

ANNEX 2:

NBIC INTELLECTUAL PROPERTY REGULATION

Article 1 Scope

This IP Regulation applies to all Background IP, Project Results and Foreground IP Rights, that come out of each of the Projects.

Article 2 IP-Ownership

- 2.1 Inclusion of Background IP will not affect control or ownership thereof. The Project Participant that has granted Access Rights under Background IP has no obligation to maintain and protect its Background IP.
- 2.2 A Project Result shall be controlled by the IP-Owner and Foreground IP Rights based thereupon shall be owned by the IP-Owner.
- 2.3 Where several Project Participants have made the inventive step, or the creative step in case of non-patent IP Rights, and where the contribution of each of the Project Participants is indivisible, regardless of their respective share of the work, they shall jointly control such Project Result and own the IP Rights based thereupon (Joint IP-Owners) (Joint IP Rights).

Article 3 Background IP

- 3.1 A Project Participant shall, before the start of a Project, provide a Background IP Statement, informing the other Project Participants of the Background IP it includes in, or excludes from, the Project. Either this is by a positive list of included Background IP or a negative list of excluded Background IP, at the Project Participant's discretion.
- 3.2 The Project Participant will use reasonable efforts to ensure that the Background IP Statement lists any of its or Third Party restrictions or conditions known to it and impacting Access Rights to the Background IP (within and outside of the Project) and, if relevant, the intended use in the Project, as detailed in Article 4 below.
- 3.3 Each Project Participant may object to a Background IP Statement of another Project Participant in the same Project prior to the start of the Project, no party will object on unreasonable grounds. Objecting Project Participant(s) and the objected to Project Participant will discuss to find an amicable solution to the objection. If none can be found, the objecting Project Participant may withdraw its

commitment to the Project application, subject to Article 6.5 of the NBIC Partner Agreement.

- 3.4 The Background IP Statement shall be part of an NBIC Project Agreement and may from time to time be amended by the issuing Project Participant, to the extent that the Access Rights granted therein to other Project Participants shall only be augmented and never be reduced without the prior consent of the other Project Participants.

Article 4 Access Rights to Background IP

- 4.1 By signing a Project Agreement, each Project Participant grants Internal Access necessary for its performance in the Project at no cost under its Background IP under conditions set out in the Background IP Statement to the other Project Participants and their Affiliates.
- 4.2 To ensure freedom to operate for a Project Participants when it wishes to use its Foreground IP-Rights and subject to any restrictions stated in the Background IP Statement, each Project Participant agrees to grant the other Project Participants (and their Affiliates) Access Rights to relevant Background IP for use to the extent that such Access Rights are Technically Needed for the use of the requesting Project Participants' Project Results. Such Access Rights will be granted upon their first request, and against fair, reasonable and non-discriminatory terms and conditions. A request for Access Rights can be validly made up to one (1) year after termination of the Project.
- 4.3 The termination of the participation of a Project Participant shall in no way affect the Access Rights granted to the other Project Participants.
- 4.4 IP Rights that i) are held by a Project Participant prior to the commencement of the Project, and ii) that are not listed as Background IP, and iii) were used by said Project Participant to carry out its agreed tasks in the Project, shall be considered Background IP.
- 4.5 All Background IP which is Data and/or Databases to which Access Rights are given under Article 4.1 shall be considered Confidential Information unless expressly stated otherwise by the Project Participant authorised to give Access, or when the conditions for Confidential Information are not fulfilled (any more).

Article 5 Protection and prosecution of Project Results

- 5.1 In the event a Project Participant jointly or individually creates a Project Result that (in the light of the Project) is relevant and worthwhile to disclose to other Project Participants, it shall inform the other Project Participants, the Project IP

