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## ESS INTELLECTUAL PROPERTY RIGHTS (IPR) AND INVENTIONS POLICY

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## 1. PREAMBLE

CONSIDERING the tasks and activities as stated in Article 2 of the Statutes of the European Spallation Source ERIC;

HAVING REGARD to Articles 21 and 22 thereof requiring the adoption of policies on data, intellectual property rights and inventions; and

RECOGNISING that it is more appropriate to address issues pertaining the collection, access, use, disposal and storage of scientific research data resulting from experiments using the facility in a separate Data Policy;

THE COUNCIL of the European Spallation Source ERIC has adopted the following Policy on Intellectual Property Rights and Inventions, to govern the dissemination, exchange, ownership, use and protection of technical knowledge, intellectual property rights and know-how created in or arising from the ESS project.

## 2. DEFINITIONS

- 2.1. "Background" refers to intellectual property owned by ESS Partners that is related to the ESS Partner's contribution to the ESS Project, but has not been created as a result of work carried out in connection with the ESS Project.
- 2.2. "ESS" refers to the European Spallation Source ERIC.
- 2.3. "ESS Background" refers to intellectual property owned by ESS.
- 2.4. "ESS Partners" refer to entities, including representing entities and in-kind partners that provide funding, contributions or otherwise collaborate through scientific or technical activity with ESS in connection with the ESS Project. The term ESS Partners excludes users of the ESS facility during operational phase.
- 2.5. "ESS Project" refers to all aspects of the design, construction, installation, operation and decommissioning phases of ESS.
- 2.6. "Foreground" refers to intellectual property generated by ESS Partners, either independently or jointly with ESS, in the course of and in connection with the ESS Project.
- 2.7. "ESS Foreground" refers to intellectual property generated by ESS in the course of and in connection with the ESS Project.
- 2.8. "Intellectual Property Rights" or "IPR" shall have the meaning set out in Article 2 of the Convention Establishing the World Intellectual Property Organisation signed on 14 July

1967<sup>1</sup>.

2.9. "Policy" refers to this Intellectual Property Rights and Inventions Policy.

### 3. IPR PRINCIPLES

Except where covered by separate contractual agreements or where mandatory legislation applies, this Policy is based on the following principles:

#### 3.1. Freedom to operate

- 3.1.1 ESS Partners shall grant ESS a non-exclusive, non-transferable, royalty-free perpetual and irrevocable license to Background including the possibility to grant sub-licenses, where such Background is required by ESS for the completion of the ESS Project, and only for this purpose. ESS Partners may exclude specific Background by written notice to ESS.
- 3.1.2 ESS acknowledges that ESS Partners may seek ownership rights over Foreground created from work undertaken for the purpose of or in connection with the ESS Project. Should any such Foreground become the subject of registered IPR protection by an ESS Partner, ESS shall be granted a non-exclusive, non-transferable, royalty-free perpetual and irrevocable license, including the possibility to grant sub-licenses, where such Foreground is required by ESS for the completion of the ESS Project, and only for this purpose.
- 3.1.3 ESS Partners' contributions to ESS shall be done without infringement of third party IPR or know-how, and where applicable, appropriate searches shall be carried out by ESS Partners for such third party rights prior to delivery to ESS.
- 3.1.4 ESS shall grant ESS Partners a non-exclusive, royalty-free perpetual and irrevocable license to ESS Background and ESS Foreground, where such a license is required by ESS Partners for the purpose of their contribution or collaboration in the ESS Project.

#### 3.2. Open access and open source

- 3.2.1 The dissemination of research results is a critical component in ensuring that knowledge and value in the form of intellectual property is shared with the scientific and industrial communities and with other entities outside ESS.
- 3.2.2 ESS shall use open source and free software licenses to the fullest extent possible. ESS Partners shall consult with ESS on which license and version thereof is currently being used by ESS in order to ensure compatibility and compliance with the open source or free software license terms. ESS Background and ESS Foreground shall be made available on open access terms to ESS Partners for the purpose of the ESS Project and on fair and reasonable terms for all other purposes.

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<sup>1</sup> "intellectual property" shall include rights relating to literary, artistic and scientific works, performances of performing artists, phonograms, and broadcasts, inventions in all fields of human endeavor, scientific discoveries, industrial designs, trademarks, service marks, and commercial names and designations, protection against unfair competition, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

3.2.3 Usage of, and access to research data is set out in the ESS Data Policy.

### 3.3. Publications

- 3.3.1 Publishing research results facilitates knowledge transfer and promotes the broad dissemination of knowledge created using public funds. Publication is also a rapid way of disseminating knowledge allowing a wide diffusion of research results.
- 3.3.2 Subject to clause 4 below, ESS shall publish all scientific and research results obtained from the ESS Project, recognising individual inventors and other contributors, for the benefit of itself, ESS Partners and the public at large.
- 3.3.3 ESS shall not limit the commercial advantage of any research results obtained by ESS Partners and users of the ESS facility, and acknowledges that in some cases, publication of results will be subject to specific agreements or need to be delayed to enable patent or design right protection by ESS Partners or users.
- 3.3.4 ESS staff copyrights, including the right to be recognised as authors, creators, inventors and/or contributing scientists, shall be respected in accordance with good scientific and publication practices. Likewise, ESS Partners shall acknowledge access to ESS in any publication derived from research conducted in connection with the ESS Project.

