

PSI DRAFT  
22 June 2021

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## **Cost Allocation Agreement**

ESS-3215759

Concerning the In-kind Contribution Agreement relating to the  
NIK 6.9 #1-2 - ESTIA Instrument

between

**European Spallation Source ERIC**

and

**Paul Scherrer Institut**

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**Annex 1** – Template for an Annex regarding Transferred Work

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**Annex D:** Procurement of ESTIA Experimental Cave

This **Cost Allocation Agreement** (the “**Agreement**”) is made by and between:

- (1) **European Spallation Source ERIC**, Swedish Reg. No. 768200-0018, a European Research Infrastructure Consortium established by decision (EU) 2015/1478 of the European Commission in accordance with Regulation (EC) No 723/2009, having its statutory seat in Lund, Sweden (“**ESS**”); and
- (2) **Paul Scherrer Institut**, a Swiss national research institute, incorporated under the laws of Switzerland whose registered office is at 5232 Villigen PSI, Switzerland (the “**Partner**”).

ESS and the Partner are hereinafter individually referred to as a “**Party**” and jointly as the “**Parties**”.

## **BACKGROUND**

- A. The European Spallation Source (ESS) is a joint European project. The ESS facility (the “**Facility**”) will be a world-leading centre for materials research and life sciences using neutrons and will host the world’s most powerful neutron source. The Facility is being built in Lund, Sweden, with a data management and software centre in Copenhagen, Denmark.
- B. The European Commission has, by decision (EU) 2015/1478 of 19 August 2015, established the ESS as a European Research Infrastructure Consortium, responsible for designing, constructing, operating, developing and decommissioning the Facility. The Swedish and Danish Governments have agreed to host ESS with Sweden as the host member state in accordance with Regulation (EC) No 723/2009.
- C. On 11 December 2017, ESS and the Partner entered into an In-kind Contribution Agreement in relation to the Partner’s contribution to the ESTIA Instrument, which contribution is detailed in underlying schedules NIK 6.9 #1 ESTIA Instrument Phase 1 and NIK 6.9 #2 ESTIA Instrument Phases 2-4.
- D. The Parties have now agreed that certain work scope defined in the attached Annex (as defined below) will be managed and delivered to the Project by ESS and for this reason, the Parties wish to enter into this Agreement to define and describe certain rights and obligations in relation thereto.
- E. As the need arises, Parties may negotiate and agree one or more further Annexes to define and describe further work scope to be managed and delivered by ESS to the Project and each such Annex will be added to and incorporated under the terms and conditions of this Agreement by reference hereto.
- F. The Parties therefore agree as follows.

## **1. DEFINITIONS**

- 1.1 Defined words and expressions used in this Agreement shall have the same meanings as assigned to them in the IKCA.
- 1.2 The following words and expressions shall, when used specifically in this Agreement, have the following meanings:

<b>“Agreement”</b>	means this Cost Allocation Agreement.
<b>“Annex(es)”</b>	means each of the annexes incorporated by the Parties hereunder, substantially in the way, shape and form attached hereto as Annex 1, in relation to each transferred work scope for purposes of defining and describing the nature, scope and duration of such work, the technical details, the specifications, the milestones and the deliverables as well as the compensation payable by the Partner to ESS for its performance.
<b>“Effective Date”</b>	means the effective date of this Agreement as set out in Article 8 below.
<b>“IKCA”</b>	means the In-kind Contribution Agreement in relation to the ESTIA Instrument, entered into between ESS and the Partner on 11 December 2017, including the underlying schedules NIK 6.9 #1 ESTIA Instrument Phase 1 and NIK 6.9 #2 ESTIA Instrument Phases 2-4.
<b>“MOU”</b>	means that certain Memorandum of Understanding for Funding of Swiss In-kind Contributions entered into between ESS and the Swiss Confederation, represented by the Swiss State Secretariat for Education, Research and Innovation SERI, on 6 February 2017.
<b>“Project”</b>	means the ESTIA Instrument project, managed by ESS in cooperation with the Partner.
<b>“Remuneration”</b>	means the compensation payable by the Partner to ESS for the performance of the work scope for the Partner, as further described in Article 4 below and in Schedule 2.
<b>“Schedule-TA”</b>	means the schedule NIK 6.9 #2 ESTIA Instrument Phases 2-4, as subsequently amended, supplemented or replaced.
<b>“SERI”</b>	means the Swiss State Secretariat for Education, Research and Innovation, an agency of the Federal Department of Economic Affairs, Education and Research EAER and representative for the Government of Switzerland.
<b>“Transferred Work”</b>	means the work scope which ESS will perform for the Partner, as further described in Article 3.1 below.

