



**NBIC Project Agreement (template)**

Between

1. **Stichting Netherlands Bioinformatics Centre**, established at Geert Grooteplein 28, 6525 GA, Nijmegen, the Netherlands, and legitimately represented by Dr. R.G. Kok, hereinafter: "NBIC"

and

2. ....,

and

3. ....,

and

n. ....

Unless expressly named, Parties are hereinafter individually referred to as "Project Participant", and collectively as the "Project Participants" or the "Project Consortium",

**CONSIDERING**

Each Project Participant has signed an NBIC Partner Agreement, or is an Affiliate of an NBIC Partner, whereby it agrees to comply with the articles of that NBIC Partner Agreement;

**Article 1 Relation to other documents**

- 1.1 The conditions set out in the NBIC Partner Agreement are binding for the Project and shall prevail over this NBIC Project Agreement (hereinafter: "this Agreement").
- 1.2 In case of a conflict between particular and mandatory sections of the terms and conditions of the Funding Agency, applicable to the execution of the Project, particular sections of this Agreement and the NBIC Partner Agreement shall be replaced by or interpreted in accordance with the requirements of the Funding Agency.
- 1.3 In order to execute the Project in accordance with this Agreement, each Project Participant agrees to the contents of the following documents (hereinafter: "the Project Framework Documents") that are an integral part of this Agreement:

*(Please note: list or description may be subject to requirements or characteristics of the individual project)*

- Annex 1: The description of the Project, including the Project Plan, overall programme description and/or business plan and all such particular financial, organizational and other details, as required and approved by NBIC and/or the Funding Agency;
- Annex 2: The written decision by the Funding Agency awarding the subsidy to the Project, the terms and conditions of the Funding Agency applicable to the subsidy that was granted to the Project;
- Annex 3: The Project's Background IP Statement;
- Annex 4: The applicable NBIC administrative procedures.

## Article 2 Project

- 2.1 The Project carried out under this Agreement is entitled ..... and shall be known under the acronym ..... and contract nr. ....
- 2.2 The Funding Agency is: .....
- 2.3 Each Project Participant shall carry out its detailed part of the Project and bear costs in accordance with the Project budget, as set out in Annex I.
- 2.4 The Project Participants may amend the Project Plan and related budgets in accordance with article 10 of this Agreement.

## Article 3 Project Management

- 3.1 The execution of the Project shall be coordinated and monitored by the Project Coordinator as described in the Project Framework Documents.
- 3.2 The Project Participants have agreed which Project Participant(s) will become Project Manager and Project IP Manager. It is the sole responsibility of the agreed upon Project Participants to appoint the individuals to perform these functions. The Project IP Manager may subcontract its role to a Third Party or Affiliate with consent of the Project Participants. Each Project Participant shall immediately inform each other of changes in the appointment of individuals during the execution of the Project.
- 3.3 In accordance with article 2 of the NBIC Partner Agreement the NBIC administrative procedures will apply to the administrative management of the Project, however said procedures shall be amended, if and to the extent required, by the applicable terms and conditions of the Funding Agency.
- 3.4 The Project Coordinator will be: NBIC.  
NBIC will appoint [name individual, address] to perform this function.
- 3.5 The Project Manager will be: [name Project Participant]  
[name Project Participant] will appoint [name individual, address] to perform this function.

- 3.6 The Project IP Manager will be: [name Project Participant]  
[name Project Participant] will appoint [name individual, address] to perform this function.

#### **Article 4 Duration, Suspension and Prolongation of the Project**

- 4.1 The Project shall begin on the Effective Date, being [date begin]. The duration of the Project shall be from the Effective Date until the completion of the Project.
- 4.2 Each Project Participant shall inform the other Project Participants of any event substantially affecting or delaying the implementation of the Project without undue delay.
- 4.3 To the extent allowed by the Funding Agency, the Project Consortium may agree that part or the entire Project will be suspended in accordance with applicable funding conditions.
- 4.4 During the period of suspension, costs may only be reimbursed if those costs cannot be postponed and such reimbursement is allowed under the applicable funding conditions.
- 4.5 The part of the Project that has been suspended may be resumed once the Project Participants and the Funding Agency have agreed on the continuation, as far as such agreement is required under the applicable funding conditions.

