

## Terms and Conditions for Non-Proprietary User Access to the Experimental Facilities of Deutsches Elektronen-Synchrotron DESY

### Preamble

DESY is one of the world's leading accelerator centres for investigating the structure and function of matter located in Hamburg, Germany. DESY offers a broad research spectrum of international standing focusing on three main areas: accelerator development, construction, and operation; photon science; particle and astroparticle physics. Therefore, DESY operates several experimental facilities, which are made available to external *Users* based on peer-reviewed proposals for non-proprietary research. The following *Terms and Conditions* shall be incorporated by reference and apply to all experiments conducted at the designated facilities.

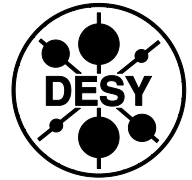
### § 1 Facilities and scope of work

- (1) DESY will make available to the scientific institution (referred to as *User*) its facilities for the purpose of performing experiments, which may include equipment, services, information and other material, with or without an onsite scientist collaboration.
- (2) Facilities operated by DESY's onsite partners are not part of these *Terms and Conditions*.

### § 2 Admission to Experimental Facilities

- (1) Access to the facilities (beamlines and/or other laboratory infrastructure) is based on research proposals accepted by DESY management. Submitted proposals will be peer-reviewed by international review panels (PRPs) and acceptance criteria are scientific excellence, technical feasibility and available resources at the laboratory.
- (2) Should the proposals under (1), or parts of it, be funded by a commercially-driven company or institution, the *User* shall inform DESY on the details of their agreement with the company or institution. In such case DESY reserves the right to charge the *User* in accordance with the currently valid fees. DESY and the *User* shall decide on a case to case basis whether a separate agreement beyond these *Terms and Conditions* is required.
- (3) The *User* warrants that all research activities are conducted exclusively for peaceful purposes and in accordance with the generally accepted rules for good scientific practice.
- (4) Private individuals are excluded from access to experiments at DESY facilities.

### § 3 Conduction of Experiments, Local Contact



- (1) After proposal acceptance, an access time schedule will be prepared and a Local Contact (staff scientist) will be assigned to the project. For an efficient and successful use of laboratory resources, Users are requested to discuss the preparation of their experiment with the Local Contact well before the scheduled experiment.
- (2) The Local Contact
  - offers support in the technical planning of the experiment including the use of onsite laboratories,
  - ensures that the instrument is properly set-up to perform the experiment(s),
  - provides adequate training and support for the *User* to efficiently and safely operate the equipment,
  - assists the *User* in matters of the sample environment set-up provided at the beamline and in the laboratory and supports the *User* in the installation of equipment owned by the *User*.

These duties apply only to support and requirements that have been agreed upon between the *User* and the Local Contact beforehand.

- (3) The *User* has to assure that a sufficient number of experimenters participate in onsite experiments in order to allow a safe and efficient execution of the experiment 24 hours a day covering the scheduled period of access.

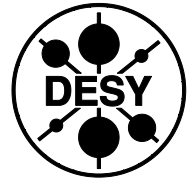
#### **§ 4 Scheduling**

DESY will inform the *User* in due time about the acceptance of their proposal and the access time allocated. An access schedule for each facility will be published on the DESY Photon Science web pages. It is understood in any event, that DESY will have sole responsibility and discretion for allocating and scheduling usage of the facilities and equipment needed for the experiments.

The *User* shall inform the DESY Photon Science Users' Office as soon as possible if for any reason scheduled beamtime has to be cancelled.

#### **§ 5 Obligation of Confidentiality**

- (1) In connection with experiments under these *Terms and Conditions*, it may be appropriate and necessary for the Parties to have access to certain technical and scientific information and materials of the other Party, hereinafter referred to as "Information". The Parties will consider as confidential any and all Information, which already has been or will be provided to them or of which they gain knowledge of otherwise in the frame of the experiments.
- (2) The Parties are required to maintain confidential and secure all Information belonging to the other Party. Each Party remains the owner of the intellectual property related to its own technology at all times. The Parties are required not to disclose such Information to

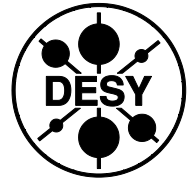


third parties, under any circumstances, unless a further written agreement is first signed between the Parties.