- Manager and the Project Valorisation Team simultaneously by RDF about said Project Result within four (4) weeks after it identified the Project Result as such.
- 5.2 Each recipient of an RDF under Article 5.1 can indicate within eight (8) weeks by notifying the (Joint) IP-Owners and the Project IP Manager whether it considers (part of) the disclosed Project Results interesting for commercialization and/or protection.
 - 5.3 In accordance with the procedure and timelines indicated on the RDF, the Project Valorisation Team shall advise in the final RDF on the protection and prosecution of the Project Result, taking into account any valorisation opportunities identified at that time. In any event such advice will be given within six (6) months of receiving the RDF.
 - 5.4 Within 4 (four) weeks from receiving the final RDF, a Project Participant claiming to be a Joint IP-Owner shall give notice thereof to the Project IP Manager and the other Project Participants. Any dispute concerning the ownership share of a Joint IP-Owner may be referred to the AC within 8 (eight) weeks from receiving the RDF.
 - 5.5 When an IP-Owner transfers control of a Project Result (or part of it) or assigns ownership of Foreground IP-Rights based thereon to an Affiliate or Third Party, it shall ensure that its obligations under this IP Regulation shall be transferred/assigned to that Affiliate or Third Party as well.
 - 5.6 If the IP Owner is not interested in protecting and/or exploiting the Project Result by IP-Rights, the IP-Owner will inform the other Project Participants in the Project of its decision. It will subsequently assign its Foreground IP Rights to Project Participant(s) that has/have expressed within four (4) weeks of being notified of the IP-Owner's decision interest in owning those Foreground IP Rights. Assignor shall assign its Foreground IP Rights free of charge. Upon such assignment, the assignor and its Affiliates shall be granted an irrevocable, non-exclusive, world-wide, fully paid-up and royalty-free license within the scope of its current and near future business activities (as specified between the assignor and assignee(s)) without the right to grant sublicenses; additionally assignor has an Internal Access as granted in Article 7.3, unless agreed otherwise. If no Project Participant, including the IP-Owner is interested in protecting the Project Result, the Project Result shall be made available in the public domain.
 - 5.7 A Project Result of which it is decided that it will be made available in the public domain may be used without restriction by each Project Participant, without any obligation to account of its use or benefit to the other Project Participants. Project Result of which it is decided that it shall be made available in the public domain shall not be considered Confidential Information and may be made public by the Project Participants, unless agreed otherwise in the relevant Project Agreement.

Article 6 Obligations of Joint IP-Owners

- 6.1 In case Project Results are jointly controlled/owned, each Joint IP-Owner shall use reasonable commercial efforts to conclude a Joint IP-Ownership Agreement (“JOA”) or assign its rights to another Joint IP-Owner. Upon such assignment, the assignor and its Affiliates shall be granted an irrevocable, non-exclusive, world-wide, fully paid-up and royalty-free license within the scope of its current and near future business activities (as specified between the assignor and assignee(s)) without the right to grant sublicenses; additionally assignor has an Internal Access as granted in Article 7.3, unless agreed otherwise.
- 6.2 In the event Joint IP-Owners are unable to agree on a JOA within one (1) year (counting from the day of receipt of the final RDF) Article 3:166 and following of the Dutch Civil Code (*Titel 7 Boek 3 BW*) apply with the following additions/amendments:
- (i) any Dutch mandatory statutory provisions in other relevant laws outside the Dutch Civil Code apply;
 - (ii) all out of pocket costs related to filing, prosecution, and maintenance of such Registered IP shall be shared between the Joint IP-Owners based on their respective ownership;
 - (iii) Joint IP-Owners shall decide on matters related to prosecution and maintenance of the Joint IP-Right by majority vote, whereby each Joint IP-Owner shall have a relative vote based on its ownership;
 - (iv) subject to sub (iii) the Joint IP-Owner who employed/provided the majority of the inventors/authors/creators shall take the lead in managing the Jointly Owned IP-Right;
 - (v) if one of the Joint IP-Owners is (no longer) interested in filing or maintaining the Joint IP-Right in a certain territory it will inform the other Joint IP-Owner(s) in writing. It shall assign its rights to the other Joint IP-Owners. Upon such assignment, the assignor and its Affiliates shall be granted an irrevocable, non-exclusive, world-wide, fully paid-up and royalty-free license within the scope of its current and near future business activities (as specified between the assignor and assignee(s)) without the right to grant sublicenses; additionally assignor has an Internal Access as granted in Article 7.3, unless agreed otherwise.
 - (vi) the Joint IP-Owners shall share the benefits generated with the use of the Joint IP Rights, such benefits include monetized value of its own & Affiliate use and actual income received from Third Parties & Affiliates (or monetized value of other compensation received instead); however if the total cumulative benefits (generated in the course of its economic life) by using/licensing/applying the Joint IP-Right are likely to be less than fifty thousand (50,000) Euros, in which event a single lump sum compensation shall replace such benefit sharing;

