

ANNEX 1:

NBIC List of Definitions

“Academic Party” means a party which falls within the scope of a public financed research institute as referred to in the Dutch Higher Education Act (*“Wet op het Hoger Onderwijs en Wetenschappelijk Onderzoek”*), and/or a *“Kennisinstituut”* within the criteria of the Dutch Ministry of Economic Affairs; a foreign party complying with equivalent foreign laws is also considered an Academic Party.

“Access Rights” means Internal Access and Commercial Access.

“Adjusted Market Price” means a price at arm’s length conditions, discounted for the relative contribution (as budgeted) of a Project Participant to the Project.

“Affiliate” means a company, whether a corporation or other business entity, that is Controlling, Controlled by or under common Control with a Party. Notwithstanding the foregoing, in a 50/50 joint venture between an NBIC Partner and a Third Party (or affiliate thereof) that is not an NBIC Partner, that Third Party (or affiliate thereof) is not considered an Affiliate of the joint venture. **“Control”** as used for the definition of Affiliate means the direct or indirect ownership of fifty percent (50%) or more of the equity interest in an entity, or the ability to control the management decisions of such entity.

“Arbitration Committee” or **“AC”** means a committee established and proceeding in accordance with the rules of the Netherlands Arbitration Institute. The arbitral tribunal shall be composed of three independent arbitrators, to be selected by the Netherlands Arbitration Institute. The arbitrators should include an expert in (macro)economics with business knowledge in the relevant industrial field of the Project, an expert with the relevant legal skill and an expert with relevant scientific and/or technical background. Unless agreed otherwise, the place of arbitration shall be Utrecht and the arbitral procedure shall be conducted in the English language. The decision by the arbiter shall be binding and the costs shall be shared by all parties to the arbitration.

“Assignment” means a transfer of ownership.

“Background IP” means all IP Rights, Data, Materials, Software, Confidential Information, know-how and trade secrets which: i) the Project Participant possesses or controls before or after signing the Project Agreement; ii) are expressly or implicitly made available for the purpose of the NBIC Project; and iii) not Project Results.

“Background IP Statement” means a written statement or list identifying Background IP which a Project Participant will, or has made available to an NBIC Project.

“**Binding Advice**” means a *vaststellingsovereenkomst* within the meaning of section 7:900 of the Netherlands Civil Code.

“**Closed Access Database**” means a Database that is not an Open Access Database.

“**Closed Source Software License**” means any License that is not an “Open Source Software License”

“**Commercial Access**” means any and all use of IP Rights other than the uses included under Internal Access.

“**Confidential Information**” means all information not in the public domain, that has been received from or on behalf of a party in whatever form, including (without limitation) any samples, Materials, compounds, data, reports, analyses, specifications, techniques, processes, technical information, ideas, know-how, trade secrets, unpublished patent applications and inventions (whether or not patentable), drawings, designs and computer software.

“**Data**” means any type of documented (electronically or otherwise) information, regardless of their origin or the process by which they were obtained, or any such data made available by one or more Project Participants. For the avoidance of doubt, Data as such:

- (i) are not protected by any Intellectual Property Rights;
- (ii) cannot be owned but are controlled;
- (iii) can be subject to legal obligations and/or contractual constraints and/or can be Confidential Information.

“**Database**” means a particular type of collection of Data that is protected by a database right (an IP Right). A Database is subject to the rights and obligations as defined in the Dutch *Databankwet*, being the implementation of Directive 96/9/EC (11 March 1996) on the legal protection of databases.

“**Dissemination**” means the disclosure of Project Results by any appropriate means other than publication through application for Registered IP Rights on Project Results.

“**Dual License**” means that Software, be it Background IP, or Foreground IP Rights, is being made available under an Open Source Software License as well as under a Closed Source Software License.

“**Foreground IP Rights**” means the Intellectual Property Rights arising from an NBIC Project and relating to Project Results.

“Formal Objection” means a written objection that:

- (i) is made by a NBIC Partner or Project Participant;
- (ii) contains the description and grounds of the objection;
- (iii) includes the relevant information and documentation thereto as required for the adequate appreciation of the issue at stake;
- (iv) is signed by an authorised representative of one of each of the relevant NBIC Partner(s) or Project Participant(s) supporting the objection.

“Funding Agency” means any public or public-private agency that lends support to (part of) an NBIC Project by making available financial support that qualifies as a subsidy and is granted under uniform conditions.

“General Partner Assembly” means a meeting wherein all NBIC Partners are invited.

“Industrial Party” means a Partner other than an Academic Party or a Funding Agency.

“Intellectual Property Rights” or **“IP Rights”** means Registered IP rights, copyrights, database rights, wherever in the world arising or available.

“Internal Access” means the direct or indirect utilization of Project Results that are covered by an IP Right on a non-exclusive basis, in internal research & development activities up and until to preparing individual samples or prototypes for evaluation by potential users, and including use in academic teaching. For the avoidance of doubt Internal Access excludes activities and/or efforts directed at market development for a product or service, such as but not limited to preparing samples for (potential) customers, manufacturing factory scale batches (after initial sample scale-up batch), creating prototypes, offering the product or service to (potential) customers, screening customers, testing a product or service in a panel, or using the IP to do market research to determine the value of the product or service. Internal Access for pharmaceutical products and methods includes proof of concept, up to and including clinical phase 2A.

