

## NBIC PARTNER AGREEMENT

### The Parties

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. [XXX], established at [full address], the Netherlands, and legitimately represented by YYY, hereinafter: "ZZZ" or "the NBIC Partner";

hereinafter individually "Party" and collectively "Parties",

### CONSIDERING:

1. The mission of NBIC, a foundation under the laws of The Netherlands, is to create a strong and collaborative bioinformatics community in the Netherlands that is well connected to the international bioinformatics field. To realize its mission NBIC has taken the initiative to establish the NBIC Consortium together with partners in academia and industry.
2. Through the NBIC Consortium NBIC intends to form a lasting network of partners who are experienced and have an active scientific or commercial interest in bioinformatics, which network is aimed at sharing and expanding the expertise in that field, applying for research and infrastructure grants, and making results of the cooperation between the NBIC Partners available to NBIC Partners and the global life science research community. The NBIC Consortium may thus grow towards a national (virtual) bioinformatics "institute" of international significance. Information on the present NBIC programmes in bioinformatics research, support and education can be found on the NBIC website.
3. [XXX] is active in the field of bioinformatics and supports the mission of NBIC. [XXX] recognizes the value of participating in the NBIC network and has expressed its wish to acquire the status of NBIC Partner.
4. By signing this Partner Agreement (hereinafter: "this Agreement"), [XXX] becomes a member of the NBIC Consortium.

Have agreed as follows:

## Article 1 DEFINITIONS AND RELATION TO THE OTHER DOCUMENTS

- 1.1 Any term in this Agreement written with a capital initial shall have the meaning as defined.
- 1.2 The NBIC Articles of Association (*statuten*) and related regulations (*reglementen*), the NBIC List of Definitions and the NBIC IP Regulation as attached to this Agreement are an integral part of this Agreement and are equally binding upon the Parties.
- 1.3 In case of a conflict between particular and mandatory sections of the terms and conditions of a Funding Agency applicable to the execution of a Project, the relevant sections of this Partner Agreement shall, only for the purpose of that Project, be replaced by the requirements of the Funding Agency.
- 1.4 Notwithstanding article 1.3, in the event of a conflict between the NBIC Articles of Association or related regulations and this Agreement, the former shall prevail.

## Article 2 ROLE OF NBIC

- 2.1 NBIC represents and leads the NBIC Consortium and facilitates the NBIC Partners in NBIC programmes as defined in Article 2.2. NBIC establishes formal links to national and international scientific programmes and organisations in life sciences, including bioinformatics and other relevant technology areas, such as informatics.
- 2.2 NBIC organises programmes in which:
  - (i) NBIC organizes collaborative projects in bioinformatics research, which are exclusively accessible to NBIC Partners;
  - (ii) NBIC coordinates bioinformatics education at multiple levels of training for professional bioinformaticians as well as life scientists, and organizes numerous events for the life science communities;
  - (iii) NBIC coordinates the establishment of a Dutch bioinformatics research infrastructure in an (inter)national infrastructure framework, which is accessible to employees of NBIC Partners;
  - (iv) NBIC supports the NBIC Partners in dissemination and application of NBIC Project Results, via an NBIC research infrastructure, via the NBIC website and by making services available to the NBIC Project Participants as referred to in Article 2.5 and 2.6.
- 2.3 NBIC coordinates and applies together with NBIC Partners for grants to fund future NBIC Projects. In close collaboration with the NBIC Partners, NBIC will coordinate the preparatory actions and formalities. Upon granting of funds to initiate new NBIC