- (vii) the Joint IP-Owners shall each be allowed to grant licenses to Third Parties & Affiliates under reasonable arms length conditions;
 - (viii) except in case of negligence or wilful misconduct by the indemnified Joint IP-Owner, each Joint IP-Owner shall indemnify the other from claims by Third Parties based on the use of the IP Rights by the indemnifying Joint IP-Owner; under the usual conditions of notification of and intervention by the indemnifying party and its control and settlement of such claim, subject to maintaining the reasonable interests of both parties;
 - (ix) no Joint IP-Owners shall be obliged to grant any license to new/future IP Rights constituting improvements of the Join IP Rights;
 - (x) Joint IP-Owners shall provide each other with at least annual reports with all relevant information (for example prosecution costs, exploitation benefits) concerning the Joint IP Rights.
- 6.3 In the event Joint IP-Owners are unable to agree on costs and/or total expected benefits within 1 (one) year (counting from the day of receipt of the final RDF), each Joint IP-Owner is entitled to submit such issues to the AC.

Article 7 Access to, and Licenses on, Project Results

- 7.1 The IP-Owner/Joint IP-Owners shall grant Access Rights to other Project Participants, other NBIC Partners and/or Third Parties in accordance with this IP Regulation.
- 7.2 As a default, Software that are Foreground IP Rights shall be made available under the MIT Open Source Software License as published in 1988 (<http://www.opensource.org/licenses/mit-license.php>). Deviations of this default may be agreed upon by the Project Participants, or in case a Formal Objection was received by the AC from a Project Participant prior to the planned release of that Software and the AC decides accordingly.
- 7.3 Each member of the Project Consortium not being the IP-Owner of a particular Project Result shall be granted the following rights by the IP-Owner:
- 7.3.1 For Registered IP:
 - 7.3.1.1 Internal Access shall be granted for free to each Project Participant and its Affiliates.
 - 7.3.1.2 If the Project Participant is an Academic Party, it shall be entitled to obtain a Non-Assert from the IP-Owner for Internal Access by a Third Party that is engaged in a collaborative research project with the Academic Project Participant outside the NBIC Consortium and to the extent such Internal Access is Technically Needed for the execution of the collaborative research project concerned.
 - 7.3.1.3 Commercial Access shall be granted as set out in Article 8.

7.3.2 For Software copyright:

- 7.3.2.1 If Software is made available under the default License named in Article 7.2 or under a different Open Source Software License, each Project Participant and its Affiliates shall have the rights granted to it by said Open Source Software License.
- 7.3.2.2 If Software is made available under a Closed Source Software License each Project Participant and its Affiliates shall have the same rights as it has as granted under article 7.3.1.

7.3.3 For a Database:

- 7.3.3.1 Project Participants shall agree in the Project Agreement whether Databases resulting from the Project shall be Open Access Databases or Closed Access Databases.
- 7.3.3.2 In case of an Open Access Database:
 - (i) access to the Database may be subject to prior permission (e.g. password) and obligations regarding confidentiality, but without additional cost;
 - (ii) access to the Database will be unrestricted for Internal Access and Commercial Access;
 - (iii) Substantial Extraction shall only be allowed for the purpose of scientific research without the IP-Owner's permission.
- 7.3.3.3 In case of a (partly) Closed Access Database:
 - (i) Access Rights to the Database for use in NBIC Projects, including the right of Substantial Extraction, shall be granted without cost, upon request;
 - (ii) Access Rights outside NBIC Projects shall be as set out in Article 8.

7.3.4 For Materials:

- 7.3.4.1 Free Internal Access shall be granted for use in the execution of the Project Participant's designated research in the same Project.
- 7.3.4.2 Internal Access shall be granted for free to Project Participant including its Affiliates, which Access Rights may be subject to reasonable production/transfer costs at the IP-Owner's discretion.
- 7.3.4.3 Commercial Access shall be granted as set out in Article 8.
- 7.3.4.4 The Project Participant is entitled to be provided with the Material for use as stated in this Article 7.3.4 up to three years after the Project.