## **2. AGREEMENT STRUCTURE**

- 2.1 This Agreement will set out the terms and conditions pursuant to which ESS will perform certain work for the Partner and the compensation payable to ESS by the Partner for such services rendered.
- 2.2 This Agreement will function as a framework for all such work defined and agreed in

one or more Annexes from time to time incorporated hereunder and each Annex will be governed by and construed in accordance with the terms and conditions of this Agreement, incorporated into each Annex by reference hereto.

- 2.3 It is acknowledged that the arrangements made in this Agreement should be regarded as an exception to the general rule that changes who carries out the contracted work scope. The Parties understand and agree that its usage will therefore be strictly limited to situations where a formal scope transfer is not feasible for reasons outside the control of either Party.
- 2.4 The Parties agree that this Agreement will be governed by the terms and conditions of the IKCA, which are hereby incorporated by reference. In the event of any conflicts or inconsistencies between this Agreement and the IKCA in relation to the subject-matter hereof, this Agreement will take precedence. In case of any other conflict or inconsistency not related to the subject-matter of this Agreement, the IKCA will prevail.
- 2.5 The Parties further acknowledge and agree that this Agreement is made in strict observance of the agreements reached in the MOU and each of ESS and the Partner hereby undertakes to ensure that the performance of its respective rights or obligations hereunder, will not be in conflict with or contradict the terms and conditions of such MOU.

### **3. PERFORMANCE OF TRANSFERRED WORK**

- 3.1 The Parties agree that ESS will perform for the Partner, the Scope of Work defined in each Annex (the “**Transferred Work**”).
- 3.2 In each of these attached Annexes, the Parties will agree on the specific terms for ESS performance of the Transferred Work included in this Agreement. The Annexes will detail the Transferred Work through specific references to relevant sections of the Schedule-TA and additional details.
- 3.3 Each such Annex shall include the relevant information for the Transferred Work to be performed, including as a minimum:
- a) An outline of the Transferred Work through specific section references to applicable parts of the relevant Schedule-TA, including the appropriate milestone or milestones for the Transferred Work as set out in the Schedule-TA.
  - b) A technical description of the Transferred Work, which can be provided by reference to relevant ESS technical documents in each Annex.
  - c) The total compensation allocated for the Transferred Work as a total amount in Euro.
  - d) An agreed schedule to track and monitor progress of the Transferred Work.
  - e) A payment schedule for the Transferred Work; and if payment is to be made upon reaching certain project milestones, a list of milestones and their monetary value needs to be included in the relevant Annex.

- f) In the explicit case of large-scale procurements to be carried out by ESS, the relevant purchase value can be left open but a maximum value for the purchase contract shall be fixed and both parties will agree on the final procurement price.

3.4 ESS will assume all technical liability for the Transferred Work and the Partner will not assume or be deemed to be responsible in any respect for the quality or the workmanship of this Transferred Work and this Transferred Work will be excluded from any and all warranty obligations of the Partner contained in the IKCA and its underlying Schedules. The performance by the Partner of the remaining Scope of Work set out in the Schedule-TA is dependent on ESS performing in accordance with relevant regulations, standards and documentation requirements defined in the IKCA and/or the Schedule-TA, as the case may be, and the Partner will not be liable for any deviations from any such regulations, standards or documentation requirements.

3.5 Notwithstanding the above, in carrying out the Transferred Work, ESS shall use the same degree of skill, care and diligence as is reasonably expected of a professional and experienced research institute providing works and services similar to the Transferred Work. The Parties are aware, that the Transferred Work is related to the development of new technologies, which implies the risk that scientific targets might be not entirely fulfilled. ESS can therefore, not warrant nor guarantee the fulfilment of all intended scientific targets.

#### **4. COMPENSATION**

4.1 As compensation for services rendered, ESS will receive from the Partner a fixed remuneration payable upon performance and completion of the Transferred Work in accordance with the payment schedule set out in each Annex (the **Remuneration**”).