- (3) The confidentiality obligation stipulated above shall not extend to any part of the Information that :
- a) can be demonstrated to have been in the public domain or publicly known and readily available, or
  - b) can be demonstrated to have been in the possession of, or that can be demonstrated to have been readily available to the other Party or its subsidiaries receiving the Information from another source prior to the disclosure, or
  - c) becomes part of the public domain or publicly known by publication or otherwise, not due to any unauthorized act by the other Party, or
  - d) is required to be disclosed by law or government regulation, provided that the other Party provides reasonable prior notice of such required disclosure.

## **§ 6 Property and Materials**

- (1) After consultation with the Local Contact, the *User* may be permitted by DESY to furnish equipment, tooling, test apparatus, or materials necessary to assist in the conduction of its experiments at the facility. Such items shall remain the property of the *User* and have to conform to DESY safety regulations. Unless the Parties otherwise agree, all such property furnished by the *User* or equipment and test apparatus provided by the *User* will be removed by the *User* immediately after the experiment from the experimental station and at the latest within fourteen (14) days from DESY premises or will be disposed of as directed by the *User* at its own expense if not otherwise agreed upon. Samples and consumables brought or sent to DESY have to be taken home or disposed of properly in accordance with safety regulations. Heavy equipment must be delivered and retrieved during core working time.
- (2) The *User* shall provide DESY with all information concerning the materials for the conduction of the experiments. In particular, the *User* shall prepare all requested declarations of chemicals, lasers, radioactive substances, apparatus etc. at least 4 weeks prior to arrival at DESY. Samples, chemicals and equipment to be brought or sent to DESY must be identical with those mentioned in the accepted proposal and in the respective declaration forms. Any changes have to be approved by DESY prior to the conduction of the experiment.
- (3) Upon completion of the experiments, the *User* shall restore all used facilities and areas to the condition found on arrival.
- (4) DESY shall have no responsibility for the *User's* property in DESY's possession other than loss or damage caused by wilful misconduct or gross negligence of DESY or its employees.

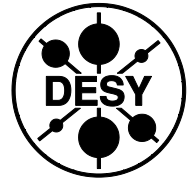


## § 7 Intellectual Property

- (1) Each Party is and remains the owner of any know-how and intellectual property made by it prior to the conduction of experiments under these *Terms and Conditions*.
- (2) Legal title to any and all working results (including, but not limited to know-how, test and development reports, proposals, ideas, drafts, designs, suggestions, samples, models, etc.) reached by the *User* within the context of experiments under these *Terms and Conditions* shall be vested in the *User*, who shall grant DESY a non-exclusive and non-transferable right of use free of charge for its own research and commercial purposes.
- (3) In the event that joint inventions arise during the conduction of the experiments and the shares in the invention cannot be divided up according to each of the relevant Parties for the purpose of filing for legal protection, the DESY and the *User* shall come to an agreement on a case-by-case basis. However, the *User* grants DESY at least a non-exclusive right of use free of charge for its own research and commercial purposes in each case.
- (4) The *User* has to inform DESY of any patent application resulting from experiments at experimental facilities of DESY under these *Terms and Conditions*.

## § 8 Publication

- (1) In accordance with the principle of providing open access to information, the *User* shall strive to publish the results of experiments under these *Terms and Conditions* in peer-reviewed scientific journals.
- (2) *Users* and beamline scientists who wish to collaborate on a topic related to the experiment should define relevant agreements including co-authorship of DESY Photon Science Staff of resulting publications prior to the experiment.
- (3) In case of publication the *User* shall acknowledge the support of DESY, including the beamline(s) and experimental station(s) used, supporting staff or any other assistance, in all published material (including conference contributions and press releases) arising from work carried out wholly or partially at DESY by using the following: "Parts of this research were carried out at (FLASH or PETRA III) at DESY, a member of the Helmholtz Association. We would like to thank (Names of the beamline staff in case that they are not co-authors) for assistance in using beamline (Name of the beamline)." Technical aspects related to the experimental facility should be checked with staff of DESY prior to publication.
- (4) The *User* shall notify DESY of the title, authors and complete reference of any scientific publication resulting from the use of the DESY facilities and submit the information to the DESY Library online database.



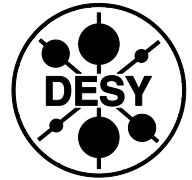
- (5) The *User* has to submit the mandatory *Experiment Report* three months after completion of the experiment at the latest. The timely delivery of these reports will be considered for future beamtime allocation.