7.3.5 For Other Copyright (other than the Software copyrights):

- 7.3.5.1 Due to the nature of the other copyrights, the below rights shall upon request be granted to the extent they are available. The Project Participant who owns such rights or whose employees own such rights will use reasonable efforts to arrange the rights requested by the requesting Project Participant.

- 7.3.5.2 Internal Access shall be granted for free to each Project Participant and its Affiliates.
- 7.3.5.3 If the Project Participant is an Academic Party, it shall be entitled to obtain a Non-Assert from the IP-Owner for Internal Access by a Third Party that is engaged in a collaborative research project with the Academic Project Participant outside the NBIC Consortium and to the extent such Internal Access is Technically Needed for the execution of the collaborative research project concerned.
- 7.3.5.4 Commercial Access shall be granted as set out in Article 8.
- 7.4 An NBIC Partner not participating in the NBIC Project where the Project Result originated shall have the following rights:
 - 7.4.1 For Registered IP:
 - Free Internal Access in NBIC Projects shall be granted for use in the execution of the Project Participant's designated research, upon reasonable request and if available.
 - 7.4.2 For Software copyright:
 - In case of an Open Source Software License Access Rights shall be subject to the applicable Open Source Software License conditions.
 - 7.4.3 For a Database:
 - 7.4.3.1 In case of an Open Access Database access to the Database may be subject to prior permission (e.g. password) and obligations regarding confidentiality, but without additional cost.
 - 7.4.3.2 In case of an Open Access Database free Internal Access, including the right of Substantial Extraction, shall be allowed in NBIC Projects for use in the execution of the Project Participant's designated research.
 - 7.4.4 For Materials:
 - 7.4.4.1 Free Internal Access in NBIC Projects shall be granted for use in the execution of the Project Participant's designated research upon reasonable request and if available.
 - 7.4.4.2 The NBIC Partner is entitled to be provided with the Material for use as stated in this Article 7.4.4 up to three years after the Project. Such Access Rights may be subject to reasonable production/transfer costs at the IP-Owner's discretion.
- 7.5 NBIC shall have the following rights on any Project Results:
 - 7.5.1 For Registered IP:
 - Internal Access in NBIC Projects shall be granted for free.
 - 7.5.2 For Software copyright:
 - 7.5.2.1 In case of Open Source Software License, Access Rights shall be subject to the applicable License conditions.
 - 7.5.2.2 In case of a Closed Source Software License free Internal Access shall be allowed in NBIC Projects.

7.5.3 For a Database:

In case of an Open Access Database, free Internal Access, including the right of Substantial Extraction shall be allowed in NBIC Projects.

7.5.4 For Materials:

Free Internal Access shall be granted in NBIC Projects upon reasonable request and if available. Such access may be subject to reasonable production/transfer costs at the IP-Owner's discretion.

7.6 Materials

The IP-Owner or Joint IP-Owners shall make reasonable efforts to maintain the Material for a period of up to three years after the end of the Project for the NBIC Project Participants and NBIC Partners.

7.7 Continuation of Data Management

7.7.1 Databases that are Project Results will remain accessible after termination of the Project. At least 6 (six) months prior to the termination of the Project, the IP-Owner/Joint IP-Owners shall take appropriate measures in accordance with the nature of the Database to safeguard the management of any Database that is a Project Result beyond the term of the NBIC Project, such safeguarding may include transferring the Database to NBIC.

7.7.2 Management of Databases may include:

- (i) coordination of development and maintenance of quality standards for Data that will be entered into Databases;
- (ii) data management in the widest sense;
- (iii) safeguarding continued accessibility of Databases;
- (iv) control over access rights and safety measures to prevent illicit use;
- (v) arrangements regarding sharing of costs and revenues.

7.7.3 In case of disagreement concerning any condition for access after the termination of the NBIC Project, any member of the Project Consortium will be entitled to bring the issue before the Arbitration Committee.

