receives a non-exclusive, royalty free, unlimited and world-wide licence to use (meaning in particular to access, exploit, adapt, merge, translate, copy and store) the Raw Data, Treated Data and Documentation Data on all fields of exploitation. The licence will include all the data / information necessary to replicate the test.

The JRC will not disseminate the Raw Data, Treated Data and Documentation Data to the public. In case the Entitled Party made Treated Data and Documentation Data accessible to the public in any way, it shall inform the JRC promptly, and in any case not later than 14 working days since the event of dissemination. If the Entitled Party made available the Treated Data or Documentation Data to the public, the JRC is authorised to release them to the public. The same rules shall apply to other Results, except for Raw Data.

With the consent of the Entitled Party, Simplified Data may be used by the JRC at any time for the purposes of outreach and training activities, subject to the terms agreed with the Entitled Party.

The JRC and the Entitled Party may agree that the Treated Data and Documentation Data will be made available to the public.

Raw Data will not be disseminated to the public in any manner. The JRC may use the Raw Data within its organisation without any time limitations.

IV Entitled Party's Background

The Entitled Party remains solely entitled to the Entitled Party's Background. None of the provisions of this Annex should be interpreted as the Entitled Party granting the JRC any licence or any other rights to the Entitled Party's Background unless otherwise agreed.

V JRC's Background

During the Access and solely for the purposes of Access the Entitled Party is allowed to use the JRC's Background, only if necessary for the research, unless the JRC objects. None of the provisions of this Annex should be interpreted as JRC granting the Entitled Party any licence or any other rights to the JRC's Background after the submission of the User Access Report.

In case the Results incorporate a part of JRC's Background or if the use of the Results necessitates the use of the JRC's Background, the Entitled Party is required to obtain JRC's prior written consent to use the Results after the submission of the User Access Report.

The same applies in case the Results constitute an improvement or derivative work of the JRC's Background.

VI Publications

In case a work performed with relation to Access leads to creation of Results in the form of scientific, technical or academic publications, conference proceedings, reports, and similar written work the Entitled Party shall duly acknowledge and state in writing on the publication, conference proceeding, report or similar that the result was created as a consequence of the Access to the physical Research Infrastructures of the Joint Research Centre (JRC). The written acknowledgement should state that:

JRC is author/co-author:

The experimental data used in this research were generated through access to the <Name of Research Infrastructure> under the Framework for access to the Joint Research Centre physical Research Infrastructures of the European Commission (<Name of User Access Project> project, Research Infrastructure Access Agreement N° <Number of RIAA>).

JRC is not author/co-author:

The experimental data used in this research were generated through access to the <Name of Research Infrastructure> under the Framework for access to the Joint Research Centre physical Research Infrastructures of the European Commission (<Name of User Access Project> project, Research Infrastructure Access Agreement N° <Number of RIAA>). Any opinions, findings and conclusions or recommendations expressed in this paper are those of the authors and do not necessarily reflect those of the European Commission.

Concerning the first peer-reviewed publication in a scientific journal related to the Access, the Entitled Party and the JRC shall obtain prior written consent from each other on the manner, timing and contents of such publication. Consent for the foregoing may not be unreasonably withheld.

VII General provisions

None of the above provisions allow, or shall be interpreted as, derogation from the confidentiality provisions in the Framework, Access Agreement or User Agreement.

In case of co-ownership neither Party may dispose of, license, assign, or transfer such jointly-owned IPR to third-parties without the prior written consent of the other Party in the absence of a particular joint-ownership agreement. Following the coming into existence of a jointly-owned IPR, the Parties may conclude a Joint-Ownership Agreement to govern the terms and conditions pertaining to rights, duties and obligations of the Parties concerning the jointly-owned IPR.

In case the owning or co-owning Party decides to waive or abandon its IPR or its share, or decides not to protect such IPR, whether patentable or not, it undertakes to inform the other Party of its decision. The other Party may decide to pursue the protection of such IP by itself, in its own name and through its own means. In such case, the Parties undertake to sign an Assignment Agreement particular to the IPR concerned.

All provisions of this Agreement apply without prejudice to the applicable law, including without limitation the law governing the right of public access to documents¹⁰. Neither Party can claim any damages or breach of this Agreement in cases where the other Party acts according to its obligations resulting from the applicable law.