- Projects in the NBIC Consortium, NBIC will make the necessary arrangements according to the regulations of the Funding Agency.
- 2.4 NBIC is the Project Coordinator of all NBIC Projects for which funding was applied and/or obtained and takes care of all administrative tasks as well as communication to the Funding Agency.
- 2.5 NBIC provides, within set budgets and under applicable conditions, bioinformatics support to the NBIC Partners in NBIC Projects:
- (i) NBIC bioinformatics services, including access to repositories of software (code) and databases (content);
  - (ii) bioinformatics expert advice;
  - (iii) software engineering capacity and support, including a helpdesk, to help develop and professionalise Open Source bioinformatics software developed by NBIC Partners;
- 2.6 NBIC provides, within set budgets and under applicable conditions, administrative support to the NBIC Partners through the NBIC Office:
- (i) Organisation of community activities, such as meetings, conferences, and professional training for academia and industry;
  - (ii) Administrative services, financial administration, regular monitoring of progress and reporting, for NBIC Projects;
  - (iii) Communication to the Partners within the NBIC Consortium, via newsletters, magazines and the NBIC website.

### **Article 3 GENERAL PARTNER ASSEMBLY**

- 3.1 The General Partner Assembly (GPA) is the forum to discuss and exchange strategy and policy issues between NBIC and NBIC Partners. NBIC will organize a GPA at least once per year, where it will report over the preceding period and present NBIC's strategy and policy for the future. Like NBIC and all NBIC Partners, [XXX] is invited to present at the GPA proposals concerning new activities, policies and other means to optimize or improve the ability of the NBIC Consortium to realise the NBIC mission.
- 3.2 NBIC may incorporate the outcome of the GPA discussions in its decisions, and will notify the NBIC Partners of such decisions.
- 3.3 The GPA agenda and related documents will be made available to all NBIC Partners in writing, and at least 30 (thirty) days prior to the GPA.
- 3.4 Each NBIC Partner is entitled to send two representatives to the GPA, whose names shall be made known to NBIC.

#### Article 4 NBIC PARTNER'S ENTITLEMENTS AND OBLIGATIONS

- 4.1 All entitlements listed in this Article 4 equally apply to [XXX]'s Affiliates unless explicitly stated otherwise.
- 4.2 Participation in NBIC Projects:
  - 4.2.1 The NBIC Partner is entitled to propose new NBIC Projects;
  - 4.2.2 The NBIC Partner is entitled to become a Project Participant in Projects or designate an Affiliate to become a Project Participant;
  - 4.2.3 Subject to the NBIC IP Regulation, the NBIC Partner has access to Project Results of Projects.
- 4.3 Access to NBIC services as referred to in Article 2.5 and 2.6 within set budgets and under applicable conditions:
  - 4.3.1 In NBIC Projects the NBIC Partner has free access to the NBIC services;
  - 4.3.2 Outside Projects the NBIC Partner has Internal Access to the NBIC services at favourable conditions;
  - 4.3.3 Outside Projects the NBIC Partner has Commercial Access to (part of) the NBIC services at market conditions.
- 4.4 Access to NBIC events:
  - 4.4.1 The NBIC Partner is entitled access to non-public meetings organised by NBIC at which Project Results of Projects will be presented, and to NBIC Consortium events. Said activities and the information exchanged at these events shall be considered Confidential Information unless the Party disclosing the Project Results expressly indicates otherwise;
  - 4.4.2 The NBIC Partner including its Affiliates, is entitled to attend certain (public) NBIC events (such as conferences, symposiums, courses, trainings and workshops) at a reduced fee. A yearly calendar of NBIC events will be made available and maintained via the NBIC website.

#### Article 5 ASSIGNMENT

This Agreement may not be assigned to a Third Party without the prior written consent of the other Party, which consent will not unreasonably be withheld. Consequently, the NBIC Partner is allowed to assign this Partner Agreement to an Affiliate, provided the NBIC Partner informs NBIC of such assignment in writing prior to the actual assignment.