#### **Article 5 Performance obligations**

- 5.1 Each Project Participant shall:
- (i) designate one representative who shall act as a liaison officer for that Project Participant and work in co-operation with the Project Coordinator;
  - (ii) carry out its agreed upon work and tasks, such as providing (in kind) contributions, as agreed in the Project Plan;
  - (iii) provide progress reports and data requested by the Project Coordinator in accordance with the Project Framework Documents and the applicable funding conditions;
  - (iv) ensure that all information to be provided to the Funding Agency is sent through the Project Coordinator;
  - (v) inform the Project Coordinator of any event that may substantially affect the implementation of the Project and the rights of the Funding Agency, or of any Project Participant.
- 5.2 The Project Coordinator shall:
- (i) coordinate and monitor the scientific, technological and financial execution of the Project and ensure that each Project Participant provides the contributions in cash and in kind under the conditions established by this Agreement, including the Project Framework Documents;

- (ii) provide the Funding Agency with such reports and other scientific, financial and management information as required by the Funding Agency under the applicable funding conditions;
- (iii) be authorised to receive any payments from the Funding Agency relevant to the Project, which payments shall be forwarded to the Project Participants entitled to receive them, all according to the NBIC administrative procedures (Annex 4), and unless subsection 5.2, sub (v), applies;
- (iv) keep accounts of what portion of the aggregate Project funds has been paid to each Project Participant, and which contributions in kind each Project Participant has made for the purposes of the Project;
- (v) be authorised to withhold or cancel payment of funds to a Project Participant that is in breach of its obligations under this Agreement;

5.3 The Project Manager shall:

- (i) direct the scientific and technological execution of the Project in direct communication with the scientific and other personnel of the Project Participants involved in the Project;
- (ii) carry out the role of Project IP Manager when the Project Consortium decides not to appoint a separate Project IP Manager;
- (iii) provide the Project Coordinator with such reports and other scientific and management information, all according to the NBIC administrative procedures (Annex 4), as required by the Project Coordinator to fulfil its tasks and report to the Funding Agency.

5.4 The Project IP Manager shall:

- (i) collect and manage the Background IP Statement (Annex 3) received from the Project Participants;
- (ii) manage and keep account of the Project Results related to the creation, protection, maintenance and prosecution of IP matters described by a Project Participant in a Result Disclosure Form, as detailed in the NBIC IP Regulation;
- (iii) chair the Project Valorisation Team if it is formed;
- (iv) coordinate the process of approval for publications in accordance with the NBIC IP Regulation;
- (v) raise IP awareness among the Project Participants and support the Project Valorisation Team to identify opportunities for patenting, dissemination and/or exploitation of Project Results.

## Article 6 Intellectual Property

- 6.1 The Background IP Statement is attached as Annex 3.
- 6.2 Each Project Participant shall fill out its Background IP Statement to the best of the providing Project Participant's knowledge at the time of signing this Agreement.
- 6.3 Each Project Participant shall provide a Background IP Statement describing the Background IP it will make available in the Project and any restrictions to grant

Access Rights in accordance with article 4.1 and 4.2 of the IP Regulation (access for use in the Project and outside the Project if Technically Needed), except for restrictions unknown to providing Project Participant and which said Project Participant did not reasonably need to be aware of.

- 6.4 Parties acknowledge that in describing the Background IP pursuant to Article 6.3 the most important Background IP is that which (i) restricts the (other) Project Participant(s) from using Project Results and (ii) are not catalogue items and/or not readily and/or publicly available. Therefore each Project Participant will in any case use reasonable endeavours to include in its statement (i) IP Rights and (ii) Materials covered by IP Rights both of which are not readily and/or publicly available.
- 6.5 For the avoidance of doubt inclusion of specific Background IP in the Background IP Statement is not a statement in its own right regarding the status and/or validity of the Background IP and/or whether it infringes Third Party rights.

## Article 7 Subcontracting

- 7.1 A Project Participant will be entitled to engage a Third Party and or Affiliate to execute a defined activity as part of the Project as a subcontractor. When the Project Plan does not refer to subcontracting or a particular subcontractor, prior written consent of the Project Participants shall be required. The Funding Agency's consent shall be obtained, as far as such consent is required under the applicable funding conditions.
- 7.2 Therefore, said Project Participant shall ensure that:
  - (i) such subcontract or agreement fully complies with the requirements of this Agreement, and contains obligations concerning confidentiality and ownership of results;
  - (ii) the other Project Participants' rights under this Agreement are fully preserved; and
  - (iii) subcontractor shall have no access to any Project Participant's Background IP or Project Results without the relevant Project Participant's or IP Owner's prior written consent.
- 7.3 The subcontractor is not a Project Participant.

## Article 8 Assignment

- 8.1 Each Project Participant is allowed to assign its rights and obligations under this Agreement to any of its Affiliates, an NBIC Partner or any Affiliate of an NBIC Partner. The assigning Project Participant shall inform the other Project Participants promptly in writing about any assignment.

- 8.2 Assignment shall relieve the assigning Project Participant from its obligations under this Agreement per a particular effective date when the Project Coordinator has received a written statement in which the assignee recognizes full acceptance of the assignment, including all obligations and unfulfilled duties of the assignor as per the particular effective date agreed upon.