¹⁰ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, Official Journal L 145 , 31/05/2001 p. 43 – 48. In accordance with Article 4.2 thereof, *the institutions shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property, unless there is an overriding public interest in disclosure.*

Annex 4 - In-kind contributions by the User Institutions

[Please add if in-kind contribution is provided or remove if no in-kind contribution is provided]

Attachment 1 – Data protection notice on “Database of open access to JRC physical Research Infrastructures”

PROTECTION OF YOUR PERSONAL DATA

This privacy statement provides information about the processing and the protection of your personal data.

Processing operation: Open access to JRC physical research infrastructures

Data Controller: Scientific Development Unit of the Directorate for Innovation in Science for Policy Making of the Joint Research Centre

Record reference: DPR-EC-00745

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1. Introduction

The European Commission (hereafter ‘the Commission’) is committed to protect your personal data and to respect your privacy. The Commission collects and further processes personal data pursuant to [Regulation \(EU\) 2018/1725](#) of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data (repealing Regulation (EC) No 45/2001).

This privacy statement explains the reason for the processing of your personal data, the way we collect, handle and ensure protection of all personal data provided, how that information is used and what rights you have in relation to your personal data. It also specifies the contact details of the responsible Data Controller with whom you may exercise your rights, the Data Protection Officer and the European Data Protection Supervisor.

The information in relation to processing operation “Open access to JRC physical research infrastructures” that offers access to JRC’s nuclear and non-nuclear facilities to researchers and scientists from EU Member States and countries associated to the EU Research Programme Horizon Europe, undertaken by the Scientific Development Unit of the Directorate for Innovation in Science and Policymaking of the Joint Research Centre (JRC) (in short, “Scientific Development Unit”), is presented below.

2. Why and how do we process your personal data?

Purpose of the processing operation: The Scientific Development Unit collects and uses your personal information to manage the proposals submitted (proposal phase), to ensure their follow-up (evaluation and implementation phase) as well as the reporting of the programme to the JRC.

The JRC opens up access to its physical research infrastructures as part of the JRC Strategy 2030. To this end, the JRC drafted a Framework with the purpose of delivering access to users for conducting research, undertaking experimental development, and providing education and training. The Framework defines the principles and modalities under which the JRC opens its facilities to external users, following an open access policy.

Concerning the application phase, the lead user (i.e. the user responsible for preparing the proposal and belonging to the lead user institution and acting as contact point for communicating with the JRC) prepares and submits a proposal following a "call for proposals" announced at the EU Science Hub. For selected proposals the user institutions sign a Research Infrastructure Agreement (RIAA) with the JRC.

Once the RIAA is signed, single users (individuals) sign a User Access Agreement (UAA) the first time they visit the JRC in relation to the RIAA. Data provided by the users will be used by the Commission to monitor the programme and its impact on the various European scientific communities.

The Scientific Development Unit of the JRC will coordinate all the process and different Units of the JRC will take part of it in order to evaluate the proposals, and to invite and receive the successful candidates.

The purpose of the processing of personal data is to manage the proposals submitted (application phase), to ensure their follow-up (evaluation and implementation phase) as well as the reporting of the programme to the Senior Management of the JRC, and will be used by the Commission to

monitor the programme and its impact on the various European scientific communities. In particular, personal data are processed:

- For the proposal phase - The Scientific Development Unit will launch the call for proposals and will receive the proposals in order to check that the eligibility criteria are fulfilled (eligibility check)
- For the evaluation phase - Staff from JRC Directorates with Research Infrastructures, as well as experts external to the JRC will take part in this phase. They will only have access to the proposals related to the calls offering access to their Research Infrastructure. A User Selections Committee (USC) will be organised to evaluate the proposals that are eligible. The proposals could be accepted, rejected or placed in a waiting list. In any case, the Scientific Development Unit will communicate to the lead user of each proposal the decision taken.
- For the implementation phase - The Legal Affairs Unit of the JRC will have access to some personal data in order to support drafting of the relevant agreement (Research Infrastructure Agreement - RIAA) with successful proposals. JRC Security Services of the sites involved will be informed in order to grant access to each specific site to users from the proposals having signed a RIAA. In some cases also the Medical services and the Radiation Protection Service at JRC Karlsruhe, Geel and Petten will have access to some of the personal data upon arrival of the users at these sites under the activity of "Open access to JRC physical research infrastructures".

Please note that users can only access the JRC if a RIAA is signed either by the lead user institution, or by all the user institutions related to the user access project.

Your personal data will not be used for an automated decision-making including profiling.

3. On what legal ground(s) do we process your personal data

We process your personal data, because, according to Art.5 of Regulation (EU) 2018/1725:

(a) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the Union institution or body;

(b) processing is necessary for compliance with a legal obligation to which the controller is subject

The basis for the processing referred to in points (a) and (b) is laid down in the following Union law as follows:

Joint Research Centre

Article 8 of the Euratom Treaty.