Article 8 Commercial Access

8.1 Each IP-Owner shall offer the Project Participants the opportunity to express its interest in Commercial Access against Adjusted Market Price by sending an Option Notice as detailed in Article 8.2, to the Project IP-Manager and the IP-Owner(s) within the in Article 8.3 specified time.

8.2 The Option Notice shall contain details about the:

- (i) license structure (e.g. exclusivity, territories, sub-licence-ability) or, subject to the decision of IP-Owner to make such an offer, an Assignment,
- (ii) intended field of use (e.g. technical field and/or application) and
- (iii) other relevant and available information to determine the intended scope and application of the Access Right.

- 8.3 The Option Notice shall grant the rights listed in Article 8.5 & 8.6, below, if timely submitted. For the various IP Rights, “timely” shall mean four (4) weeks after:
- (i) Registered IP: the final RDF (as referred to in Article 5.3) for a given (set of) Project Result(s) was sent to the Project Participants.
 - (ii) Software Copyright: the notification by the IP-Owner(s) that the Software will be offered under a Closed Source Software License.
 - (iii) Databases: the notification by the IP-Owner(s) that the Database will be offered under a Closed Access Database.
 - (iv) Material: the final RDF (as referred to in Article 5.3) for a given (set of) Project Result(s) was sent to the Project Participants.
 - (v) Other copyright: the Project Participants were notified of the relevant work.
- 8.4 When none of the Project Participants timely expresses its interest, the IP-Owner may approach at its own discretion other NBIC Partners and/or Third Parties.
- 8.5 Project Participants which have timely submitted an Option Notice shall
- 8.5.1 have the right to jointly negotiate with the IP-Owner(s) to reach an agreement on the conditions (including the Adjusted Market Price) for its desired Access Rights within the period defined below:
- (i) Registered IP: 9 months after the first filing.
 - (ii) Software copyright: 4 months after the submission of the Option Notice.
 - (iii) Databases: 4 months after the submission of the Option Notice.
 - (iv) Material: 4 months after the submission of the Option Notice.
 - (v) Other copyright: 4 months after the submission of the Option Notice.
- 8.5.2 have the obligation to jointly pay for the out of pocket costs (if incurred) by the (Joint) Owner(s) for:
- (i) Registered IP: preparing/drafting/filing the first filing.
 - (ii) Software copyright: having the source code reviewed by software engineers.
- 8.6 The (Joint) IP-Owner(s) shall:
- 8.6.1 keep Project Participants which have timely submitted an Option Notice informed of the general progress and share relevant information, e.g. draft applications (if relevant), intended fields of use, geographical interests, etc.
- 8.6.2 offer Project Participants which have timely submitted an Option Notice the opportunity to comment on and suggest improvements to applications for Registered IP (if applicable) and comply with all reasonable requests relating thereto.
- 8.7 If the (Joint) IP-Owner(s) and the Project Participant(s) that wish(es) to obtain Commercial Access to specific Foreground IP Rights cannot reach agreement within the time set out under Article above regarding Adjusted Market Price each Party shall have the right to have the Market Price and Adjusted Market Price determined by the Arbitration Committee.

- 8.8 Parties shall negotiate the additional clauses in good faith to reach a fair, reasonable and non-discriminatory agreement.
- 8.8.1 The following types of clauses shall be part of a license agreement, (unless otherwise agreed by the parties):
- (i) commitment to exploit within the licensed fields (i.e. anti-shelving);
 - (ii) possibility of publications concerning the licensed IP Rights;
 - (iii) availability for research and education use of the Foreground IP Rights;
 - (iv) freedom for the licensee(s) to (jointly) initiate litigation or (jointly) enforce the licensed IP Rights;
 - (v) licensee's right to receive information and contribute to the prosecution of licensed IP Rights;
 - (vi) fair distribution of contribution of patent costs reflecting the scope of the each license (fields and territory) and the number of licensees.
- There shall be no obligation to grant a license back by the licensee to the licensor and, provided the commitment to exploit is met, there shall be no restriction to the licensed fields.
- 8.8.2 For the avoidance of doubt "commitment to exploit" means reasonable efforts and resources commonly used in the industry for the development or commercialization of said IP Rights at a similar stage in its life, taking into account the establishment of said IP Rights in the market place, the competitiveness, the proprietary position, the regulatory environment involved, the profitability and other relevant factors, to develop and commercialize said IP Rights and demonstrate that it is proceeding with the development and/or commercialization.