## Article 6 LIABILITY

- 6.1 Each Party shall be liable for its own activities under this Agreement.
- 6.2 Each Party's liability towards the other Party under this Agreement shall be limited to the extent permitted under Dutch law to direct damage suffered by the other Party.
- 6.3 The NBIC Partner shall be liable for any of its Affiliates to comply with this Partner Agreement, as if it was its own compliance.
- 6.4 Article 6.3 does not in any way restrict or limit a Party's liability towards the other Party in a particular NBIC Project Agreement.
- 6.5 In the event the NBIC Partner has (co-)submitted a Project proposal to NBIC it may retract its commitment to execute said Project prior to the signing of a Project Agreement, provided it reimburses all reasonable out of pocket costs incurred for execution the Project (including long term costs which have been committed to) by the other NBIC Partners involved in said application. This clause is included for the express benefit of such other NBIC Partners.

## Article 7 TERM AND (EARLY) TERMINATION

- 7.1 This Partner Agreement will commence on the date as indicated on the signatory page (the Effective Date).
- 7.2 Provided the NBIC Partner has fulfilled all its obligations under the Project Agreement(s) it is a party to, the NBIC Partner may end its partnership only by December 31<sup>st</sup> of a given year, having given notice of its wish to do so before October 1<sup>st</sup> preceding.
- 7.3 In case an Affiliate intends to terminate its participation in an NBIC Project prior to the date of Termination, the NBIC Partner shall designate another of its Affiliates as a new Project Participant and/or take over the former Affiliate's position as a Project Participant.
- 7.4 NBIC may terminate this Agreement for cause when the NBIC Partner is in default (*verzuim*). The NBIC Partner shall in any event be in default when it persistently or repeatedly breaches this Agreement, or it is in major breach of this Partner Agreement.
- 7.5 The NBIC Partner may terminate this Agreement for convenience within thirty (30) days of being notified by NBIC of changes in the NBIC Articles of Association or related regulations. Any running Project will continue under the previous version of the amended documents.
- 7.6 When the NBIC Partner participates in a running Project, this NBIC Partner Agreement shall not be terminated prior to completion or termination of its

participation in that Project and according to the termination clauses in that Project Agreement.

- 7.7 When the NBIC Partner is in default as an NBIC Partner, it is excluded entitlements as listed in Article 4.
- 7.8 After termination or early termination of this Agreement, the following clauses shall remain effective:
- (i) Article 6 Liability;
  - (ii) IP Regulation Article 4.3 (about background IP access granted);
  - (iii) IP Regulation Article 6 (about joint IP-ownership);
  - (iv) IP Regulation Article 10 (about confidentiality);
- 7.9 Additionally the following Articles remain in force unless the NBIC Partner's participation is terminated pursuant to Article 7.4:
- (i) IP Regulation Article 4 (about background IP);
  - (ii) IP Regulation Article 7 (about access and licenses).

## **Article 8 AMENDMENTS**

Amendments to this Agreement shall only be valid with approval of NBIC and the NBIC Partner. A change in the NBIC Articles of Association and related regulations shall not require approval of the NBIC Partner, but will be notified by NBIC at NBIC's earliest convenience.

## **Article 9 NO GENERAL TERMS AND CONDITIONS**

Any and all General Terms and Conditions of the NBIC Partners or its Affiliates are expressly declared not applicable to this Agreement or any related Project Agreement.

## **Article 10 LAW AND FORUM**

- 10.1 This Agreement is construed under the laws of The Netherlands.
- 10.2 Parties will attempt to settle conflicts arising from this Agreement amicably.
- 10.3 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, and referral to the Arbitration Committee is not mandatory, they shall bring the issue before the competent court in the district of The Hague.
- 10.4 The Parties do not exclude the possibility of seeking injunctive relief before that court in case the nature of the conflict requires this.



netherlands  
bioinformatics  
centre

Signed in twofold,

Effective date:

NBIC

[XXX]

**ANNEXES:**

- 1 NBIC List of Definitions
- 2 NBIC IP Regulation
- 3 NBIC Articles of Association (*statuten*) and related regulations (*reglementen*)

## 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 “*Kennisinstelling*” 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.

## ANNEX 2:

### NBIC INTELLECTUAL PROPERTY and DISSEMINATION 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.