4.2 The Remuneration is fixed and not subject to any adjustment.

4.3 The Remuneration will be paid no later than thirty (30) days from receipt of a written verification detailing the Transferred Work performed by ESS. Unless otherwise agreed, all payments from the Partner to ESS will be made in Euros.

4.4 The Partner’s obligation to pay ESS for services rendered is independent from and does not rely on, nor is it conditioned on any undertaking which the Government of Switzerland may have to make payments or otherwise provide financing to the Partner for the fulfilment of the Government’s in-kind contribution to the construction of ESS.

#### **5. PAYMENT PRINCIPLES**

5.1 Pursuant to the terms of the MOU, ESS will periodically receive funds in Swiss Francs from SERI which ESS will hold in escrow for subsequent payment to the Partner on behalf of the Government of Switzerland upon completion of defined milestones.

5.2 Independent and separate from this, the Partner will pay ESS upon performance and completion of Transferred Work in accordance with the payment schedule set out in each Annex and as detailed in Article 4 above.

## 6. FINANCIAL RISK

- 6.1 ESS will assume the financial risk for the Transferred Work to be performed by ESS. Notwithstanding this, the financial risk for the remaining Scope of Work in the Schedule-TA to be performed by the Partner will still rest with the Partner.

## 7. ORGANISATION

- 7.1 The following persons shall be the respective contact person of the Party and shall be responsible for the general coordination of work and the clarification of technical issues for the execution of the Agreement:

**For ESS:**

Representative: Dimitri Argyriou, Associate Director In-Kind Management  
dimitri.argyriou@ess.eu

**For the Partner:**

Representative: Marc Janoschek, Head of Laboratory, Neutron and Muon  
Instrumentation (LIN)  
marc.janoschek@psi.ch

- 7.2 Each Party will immediately notify the other Party in writing of changes to its contact person.

## 8. TERM AND TERMINATION

- 8.1 This Agreement shall enter into effect upon the signature of both Parties (the “**Effective Date**”) and shall remain in effect until the final consummation and completion of the IKCA, unless earlier terminated.
- 8.2 Either Party may terminate this Agreement if the other Party is in material breach of its obligations under this Agreement and such Party fails to rectify such breach within sixty (60) days of a notice in writing from the terminating Party, however provided that, in the event such breach is not capable of being rectified, the Party not in default may terminate this Agreement immediately upon written notice thereof.
- 8.3 In the event the IKCA is terminated for whatever reason, this Agreement will automatically be terminated on even date with the IKCA.

## 9. ENTIRE AGREEMENT

- 9.1 This Agreement constitutes the entire agreement between the Parties with respect to the subject-matter hereof and supersedes all prior agreements, whether written or oral, with respect to the subject-matter of this Agreement.

## 10. AMENDMENTS

- 10.1 Amendments to or changes of this Agreement shall, in order to be valid, be made in writing and signed by authorized representatives of both Parties and shall be clearly stated as amendments to or changes of this Agreement.

## **11. NOTICES**

- 11.1 All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a “**Notice**”) shall be in writing and addressed to the respective Party’s contact person set out in this Agreement (or to such other address that may be designated by the receiving party from time to time in accordance with this Article 11).
- 11.2 All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), certified or registered mail (in each case, postage prepaid), facsimile or e-mail. Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Article 11.

## **12. GOVERNING LAW AND DISPUTE RESOLUTION**

- 12.1 This Agreement shall be governed by and construed and enforced in accordance with the substantive laws of Sweden without giving effect to any choice of law rules and principles thereof.
- 12.2 Dispute controversies or difference of opinion, including with respect to any right or obligation that survives termination or cancellation of this Agreement, which cannot be amicably settled by negotiations between the Parties within one (1) month, shall be administered and resolved by the Council following recommendation by the IKRC. The Council shall make a decision on how to settle the dispute. The Council shall decide its own rules of procedure and shall have the right to refer the dispute to another forum, such as Alternative Dispute Resolution (ADR) or a court, in which case, the governing law shall be the substantive laws of Sweden.
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**IN WITNESS WHEREOF**, the Agreement has been executed by the Parties' authorised representatives by way of electronic exchanging of signed copies and each Party has received one (1) copy of the signed version of the Agreement.