Article 9 Dissemination

- 9.1 Each Project Participant shall be allowed to disseminate any of its Project Results.
- 9.2 Any proposed Dissemination of Project Results shall be submitted to the Project IP Manager and the other Project Participants (Recipients), to give each the opportunity to object to such Dissemination, as detailed below.
- 9.3 The Project Participant wishing to Disseminate shall make available (a draft of) the proposed publication to the Recipients at least forty-five (45) days prior to publishing it or submitting it to the publishing entity.
- 9.4 The Recipients may object to the proposed publication within the above period on the following grounds:
- (i) if the proposed publication holds the objecting Project Participant's Confidential Information; an objection on this ground will remain valid as long as intended publication contains the objected to Confidential Information, or

- (ii) will jeopardise a Recipient's opportunity to obtain a Registered IP-Right; an objection on this ground will remain valid for a maximum of ninety (90) days, starting from the date the period under Article 9.3 ended, however it may be extended once with forty-five (45) days by the Recipient which objected, provided it can reasonably show that such an extension is needed because of the complexity of the application and/or Project Results to be protected by the Registered IP-Right.

An objection shall specify the parts of the proposed publication at which the objection is aimed and the grounds for the objection. If there is no longer a valid objection, the Dissemination is deemed to be approved.

- 9.5 If no timely objection is made the Dissemination is deemed to be approved.
- 9.6 Parties shall work towards finding an amicable solution to any valid objection.
- 9.7 Any publication of NBIC Project Results shall include the NBIC affiliation ("Netherlands Bioinformatics Centre, Geert Grooteplein 28, 6525 GA Nijmegen, the Netherlands") and shall mention the following notice to refer to the NBIC framework from which that publication originates: "This work has been carried out under the framework of the Netherlands Bioinformatics Centre (NBIC)," and any reference required by the Funding Agency.

Article 10 Confidentiality

- 10.1 Notwithstanding Article 9, the disclosure of Confidential Information may occur in writing as well as orally, during meetings or telephone conversations with or between representatives of the NBIC Consortium members and confidentiality obligations shall apply to such information. Each receiving Party shall protect said Confidential Information with the same degree of care as it applies to protect its own confidential information but in no event with less than reasonable care.
- 10.2 Confidential Information shall not include or extend to any information that:
 - (i) is or becomes generally available to the public otherwise than by reason of breach of confidentiality by a receiving Party;
 - (ii) is proven to have already been known to the receiving Project Participant(s) prior to the receipt of same from the disclosing Party;
 - (iii) is subsequently disclosed to the receiving Party or Parties from sources other than the disclosing Party, any of the other receiving Party (s) or any other source which is under a confidentiality obligation towards the disclosing Party.
 - (iv) is proven to have been independently developed by the receiving Party (s) outside the Project.
- 10.3 It is not a breach of Confidentiality when a receiving Party is obliged to disclose Confidential Information by a court order or by order of a public authority, provided it has informed the disclosing Party of such a request as soon as reasonably

possible. For the avoidance of doubt such disclosure shall not be considered as a disclosure as meant under 10.2 sub (i).

- 10.4 Each receiving Party shall solely use the received Confidential Information for the performance of its obligations under the Agreement. It shall not disclose any Confidential Information to its officers, agents, employees, students etc. unless they have a need to know such Confidential Information. Each Party shall ensure its officers, agents, employees and students are bound by a confidentiality obligation, which shall not be less strict than the provisions of this article.
- 10.5 Upon termination or expiration of the Agreement all documentation, information, materials received from a disclosing Party in the possession or under control of a receiving Party will be handed over by the receiving Party to the disclosing P Party upon first request by disclosing Party.
- 10.6 The confidentiality obligations of this Article will survive:
- (i) the (early) termination or expiration of the Agreement for a period of five (5) years after such termination or expiration, or
 - (ii) in case the disclosure of Confidential Information was part of a Project, for a period of five (5) years after the termination of the Project.