“IP-Owner” means the NBIC Project Participant whose employees, researchers, research fellows, individuals equivalent to those persons or one or more subcontractors makes the inventive step, or the creative step (in case of non-patentable or non-patented Project Results), carrying out the work generating a Project Result.

“IP Regulation” means the NBIC Intellectual Property and Dissemination Regulation.

“License” means a written permission from a Licensor granting Internal Access or Commercial Access to particular IP-Rights under defined terms.

“Licensee” means a party that is granted a License.

“Licensor” means a party legitimately granting a License.

“Material” means tangible material that no longer meets the characteristics of human tissue as well as other (biological) material not including human tissue. This material may consist in the form of animal models, cell lines, compounds, cultures, isolated genes or proteins etcetera, together with unmodified derivatives, material included or incorporated in modified derivatives, progeny, copies and associated know-how and data.

“NBIC” means Stichting Netherlands Bioinformatics Centre, a foundation under the laws of The Netherlands.

“NBIC Community” means all natural persons involved in any NBIC activities, including, but not limited to Projects.

“NBIC Consortium” means the entire group NBIC and NBIC Partners.

“NBIC Partner” means the party contracting with NBIC through an NBIC Partner Agreement, including its Affiliates.

“NBIC Partner Agreement” means the agreement whereby NBIC and another party establish a partnership.

“NBIC Programme” means a named coherent group of Projects carried out under the governance of NBIC and clustered in themes such as research, support, education and valorization.

“NBIC Project Agreement” means a bilateral or multilateral agreement between NBIC Partners concerning the performance of work as part of a Project.

“NBIC Project Participants” means all Project Participants in all Projects jointly.

“Non Assert” means a written statement issued by an authorised Party in which that Party declares that under particular conditions it shall not invoke certain IP Rights which the issuing Party is entitled to, against a defined other Party.

“Non-Exclusive License” means a License under Background IP or Foreground IP Rights on a non-exclusive basis, which means that also other parties may obtain a Non-Exclusive License under the same Background IP or Foreground IP Rights.

“Open Access Database” means a Database to which users are granted access free of charge by the IP-Owner or Joint IP-Owners.

“**Open Source Software License**” means a License under which Software is being made available under a License that is labelled as such and accredited by the Open Source Initiative (OSI).

“**Option Notice**” means a written notification from a Project Participant stating the Project Participant’s interest in obtaining Access Rights to particular Project Results.

“**Project**” means a particular set of activities that are (to be) carried out under an NBIC Project Agreement.

“**Project Consortium**” means the group of Project Participants that are signatories to an NBIC Project Agreement.

“**Project Coordinator**” means the Project Participant identified in an NBIC Project Agreement that, in addition to its obligations as a Project Participant, is responsible to carry out the specific co-ordination tasks provided for in a NBIC Project Agreement on behalf of the other participants.

“**Project IP Manager**” means the individual identified pursuant to an NBIC Project Agreement, who is responsible for specific co-ordination tasks related to the creation, maintenance and prosecution of IP matters.

“**Project Manager**” means the individual appointed by the Project Coordinator to manage the Project according to the NBIC Project Agreement.

“**Project Participant**” means for a specific Project each NBIC Partner which is a signatory to that specific NBIC Project Agreement.

“**Project Plan**” means the plan, setting forth all the work to be performed in the Project as part of an NBIC Project Agreement.

“**Project Result**” means any result, of any nature (including Materials and Confidential Information), that comes out of the (collaborative) efforts of the NBIC Project Participant(s) carried out under an NBIC Project Agreement, including all IP Rights attached thereto as well as the right to apply for an IP Right. Results that according to the Project Plan or Background IP Statement are explicitly to be retained as Background IP are not Project Results.

“**Project Valorisation Team**” means a body that is granted the authority to perform certain tasks as stated in the NBIC Project Agreement and the IP Regulation. The Project Valorisation Team at least consists of a representative of NBIC, the IP Owner(s), a representative of IP Owner’s Technology Transfer Office (or comparable body), and the Project IP Manager.

“**RDF**” means the Result Disclosure Form as issued by NBIC that must be used by a Project Participant to communicate the existence of a Project Result.

“**Registered IP Rights**” means all IP Rights requiring an application before the IP Rights are granted (patent, patent applications and other statutory rights in inventions, trademarks, design rights) including applications for design rights, utility models and other similar or equivalent forms of statutory protection.

“**Software**” means a computer program being sequences of instructions to carry out a process in, or convertible into, a form executable by a computer, including the technical information relating to the design, development, comprehension, use or maintenance of any version of Software, and including the necessary documentation.

“**Subcontractor**” means a Third Party carrying out tasks identified in a Project by means of a subcontracting agreement with one or more of the NBIC Project Participants.

“**Substantial Extraction**” means the copying of substantial parts of a Database, or the systematic copying of non-substantial parts of a Database with a result that is similar to the copying of substantial parts.

“**Technically Needed**” means necessary to the extent that obtaining an alternative technical solution requires an unreasonable effort.

“**Third Party**” means every legal entity and natural person that is neither an NBIC Partner nor an Affiliate thereof.