**European Spallation Source ERIC**

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Name (in block letters)*

\_\_\_\_\_  
*Position*

**Paul Scherrer Institut**

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Name (in block letters)*

\_\_\_\_\_  
*Position*

**Paul Scherrer Institut**

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Name (in block letters)*

\_\_\_\_\_  
*Position*

## ANNEX 1: TEMPLATE FOR TRANSFER OF WORK SCOPE ANNEX

### Transfer of Work Scope Annex

This is an Annex to the Cost Allocation Agreement (ESS-3215759) entered into between European Spallation Source ERIC (ESS) and Paul Scherrer Institut (the Partner) on [date], the terms and conditions of which are hereby incorporated by reference.

CHANGE DATA			
CR ID	Xxx	Date created	2021-MM-DD
Title of the CR:	Transfer of Work Scope from the Partner to ESS in relation to xxx		
Name of Change Originator (partner):	(Partner lead)	ESS WP Co-ordinator:	(ESS lead)
Reviewed by ICC:	<input type="checkbox"/> YES NAME:	Agreed by ESS WP Manager:	<input type="checkbox"/> YES NAME:

CHANGE ANALYSIS (filled out by the Partner)																									
Technical Annex (TA)	[ESS IK name/reference and title]																								
Reason for Change	Due to xxxxxx, the Project would like to transfer the following Scope of Work in the TA as regards xxxxxx together with the associated budget and project responsibility from the Partner to ESS.																								
Change Description	<p>In discussions between xxx and WP leader Y, the following Scope of Work have been discussed and agreed:</p> <table border="1"> <thead> <tr> <th>Scope</th> <th colspan="2"></th> </tr> </thead> <tbody> <tr> <td>Budget (EUR)</td> <td colspan="2"></td> </tr> <tr> <td>TA References / Sections in TA</td> <td colspan="2"></td> </tr> <tr> <th>Key Milestones</th> <th>What</th> <th>When</th> </tr> <tr> <td>MS a</td> <td></td> <td></td> </tr> <tr> <td>MS b</td> <td></td> <td></td> </tr> <tr> <td>MS c</td> <td></td> <td></td> </tr> <tr> <td>MS d</td> <td></td> <td></td> </tr> </tbody> </table>	Scope			Budget (EUR)			TA References / Sections in TA			Key Milestones	What	When	MS a			MS b			MS c			MS d		
Scope																									
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TA References / Sections in TA																									
Key Milestones	What	When																							
MS a																									
MS b																									
MS c																									
MS d																									
Change impact	<p><b>Schedule:</b> Please elaborate if there are any impact on schedule (positive or negative)</p> <p><b>Risk:</b> Please elaborate if there are any impact on risks (positive or negative)</p>																								
Remuneration	<p>The Partner will pay to ESS the following amounts as compensation for ESS' performance of the transferred Scope of Work:</p> <p>Payment 1: EUR xxx; payable on completion of MS a</p> <p>Payment 2: EUR xxx; payable on completion of MS b</p> <p>Payment 3: EUR xxx; payable on completion of MS c</p> <p>Payment 4: EUR xxx; payable on completion of MS</p>																								

<b>CHANGE ANALYSIS (filled out by the Partner)</b>	
	Total: EUR xxx [same as the budget]
<b>References</b>	Please refer to any other relevant documentation here with references to specific sections in the design documents, as relevant.

<b>CHANGE IMPACT (filled out by ESS)</b>	
<b>Schedule impact</b>	Please elaborate if there are any impact on schedule (positive or negative) – for the concerned WP / common project and schedule.
<b>Increased risks for projects</b>	Please elaborate if there are any impact on risks (positive or negative) – for the concerned WP / Common project and schedule.
<b>Affected ESS Services</b>	<input type="checkbox"/> Procurement <input type="checkbox"/> Finance <input type="checkbox"/> Installation Justification:
<b>Other Comments</b>	
<b>References</b>	Please refer to any supporting documentation here.

<b>CHANGE DECISION – IK Partner responsible (with scope &amp; budget responsibility)</b>			
<b>Decision</b>	Approved	<b>Date</b>	
<b>Decision made by</b>	[name]	[name]	
<b>Signature</b>			
<b>Comment/ Justification</b>			

<b>CHANGE DECISION – NSS Project Leader</b>			
<b>Decision</b>	Approved	<b>Date</b>	
<b>Decision made by</b>	[name]		
<b>Signature</b>			
<b>Comment/ Justification</b>			