



**EUROPEAN COMMISSION**  
JOINT RESEARCH CENTRE

Strategy, Work Programme and Resources  
**Scientific Development**

Brussels, 31 October 2022

**ANNEX 1 TO FRAMEWORK FOR ACCESS TO THE PHYSICAL RESEARCH  
INFRASTRUCTURES OF THE JOINT RESEARCH CENTRE (JRC)**

**INTELLECTUAL PROPERTY RIGHTS**

## 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. **Designated Individual** – shall mean a determined third party with whom a party can share data;
4. **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.;
5. **Embargo Period** - shall mean the period that starts on the date of submission of the User Access Report and during which the JRC shall not make available to the public the Treated Data, Documentation Data or Simplified Data without the Entitled Party's consent;
6. **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;
7. **Entitled Party's Background** – shall mean 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;
8. **IPR** – shall mean all intellectual property rights such as copyright, industrial property, patent, or rights on databases;
9. **JRC's Background** – shall mean any JRC's data, know-how or information, whatever their form or nature as well as any IPR, that pre-exist to the Access;

10. **Market-driven Access** – shall have the meaning defined in Article 5a of the Framework;
11. **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;
12. **Relevance-driven Access** – shall have the meaning defined in Article 5a of the Framework;
13. **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;
14. **Simplified Data** – shall mean data formats for analysis in outreach and training exercises;
15. **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.

The JRC shall have the right to make the Treated Data, Documentation Data or Simplified Data available to the public in accordance with its Data Policy<sup>1</sup> (including in open access) after the expiry of the Embargo Period following the submission of the User Access Report. The Embargo Period shall expire (i) after 18 months or (ii) upon the making available to the public of the Treated Data and Documentation Data by the Entitled Party, without prejudice to the parties' right to extend such Embargo Period as further set out below. Before the expiry of the Embargo Period, the JRC shall not make the Treated Data, Documentation Data or Simplified Data available to the public without the Entitled Party's consent.

Notwithstanding the foregoing, the JRC shall retain the right to make the Treated Data, Documentation Data or Simplified Data available to Designated Individuals, provided that (i) it has obtained the Entitled Party's prior authorisation therewith and (ii) such Designated Individual is bound by the necessary confidentiality undertakings.

---

<sup>1</sup> EUR 27163 EN – Scientific and Technical Research series – ISSN 1831-9424 (online)

For the avoidance of doubt, the Entitled Party shall not be subject to such Embargo Period and shall retain the right to make the Treated Data, Documentation Data or Simplified Data available to the public and/or to Designated Individuals.

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 making available to the public 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 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, Documentation Data or Simplified Data will be made available to the public before the expiry of the Embargo Period.

No party shall make the Raw Data available to the public in any manner. Notwithstanding the aforementioned, each party shall be entitled to make the Raw Data available to Designated Individuals, provided (i) it has obtained the other party's prior authorisation therewith and (ii) such Designated Individual is bound by the necessary confidentiality undertakings. 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.

The JRC shall have the right to make the Treated Data and Documentation Data available to the public in accordance with its Data Policy (including in open access) after the expiry of the Embargo Period following the submission of the User Access Report. The Embargo Period shall expire (i) after 18 months or (ii) upon the making available to the public of the Treated Data and Documentation Data by the Entitled Party, without prejudice to the parties' right to extend such Embargo Period as further set out below. Before the expiry of the Embargo

Period, the JRC shall not make the Treated Data, Documentation Data or Simplified Data available to the public without the Entitled Party's consent.

Notwithstanding the foregoing, the JRC shall retain the right to make the Treated Data, Documentation Data or Simplified Data available to Designated Individuals, provided that (i) it has obtained the Entitled Party's prior authorisation therewith and (ii) such Designated Individual is bound by the necessary confidentiality undertakings.

For the avoidance of doubt, the Entitled Party shall not be subject to such Embargo Period and shall retain the right to make the Treated Data, Documentation Data or Simplified Data available to the public and/or to Designated Individuals.

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 making available to the public 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, Documentation Data or Simplified Data will be made available to the public before the expiry of the Embargo Period.

No party shall make the Raw Data available to the public in any manner. Notwithstanding the aforementioned, each party shall be entitled to make the Raw Data available to Designated Individuals, provided (i) it has obtained the other party's prior authorisation therewith and (ii) such Designated Individual is bound by the necessary confidentiality undertakings. 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 make the Raw Data, Treated Data and Documentation Data available to the public without the Entitled Party's consent. 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 after having made it available. If the Entitled Party made available the Treated Data or Documentation Data to the public, the JRC shall also be authorised to make them available to the public in accordance with its Data Policy (including in open access). 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, Documentation Data or Simplified Data will be made available to the public.

No party shall make the Raw Data available to the public in any manner. Notwithstanding the aforementioned, each party shall be entitled to make the Raw Data available to Designated Individuals, provided (i) it has obtained the other party's prior authorisation therewith and (ii) such Designated Individual is bound by the necessary confidentiality undertakings. 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 documents<sup>2</sup>. 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.

---

<sup>2</sup> 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.*