### **§ 9 Personnel Relationship**

- (1) Personnel of the *User* shall remain employed by the *User* at all times during the conduction of the experiments, and shall not be considered employees of DESY for any purpose.
- (2) The *User* is required to have appropriate health, accident insurance and general liability insurance coverage during its travel to and from as well as its stay at the DESY premises, which provides coverage while the *User* is engaged in research activities related to the conduction of experiments under these *Terms and Conditions*. The *User* shall hold DESY free and harmless from any liability in this respect, including as may arise in case of failure to keep any part of the insurance coverage defined above in place.

### **§ 10 Access requirements**

- (1) Access to the experimental facilities is granted in accordance with the procedure and company regulations (GO/BO) of DESY. The respective access systems at DESY requires the collection and processing of personally identifiable information. As a precondition to using experimental facilities of DESY, the employees of the *User* and persons acting on its authority shall complete all access documents and meet all requirements of DESY. Beyond that, DESY warrants that DESY will not collect or handle any personally identifiable information as a result of the service performed.
- (2) Employees of the *User* and persons acting on its authority shall complete necessary safety training courses and participate in all required on-site instructions before starting the experiment.
- (3) Employees of the *User* and persons acting on its authority are subject to the administrative and technical supervision and control of DESY and will comply with all applicable rules of DESY with regard to admission to and use of the experimental facility, including but not limited to safety, operating and health physics procedures, environment protection, access to information, cyber-security, conduct and the specific requirements of the experimental facilities. DESY reserves the right to withdraw access to experimental facilities if the *User* or persons acting on its authority do not use the facilities in a safe manner or do not comply with said regulations and requirements or other reasonable instructions of DESY.
- (4) The *User* shall adhere strictly to the emergency management of DESY. This includes in particular that *User* shall not call for emergency forces on its own initiative, but informs the technical emergency service of DESY to coordinate necessary steps.



## § 11 Warranty, Liability

- (1) DESY makes no express or implied warranty as to the conditions of the facility furnished hereunder. In addition, DESY and the *User* make no express or implied warranty as to the research or any intellectual property, generated information, or product made or developed under these *Terms and Conditions*; or the ownership, merchantability, or fitness for a particular purpose of the research or resulting product; that the goods, services, materials, products, processes, information, or data to be furnished hereunder will accomplish intended results or are safe for any purpose including the intended purpose; or that any of the above will not interfere with privately owned rights of third parties.
- (2) Except in case of gross negligence or wilful misconduct or as may result from the application of § 5 and § 7 of these *Terms and Conditions*, DESY shall not be liable for any loss or damage in connection with the experiments. It is understood, however, that except as may result from the application of § 5 and § 7 of these *Terms and Conditions*, DESY shall not be liable to the *User* for any indirect or consequential loss or damage attributed to the use of the experimental facilities, research or resulting products, intellectual property, or generated information.
- (3) The *User* is obliged to notify DESY Photon Science of any damages of equipment caused by its employees or persons acting on its authority.
- (4) If necessary maintenance, urgent work or operational faults of the facility lead to a delay of experiments or partial or complete loss of allocated beamtime, DESY Photon Science will attempt to reassign measurement time to affected *Users*. However, claims for damages against DESY are excluded.

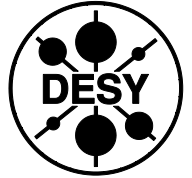
## § 12 Force Majeure

No Party shall be liable for a delay in performance or failure to perform its obligations under this *Terms and Conditions* if such delay or failure is due to acts of God or any other event beyond the control of the Parties, including, without limitations, fire, explosion, weather, disease, war, insurrection, civil strife, riots, government action or power failure, provided, however, that the Party who is unable to perform resumes performance as soon as possible following the end of the event causing delay or failure.

## § 13 Disputes

In the event of disagreement, the Parties shall seek to resolve their differences amicably. In the event of lasting disagreement, exclusive jurisdiction is given to the appropriate Courts of Hamburg.

## § 14 Concluding Provisions



- (1) Alterations of and additions to these *Terms and Conditions* have to be agreed upon in writing and shall be signed by the Parties. This also applies to an amendment of the form requirement.
- (2) These *Terms and Conditions* will be governed by and constructed in accordance with the laws of the Federal Republic of Germany.
- (3) In case one or more of the provisions contained in these *Terms and Conditions* should be or become fully or in part invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality, and enforceability of the remaining provisions of these *Terms and Conditions* shall not in any way be affected or impaired.

Hamburg, July 10th, 2014