



EUROPEAN COMMISSION
JOINT RESEARCH CENTRE

Strategy and Work Programme Coordination
Interinstitutional, International Relations & Outreach

Brussels, 8 May 2017

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

INTELLECTUAL PROPERTY RIGHTS

Drafted by:

Jean Paul Triaille (JRC I.4)
Karolina Gutt-Mostowy (JRC I.4)

In collaboration with:

Fabio Taucer (JRC A.3)
Marie-Laure Casoni (JRC A.4)
Friedrich Muehlbauer (JRC A.4)

ANNEX 1 TO THE FRAMEWORK INTELLECTUAL PROPERTY RIGHTS

The present document defines the allocation of the Intellectual Property Rights ("**IPR**") created in the performance of the Framework on Access to the Physical Research Infrastructures of the Joint Research Centre (JRC) ("**Framework**").

This Annex defines the general principles for the allocation of the IPR applicable to all cases of access to the Physical Research Infrastructures of the JRC, except for the cases excluded by Article 2 of the 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. **Access Report** – shall have the meaning defined in Article 10 of the Access Agreement;
3. **Documentation Data** - shall mean data that ensures that the generated data can be understood and interpreted by any user. 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. **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;
5. **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;
6. **IPR** – shall mean all intellectual property rights such as copyright, industrial property, patent, or rights on databases;
7. **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;
8. **Market-driven Access** – shall have the meaning defined in Article 5a of the Framework;
9. **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;
10. **Relevance-driven Access** – shall have the meaning defined in Article 5a of the Framework;
11. **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;

12. **Simplified Data** – shall mean data formats for analysis in outreach and training exercises;
13. **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 via open access schemes in accordance with the JRC Data Policy after 18 months from the submission of the Access Report. The Treated Data and Documentation Data will not be made available to the public via open access schemes or otherwise for an additional period of 12 months in case of a motivated request of the Entitled Party. The period during which the Treated Data and Documentation Data will not be made available is counted from the date of the request being acknowledged by the JRC. Such request must be based on the fact that the dissemination would jeopardise protection or commercial exploitation of the Treated Data and Documentation Data while the nature of the Treated Data and Documentation Data justifies such exemption and only as long as the exception is justified. For example, in case the Entitled Party wishes to submit a patent application and publishing the Treated Data and Documentation Data would jeopardise such an application, the exception is considered to expire once the application has been effectively submitted. Following the expiration of the additional 12 months 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. Raw Data will not be disseminated via open access schemes or in any other manner in any case.

Before the expiry of the 18 months period the Treated Data and Documentation Data may be used by the JRC for its internal purposes only. Raw Data may be used by the JRC internally without any time limitations.

Before the expiry of the 18 months period and with the consent of the Entitled Party, Simplified Data may be used by the JRC for the purposes of outreach and training activities, subject to the terms agreed with the Entitled Party.

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 via open access schemes in accordance with the JRC Data Policy after 18 months from the submission of the Access Report. The Treated Data and Documentation Data will not be made available to the public via open access schemes or otherwise for an additional period of 12 months in case of a motivated request of the Entitled Party. The period during which the Treated Data and Documentation Data will not be made available is counted from the date of the request being acknowledged by the JRC. Such request must be based on the fact that the dissemination would jeopardise protection or commercial exploitation of

the Treated Data and Documentation Data while the nature of the Treated Data and Documentation Data justifies such exemption and only as long as the exception is justified. For example, in case the Entitled Party wishes to submit a patent application and publishing the Treated Data and Documentation Data would jeopardise such an application, the exception is considered to expire once the application has been effectively submitted. Following the expiration of the additional 12 months period the Entitled Party may submit a new request provided that the grounds for granting the exception still exist.

Before the expiry of the 18 months period the Treated Data and Documentation Data may be used by the JRC for its internal purposes only. The same rules shall apply to other Results, except for Raw Data. Raw Data may be used by the JRC internally without any time limitations.

Before the expiry of the 18 months period and with the consent of the Entitled Party, Simplified Data may be used by the JRC for the purposes of outreach and training activities, subject to the terms agreed with the Entitled Party.

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

Unless specified, for instance, 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.

Raw Data, Treated Data and Documentation Data will not be disseminated by the JRC via open access schemes. In case the Entitled Party made Treated Data and Documentation Data accessible to the public in any way, it shall promptly, but not later than 14 working days since the event of dissemination, inform the JRC. Have Treated Data or Documentation Data been made available to the public by the Entitled Party, the JRC is authorised to release them via open access schemes. The same rules shall apply to other Results, except for Raw Data. Raw Data will not be disseminated via open access schemes or in any other manner in any case.

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.

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

VI Publications

In case the work performed with relation to Access leads to the 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 if possible 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).

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.