Commission Decision of 10 April 1996 (96/282/Euratom) on the reorganization of the JRC.

Council Decision 89/340/EEC concerning work for third parties performed by the JRC relevant to the European Economic Community - Article 1: "For the purpose of fulfilling the overall objectives of the Community relating to research and technological development, the Commission may place the installations, equipment or expert assistance of the JRC at the disposal of third parties whether public or private, as appropriate, against payment."

Horizon 2020 Programme

Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC.

Council Decision of 3 December 2013 establishing the specific programme implementing Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020) and repealing Decisions 2006/971/EC, 2006/972/EC, 2006/973/EC, 2006/974/EC and 2006/975/EC.

Horizon Europe Programme

Regulation (EU) 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe – the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination, and repealing Regulations (EU) No 1290/2013 and (EU) No 1291/2013.

Council Decision (EU) 2021/764 of 10 May 2021 establishing the Specific Programme implementing Horizon Europe – the Framework Programme for Research and Innovation, and repealing Decision 2013/743/EU.

We do not process special categories of personal data, therefore Article 10 of Regulation (EU)2018/1725 does not apply.

4. Which personal data do we collect and further process?

The data subjects are the participants (users) to the "Open access to JRC physical research infrastructures" programme, including the lead user (i.e. the user responsible for preparing the proposal and belonging to the lead user institution and acting as contact point for communicating with the JRC).

In order to carry out this processing operation the Scientific Development Unit collects and further processes the following personal data for the participants, including the lead user (i.e. the user responsible for preparing the proposal and acting as contact point for communicating with the JRC):

- For the proposal phase: Access project number, Last name, First name, Gender, Date of birth, Nationality, Scientific background/CV, Position, Affiliation, Email, Home Institution name, Address, Fax, Telephone, Eligibility check for each call of proposals.
- For the evaluation phase: Access project number, grading and assessment of the proposals (accepted, rejected and waiting list).
- For the implementation phase: Number of visits, duration of stays and travel and subsistence reimbursed (yes/no) and data contained in the documents that users need to submit (passport, criminal records, insurances, etc.) related to gain access to each site where the research infrastructure is located.

Note: during the implementation phase additional persons, not included in the proposal phase, but belonging to one of the institutions that signed an agreement the RIAA with the JRC, may visit the JRC to access its research infrastructure related to the RIAA. For this purpose, the data indicated above in the proposal and implementation phase will also need to be collected.

The provision of personal data is mandatory to meet the requirements set out in the Framework for the proposals, evaluation and implementation phases. If you do not provide your personal

data, the JRC will not be able to process, evaluate and implement proposals responding to the calls for open access to JRC physical research infrastructures.

5. How long do we keep your personal data?

The Scientific Development Unit only keeps your personal data for the time necessary to fulfil the purpose of collection or further processing, namely for:

- Non eligible proposals (personal data collected at the proposal phase): kept for 1 year after submission of the proposals
- Eligible proposals that signed the RIAA / users signing the User Access Agreement (UAA) (personal data collected at the proposal phase: Files relating to collaboration instrument procedures and execution including personal data are to be retained in the service in charge of the procedure until the expiry date of the instrument, and in the archives for a period of 10 years following the expiry of the instrument. These files could be retained until the end of a possible audit if one started before the end of the above periods. After the periods mentioned above have elapsed, the files containing personal data are subject to an assessment procedure in line with the Common Retention List (SEC(2012)713), according to which they are either sent to the historical archives of the Commission for further conservation or destroyed.
- Eligible proposals not signing a RIAA (personal data collected at the proposal phase): kept for 3 years after submission of the proposal.

6. How do we protect and safeguard your personal data?

All personal data in electronic format (e-mails, documents, databases, uploaded batches of data, etc.) are stored on the servers of the European Commission. All processing operations are carried out pursuant to the [Commission Decision \(EU, Euratom\) 2017/46](#) of 10 January 2017 on the security of communication and information systems in the European Commission.

The Commission's contractors (members of the User Selection Committee (USC)) are bound by a specific contractual clause for any processing operations of your data on behalf of the Commission, and by the confidentiality obligations deriving from the transposition of the General Data Protection Regulation in the EU Member States ('GDPR' [Regulation \(EU\) 2016/679](#)).