## Article 9 Warranties and Liabilities

- 9.1 Each Project Participant shall be liable for its own actions or omissions.
- 9.2 All Background IP made available in the context of this Agreement is made available “as is” and each Project Participant understands and agrees that such Background IP may be experimental in nature and are made available without any warranty, express or implied.
- 9.3 Notwithstanding a participating Affiliate’s own responsibility as a Project Participant, an NBIC Partner shall be responsible and liable for that Affiliate’s activities as a Project Participant in this Agreement as if they were its own activities.
- 9.4 In any event, the aggregate liability of a Project Participant towards the other Project Participants pursuant to this Agreement shall be limited to an amount not exceeding an amount equal to once that Project Participant’s share of the Project budget.
- 9.5 The liability of a Project Participant pursuant to this Agreement will under no circumstance extend to any indirect, incidental, special, punitive or consequential damages or losses, or any loss of profits, loss of revenue, loss of data, loss of contracts or opportunity.
- 9.6 Subject to articles 9.4 and 9.5, each Project Participant shall be solely liable for any loss incurred by, or damage or injury to Third Parties resulting from its performance or on its behalf and/or from its use of Project Results, Background IP and/or Foreground IP Rights and/or Data.
- 9.7 Each Project Participant shall remain fully responsible for the performance of work it has agreed to carry out under this Agreement, including work (to be) subcontracted.

## Art. 10 Termination

- 10.1 The Project Consortium may unanimously terminate this Agreement.
- 10.2 The Project Coordinator may with consent of the other Project Participants terminate the participation of a Project Participant (hereinafter: “Involuntary Early Termination”) for cause in the following cases:
- (i) in case of a material breach of any of its obligations under this Agreement by such Project Participant which, in spite of being notified by the Project

- Coordinator that it is in default (verzuim), is not remedied within thirty (30) calendar days of said notification;
- (ii) in case a Project Participant is entering bankruptcy proceedings or is declared bankrupt.
- 10.3 When a Project Participant wishes to terminate its participation in the Project Consortium for convenience before the end of the Project as stated in Article 4.1, and provided this Agreement is not terminated for cause (hereinafter: "Voluntary Early Termination"), it may terminate for itself this Agreement with at least 6 (six) months notice, provided it meets the requirements as set out below. The Project Coordinator shall immediately inform the remaining Project Participants when it receives such notification.
- 10.4 In the event of Involuntary or Voluntary Early Termination, the leaving Project Participant shall carry out all reasonable requirements laid down in a transition plan.
- 10.5 A proposal for this transition plan shall be prepared by the Project Coordinator, detailing reasonable measures on how to minimize the impact of the termination and to ensure a smooth continuation of the Project, including the allocation of work and the estimated costs thereof. The Project Participants shall contribute in good faith to such a proposal. The remaining Project Participants shall jointly approve a transition plan on the basis of the proposal.
- 10.6 In the event of Involuntary or Voluntary Early Termination, the terminating Project Participant shall bear any additional costs resulting from re-allocation of its work under this Agreement, as laid down in the transition plan.
- 10.7 In the event of Involuntary or Voluntary Early Termination, any financial contributions paid in advance and not already committed or allocated towards Project related expenditure will be returned to the Project Coordinator without undue delay after the effective date of the termination.
- 10.8 Voluntary Early Termination shall not affect the terminating Project Participant's entitlements to Project Results as were identified up to the date of Early Termination in accordance with the NBIC IP Regulation.
- 10.9 Involuntary Termination shall not affect the obligations of the terminating Participant. The terminating Participant shall not be entitled to any rights under this Agreement (including the NBIC IP Regulation) as of the date of termination.
- 10.10 After termination this Agreement for each Project Participant, irrespective of the grounds for such termination, the following clauses shall remain effective:
- (i) Article 6 of this Agreement (Intellectual Property);
  - (ii) Article 9 of this Agreement (Warranties and Liabilities);
  - (iii) Article 10.4 and 10.6 of this Agreement (Termination);
  - (iv) IP Regulation Article 4.3 (Access Rights granted to Background IP);
  - (v) IP Regulation Article 6 (Joint IP-Ownership);
  - (vi) IP Regulation Article 10 (Confidentiality).

**Article 11 AMENDMENTS**

Amendments to this Agreement shall only be valid after written approval of the Project Participants and with consent of the Funding Agency, if applicable.

**Article 12 NO GENERAL TERMS AND CONDITIONS**

Any and all general terms and conditions of the Project Participants or their Affiliates are expressly declared not applicable to this Agreement.

**Article 13 LAW AND FORUM**

- 13.1 This Agreement is construed under the laws of The Netherlands.
- 13.2 Parties will attempt to settle conflicts arising from this Agreement amicably.
- 13.3 In case Parties are unable to settle their conflict amicably within 60 (sixty) days after one Party has given the other Party written notice of the existence of such conflict, they may bring the issue before the competent court in the district of The Hague, The Netherlands, provided that referral to the Arbitration Committee is not mandatory.
- 13.4 The Parties do not exclude the possibility of seeking injunctive relief before any competent court in case the nature of the conflict requires this.

Signed in ... fold,

Effective Date:

NBIC:

[name of participant 2]:

[name of participant 3]:

[name of participant 4]:

[name of participant N]:



## ANNEXES

*(Please note: list or description may be subject to requirements or characteristics of the individual project)*

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