## 4. INVENTIONS

- 4.1. When one or more of the following conditions are met, ESS may apply for patent protection for inventions:
  - 4.1.1 In case of particularly important inventions where it is deemed that the impact and visibility in the relevant scientific community will be maximised by patent protection;
  - 4.1.2 Where the invention has substantial potential for commercial exploitation, supported by business case analysis;
  - 4.1.3 Where it is deemed that for cross-licensing, technology exchange or for security related reasons the invention should be protected by ESS.
- 4.2. Patenting by ESS should only be pursued when the inventors are clearly identified and there is no disagreement or dispute over the ownership of the invention. Decisions on patent applications, the management of the patent application process and the establishment of spin-off companies or related agreements shall follow the principles set out in this Policy and be approved by ESS management following recommendations of the ESS Legal Division.
- 4.3. When making a decision to patent, the scope of protection (geographical coverage and length of protection) shall depend on the objectives sought by patenting and shall be assessed on a regular basis by taking into account the degree of success in achieving the

objectives envisaged and associated costs in continuing the patent protection.

- 4.4. ESS shall be the owner of inventions created by staff employed by ESS in the course of their duties and shall apply for protection of such inventions provided the conditions in 4.1 and 4.2 above are met. In such cases, the ESS Director General may decide to award *ex gratia* compensation to the employee or employees concerned, which must be reasonable and proportionate in the circumstances.
- 4.5. Inventions created by ESS Partner's staff seconded to ESS, or which are created in joint projects, shall be determined by contractual agreement between ESS and the ESS Partner. The considerations set out in Clauses 4.1 and 4.2 above shall apply.
- 4.6. ESS shall not seek to limit or obtain ownership rights to research results, associated IPR or know-how created by users of the ESS facility, unless this forms part of the user agreement.
- 4.7. Should an ESS Partner intend to waive the protection of Foreground obtained in connection to the ESS Project (either completely or in specific countries), it shall inform ESS as soon as possible and allow ESS to pursue protection of the Foreground. In such cases, ESS shall apply the conditions set out in 4.1 and 4.2 above to make a final decision on whether to pursue protection of the Foreground.

## 5. PROPRIETARY INFORMATION

ESS acknowledges that proprietary information may be disclosed during collaborative research and other projects with ESS Partners. As a general rule, ESS shall impose confidentiality obligations on ESS Partners by either a separate non-disclosure agreement or clause in another agreement before proprietary information is shared. These include the obligation for a disclosing party to notify ESS when information disclosed to ESS is of a confidential nature.

## 6. TRADE MARKS AND IMAGES

Unless otherwise agreed in writing, ESS shall not give an ESS Partner or any user of the ESS facility a license or rights to ESS' trademarks, domain names and/or any other marks or signs, photos, videos or other images owned or held by ESS ("ESS Marks"). Any and all use thereof shall be subject to prior written approval from ESS and be made in accordance with ESS' instructions and in a manner that either enhances or does not affect the value or the distinctiveness of the ESS Marks.

## 7. IMPLEMENTATION

Questions related to the interpretation and implementation of this Policy should be submitted to the ESS Legal division. Further guidelines may be developed by ESS on practical matters related to the implementation of this Policy.

## 8. AMENDMENTS TO THIS POLICY

### 8.1. Revisions

Revisions to this Policy may occur for any reason or at any time. Revisions of substance shall be subject to the approval of the European Spallation Source ERIC Council ("Council").

The Policy shall be reviewed 6 months prior to the commencement of user programme activity at the ESS facility.

### 8.2. Notifications

ESS shall make reasonable efforts to notify affected parties of substantial revisions to this Policy and allow such parties reasonable time to make appropriate adjustments accordingly.

## 9. DISPUTE RESOLUTION

Any dispute, controversy or claim arising out of or in connection with this Policy shall be settled amicably by negotiations between the parties to the dispute. Dispute controversies or claims which cannot be amicably settled by negotiations between the parties or by the Council, shall be settled in accordance with Article 29 of the ESS Statutes.

### DOCUMENT REVISION HISTORY

Revision	Reason for and description of change	Author	Date
1	First version of document	Ohad Graber-Soudry	2015-06-26
2	New reviewer Johan Långberg	Ohad Graber-Soudry	2015-06-30
3	Third issue	Florian Weissbach	2020-05-20