In order to protect your personal data, the Commission has put in place a number of technical and organisational measures in place. Technical measures include appropriate actions to address online security, risk of data loss, alteration of data or unauthorised access, taking into consideration the risk presented by the processing and the nature of the personal data being processed. Organisational measures include restricting access to the personal data solely to authorised persons with a legitimate need to know for the purposes of this processing operation.

7. Who has access to your personal data and to whom is it disclosed?

Access to your personal data is provided to the Commission staff responsible for carrying out this processing operation and to authorised staff according to the "need to know" principle. Such staff abide by statutory, and when required, additional confidentiality agreements. In particular, access to all personal data is provided to the Commission staff responsible for carrying out this processing operation and to authorised staff according to the "need to know" principle.

Eligible proposals (that contain personal data of the users) are shared with the User Selection Committee (USC), to evaluate the eligible proposal (evaluation phase).

The Lead user of each proposal receives all communication related to their own proposal (acknowledgment of receipt of the proposal, non eligibility, grading and assessment of the proposals (accepted, rejected and reserve list)).

The lead user, together with the contact administrative person of the lead user institution, negotiate with the JRC the RIAA. The RIAA contains the list of all the users that will be accessing the JRC. This list is provided by the lead user to the JRC, and the exchange of information contained in the RIAA takes place only between the JRC and the lead user. The RIAA is signed by the lead user institution (i.e. the Director of the lead user institution). If the RIAA is signed by more than one user institution (the Directors of the other user institutions), the signature process among all the user institutions is managed by the lead user. The lead user sends to the JRC the RIAA signed by all user institutions.

Once the RIAA is signed, single users need to sign the User Access Agreement (UAA) the first time they access the JRC. The UAA contains only personal information of the user accessing the JRC.

The User Access Reports at the EU Science Hub upon completion of an User Access Project will be publicly accessible (containing name, surname and affiliation of users)

The controller will transfer your personal data to the lead users of each proposals that could be located in a third country (Countries associated to Horizon Europe and Euratom) in accordance with Regulation (EU) 2018/1725.

The international transfer would be based on adequacy decision (Article 47 of Regulation (EU) 2018/1725), if applicable. If not applicable, to other countries the data transfer will be based on exceptions (Article 50(1)(d) and (e) of Regulation (EU) 2018/1725).

The information we collect will not be given to any third party, except to the extent and for the purpose we may be required to do so by law.

8. What are your rights and how can you exercise them?

You have specific rights as a 'data subject' under Chapter III (Articles 14-25) of Regulation (EU) 2018/1725, in particular the right to access, your personal data and to rectify them in case your personal data are inaccurate or incomplete. Where applicable, you have the right to erase your personal data, to restrict the processing of your personal data, to object to the processing, and the right to data portability.

You have the right to object to the processing of your personal data, which is lawfully carried out pursuant to Article 5(1)(a) of Regulation (EU) 2018/1725 on grounds relating to your particular situation.

You can exercise your rights by contacting the Data Controller, or in case of conflict the Data Protection Officer. If necessary, you can also address the European Data Protection Supervisor. Their contact information is given under Heading 9 below.

Where you wish to exercise your rights in the context of one or several specific processing operations, please provide their description (i.e. their Record reference(s) as specified under Heading 10 below) in your request.

9. Contact information

- The Data Controller

If you would like to exercise your rights under Regulation (EU) 2018/1725, or if you have comments, questions or concerns, or if you would like to submit a complaint regarding the collection and use of your personal data, please feel free to contact the Data Controller, at the JRC-RI-OPEN-ACCESS@ec.europa.eu

- The Data Protection Officer (DPO) of the Commission

You may contact the Data Protection Officer (DATA-PROTECTION-OFFICER@ec.europa.eu) with regard to issues related to the processing of your personal data under Regulation (EU) 2018/1725.

- The European Data Protection Supervisor (EDPS)

You have the right to have recourse (i.e. you can lodge a complaint) to the European Data Protection Supervisor (edps@edps.europa.eu) if you consider that your rights under Regulation (EU) 2018/1725 have been infringed as a result of the processing of your personal data by the Data Controller.

10. Where to find more detailed information?

The Commission Data Protection Officer (DPO) publishes the register of all processing operations on personal data by the Commission, which have been documented and notified to him. You may access the register via the following link: <http://ec.europa.eu/dpo-register>.

This specific processing operation has been included in the DPO's public register with the following Record reference: DPR-EC-00745, "Open access to JRC physical research infrastructures".

Attachment 2 – Work instruction – Experimental activities on large structures in the ELSA laboratory

[To be added for projects involving the user of the ELSA Research Infrastructure]: