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| --- | --- |
|  |  |

## Instructions

This Agreement must be concluded after the Grant Award Decision by NWO concerning this Project and before the start of the Project. The arrangements laid down in the main text of the Agreement form the basis for executing the Project.

All pages, including Annexes, with fields to be filed in shown in red, to this Agreement are mandatory and must be completed.

Arrangements on intellectual property, publication and confidential information are included in Annex 1. Parties may choose to adopt **the standard text NWO**, in which case no alterations are allowed. Parties may also choose to negotiate **tailor-made agreements**.

CONSORTIUM AGREEMENT

Open Technology Programme 2024

PROJECT [TITle]

File number <<<dossiernummer>>>

## Grant Recipients

1. **Name Grant Recipient** having its registered office in address (no postal address) the Netherlands, more specifically the Faculty of name faculty, hereinafter referred to as ‘**YY**’, legally represented by name legally representative;
2. **Name Grant Recipient** having its registered office in address (no postal address) the Netherlands, more specifically the Faculty of name faculty, hereinafter referred to as ‘**YY**’, legally represented by name legally representative;
3. **Name Grant Recipient** having its registered office in address (no postal address) the Netherlands, more specifically the Faculty of name faculty, hereinafter referred to as ‘**YY**’, legally represented by name legally representative;
4. ...

## Project Stakeholders

1. **Name Project Stakeholder** having its principal office in address, country, hereinafter referred to as ‘**ZZ**’, legally represented by name legally representative;
2. **Name Project Stakeholder** having its principal office in address, country, hereinafter referred to as ‘**ZZ**’, legally represented by name legally representative;
3. **Name Project Stakeholder** having its principal office in address, country, hereinafter referred to as ‘**ZZ**’, legally represented by name legally representative;
4. …

Together referred to as ‘**Parties**’ and individually as ‘**Party**’.

Parties numbers **numbers among Grant Recipients** together will be referred to as ‘Grant Recipients’ and numbers **numbers among Project Stakeholders** together will be referred to as ‘Project Stakeholders’.

## Whereas

* The Grant Recipients have submitted a Research Proposal for the project to NWO as part of the Call for Proposals Open Technology Programme 2024;
* NWO has decided to award funding to this Research Proposal entitled **project title**;
* The Project Stakeholders, being co-funders and/or cooperation partners have committed to support the Project as indicated in the Research Proposal and/or their respective Declaration co-funding as specified in this Agreement;
* The Parties wish to collaborate under the terms and conditions as set forth in this Agreement.

## Agree as follows

### Article 1 Definitions

AgreementThis agreement, including the recitals and the Annexes.

Annexes The annexes to this Agreement, which include:  
Annex 1: Intellectual Property Rights, Confidentiality and Publication Procedure;  
Annex 2: Research Proposal, including Declaration co-funding;  
Annex 3: Grant Award Decision NWO;  
Annex 4: Background Information Notice;  
Annex 5: Financial information NWO;

Annex 6: Accession document.

Background InformationAll information, techniques, know-how, software and materials (regardless of the form or medium in which they are disclosed or stored), as well as any Intellectual Property Rights pertaining thereto which is in the possession of a Party prior to commencement of the Project, or is generated by a Party before or outside the Project and which is necessary to carry out the Project.

Call for ProposalsOpen Technology Programme 2024

Committee The advisory committee or user committee established by Parties as prescribed in the Call for Proposals, which at least includes representatives of all Parties, but may also include, where appropriate, representatives of NWO and/or of scientific and/or societal stakeholders, and which has a supervising and advisory role with regard to the Project’s progress in terms of science and knowledge utilisation.

Effective DateThe signing date of the last Party to sign this Agreement.

Grant Award Decision The decision by NWO, as included in Annex 3 to this Agreement.

NWO The Dutch Research Council (Nederlandse Organisatie voor Wetenschappelijk Onderzoek).

Project The research project entitled **project title**, File number **File number**, as further specified in the Research Proposal.

Project LeaderThe person employed by the knowledge institution who bears final responsibility for the project in terms of content and finance, as referred to in article 5.1 of the NWO Grant Rules 2017.

PublicationThe disclosure of Results, in any manner or by any method whatsoever, excluding any disclosure resulting from an application for a patent on Results (article 5.1 NWO Grant Rules 2017).

Research Proposal The Research Proposal submitted to and granted by NWO, included in Annex 2 to this Agreement.

Results All inventions, results, materials, methods, processes, programmes, software, findings or discoveries that are generated within a Project (article 5.1 NWO Grant Rules 2017).

### Article 2 Conduct of the Project and Committee

1. The Project will take place under the general supervision of **name project leader** (the Project Leader). Parties shall conduct the Project in accordance with the Research Proposal, the Grant Award Decision and the NWO Grant Rules 2017 to the best of their knowledge and ability and taking into account the criteria and standards applicable to scientific and/or technological research.
2. The Project Leader is responsible for the scientific quality, coordination, Project management and progress of the Project and to this extent arranges for:
   1. the organisation of a kick-off meeting to be organised at the start of the Project to which all Parties shall be invited;
   2. the organisation of Committee meetings, that will take place at least once per year. During the meetings, the progress of the Project towards both science and knowledge utilisation shall be discussed and evaluated;
   3. the preparing of a progress report before the meetings of the Committee and reporting on these meetings;
   4. managing the process of obtaining societal, economic and/or scientific value out of Results;

The Project Leader may appoint a project manager in or outside his/her knowledge institute and delegate its Project management tasks such as the organisation and conduct of Committee meetings. For any avoidance of doubt, the Project Leader remains responsible for the delegated tasks.

1. If any patentable invention is created in the Project, the inventing Part(y)(ies) shall inform the Project Leader. The Project Leader shall inform the other Parties thereof by sending a completed invention disclosure form to each member of the Committee.
2. In the event that the Project cannot be conducted in accordance with this Agreement, the Research Proposal and/or the NWO Grant Rules 2017, the Project Leader notifies NWO immediately. All possible solutions shall be discussed, upon which a decision on the continuation of the Project shall be taken by NWO.
3. Parties shall obtain first-hand information on the progress of the Project and the Project in general.

### Article 3 Contribution and Invoicing

1. Grant Recipient(s) shall receive the grant from NWO in accordance with the Grant Award Decision.
2. Project Stakeholder(s), being co-funder(s), shall deliver the in cash contribution(s) in accordance with their respective Declaration co-funding. The contribution of the Project Stakeholder(s) is invoiced by NWO on behalf of the Grant Recipient(s) in accordance with the Payment Schedule and Invoicing Form(s). Furthermore, Project Stakeholder(s) shall provide NWO with all additional necessary information to facilitate such invoicing.
3. Project Stakeholder(s), being co-funder(s), shall deliver the in kind contribution(s) in accordance with their respective Declaration co-funding.
4. In the event that the Project is terminated prematurely, Parties shall discuss the reimbursement possibilities of instalments of Project Stakeholders’, being co-funder(s), contributions.

### Article 4 Intellectual property, Publication and Confidential Information

1. Parties follow the standard NWO policy on intellectual property, publication rights and confidential   
    information as specified in Annex 1 (standard text NWO).   
     
    Parties make their own arrangements in Annex 1 (tailor-made agreements) on at least:
   1. ownership of Results;
   2. access to Background Information and/or intellectual property rights for the conduct of the Project;
   3. access to Results and/or intellectual property rights for the conduct of the Project;
   4. publication;
   5. confidential information.
2. In either case the arrangements in Annex 1 comply with the following documents:
   1. Call for Proposals;
   2. NWO Grant Rules 2017;
   3. European legislation on state aid;
   4. Ten Principles for Socially Responsible Licensing as laid down in the NFU report on ‘Ten Principles for Socially Responsible Licensing’.

### Article 5 No Guarantee

Each Party shall carry out the tasks assigned to it in this Project and this Agreement with care and diligence. Nevertheless, no guarantee is given that any expected Results will be achieved, or that Results are fit for any particular purpose, or that Results generated in the Project do not infringe rights of third parties, or that patent applications result in granted patents. Parties shall not create or develop any technology for the Project that knowingly infringes any third party intellectual property rights. For the avoidance of doubt, neither Parties’ obligations in this respect comprise conducting patent searches.

### Article 6 Miscellaneous

1. Parties shall not assign their rights and obligations under this Agreement or any part thereof without the prior written consent of the other Parties.
2. Except in case of wilful misconduct or gross negligence, the aggregate liability by each Party towards the other Parties is limited to its share in the overall Project budget as laid down in the Grant Award Decision.
3. Parties shall not be responsible for delays resulting from cases beyond the reasonable control of such Party, including, without limitation, fire, explosion, flood, war, strike, or riot, provided that the non-performing Party uses its reasonable efforts to avoid or remove such causes of non-performance and continues performance under this Agreement with reasonable dispatch whenever such causes are removed. Illness and disease of individuals involved in research activities to be performed in this Project cannot be adduced as force majeure.
4. This Agreement may not be amended, modified or terminated orally; no provision of this Agreement may be waived orally; and no amendment, modification, or waiver of any of the provisions hereof shall be binding unless in writing and signed by all Parties.
5. In the event of nullity, void-ability or unenforceability of one or more provisions of this Agreement, the remaining provisions shall remain in full force and effect. Parties shall replace in good faith any null, void or unenforceable provision with a valid and enforceable one such that the objectives contemplated by the Parties when entering into this Agreement may be realised.
6. The waiver of a provision or breach of an obligation or the failure to exercise any rights provided under the Agreement, shall not be deemed to constitute a waiver of any other provision or subsequent breach of an obligation and shall not prejudice the exercise of any right in the future.

### Article 7 Term and Termination

1. This Agreement shall come into force on the Effective Date and shall thereafter remain in force until three months after the date of termination or the date of conclusion of the Project through a Grant Amount Decision as defined in article 5.1 of the NWO Grant Rules 2017.
2. With regard to a Party:
   1. that has not, not timely or not properly fulfilled its obligations under this Agreement and, after having been summoned thereto in writing, has failed to remedy such breach within a reasonable term mentioned in the summons, without prejudice to the right of the other Parties to claim the losses they have suffered as a result of the default and/or termination of the Agreement;
   2. in respect of which a suspension of payment is granted, bankruptcy is declared, an administrative order is filed, a receiver is appointed in respect of its assets or a general assignment for the benefit of creditors is made; or
   3. that goes into liquidation or that permanently discontinues its business, the other Parties may terminate this Agreement vis-à-vis such Party with immediate effect, without judicial intervention or any further summons being required, by giving written notice by registered mail. The remaining Parties shall discuss on what conditions they continue the Agreement in accordance with the NWO Grant Rules 2017.
3. If the consortium agrees a new party may, during the term of the Agreement, join the consortium after NWO has approved the request for change to that effect. A new party becomes a Party to the Agreement by signing the Accession document (Annex 5) by the new party and the Project Leader. Parties authorize the Project Leader to sign the Accession document on their behalf. Accession shall take effect on the date specified in the Accession document.
4. All articles except article 7 shall survive termination of this Agreement.

### Article 8 Applicable law and disputes

This Agreement is governed by Dutch law. Any dispute arising from or in connection with this Agreement shall be submitted to the district court of **Place district court**, the Netherlands. Parties shall however endeavour first to settle any and all disputes arising from or in connection from this Agreement amicably.

## Signatures

For each grant recipient, the following information must be completed and signed.

Organisation Grant Recipient: **Organisation Grant Recipient**

Place & Date: **Place & Date**

Signature: **Signature**

Name Legal representative, function: **Name Legal representative, function**

For each project stakeholder, the schedules below should be completed and signed.

Project Stakeholder: **Project stakeholder**

Place & Date: **Place & Date**

Signature: **Signature**

Name Legal representative, function: **Name Legal representative, function**

### Contribution in kind (if applicable)

|  |  |
| --- | --- |
| Waives (Option) to IPR | Yes  No |
| Amount in kind | € amount |

### Contribution in cash, payment schedule and invoicing (if applicable)

Invoicing

*NWO will send digital invoices to the contributing Project Stakeholders*, *being co-funder(s). All in cash contributions are quoted exclusive of VAT. Contributions are by default invoiced as a lump sum at the beginning of the project (at the moment when all starting conditions have been fulfilled). If desired, the contribution can be made in up to four (4) instalments spread over four (4) years.*

|  |  |
| --- | --- |
| Waives (Option) to IPR[[1]](#footnote-1) | Yes  No |
| Amount in cash | € amount |
| The amount is invoiced in 1 instalment.  *This instalment will be invoiced after the signing of the contract.* | Yes  No |
| If no, in how many equally divided annual instalment to be invoiced (maximum in four (4) instalments)?  *The first instalment will be invoiced after the signing of the contract and the subsequent ones one year later each time.* | instalments |

*In the case of an in cash contribution, please enter the necessary information (for administrative purposes). This information will be treated as confidential.*

|  |  |
| --- | --- |
| Full name organisation | Full name organisation |
| Name financial contact person | Name financial contact person |
| Phone number financial contact person | Phone number financial contact person |
| E-mail address to send the invoice to | E-mail address to send the invoice to |
| Invoice address | Invoice address |
| ZIP code and address | ZIP code and address |
| Country | Country |
| Payment description (e.g. PO number) | Payment description |
| Eventual additional description | Eventual additional description |
| A new PO number with every tranche | Yes  No |
| Contact person for the new PO number | Contact person fort he new PO number |
| Chamber of Commerce registration number | Chamber of Commerce registration number |
| VAT registration number | VAT registration number |

## Annex 1: Intellectual property, Publication and Confidential Information

### STANDARD TEXT NWO (not applicable if tailor-made agreements is chosen)

#### 4.1 Additional Definitions

Confidential Information All information, including Background Information of whatever nature or in whatever form which is disclosed by one of the Parties (‘the Disclosing Party’) to one of the other Parties (‘the Receiving Party’) in connection with the Project after the Effective Date and which

* + 1. if disclosed in tangible form, was marked as Confidential at the time of such disclosure; or
    2. if disclosed orally, was stated to be confidential at the time of such disclosure and confirmed as confidential in writing within thirty (30) days after disclosure; or
    3. should reasonably be understood to be confidential.

Field of Use The business field of use of a Project Stakeholder to be specified, in which the Project Stakeholder concerned can use the Option to apply for a licence on Results on a commercial basis.

IPR Intellectual Property Rights, including industrial property rights, database rights, and any similar forms of statutory protection, arising or available wherever in the world.

Option The right of the Project Stakeholder(s) that co-fund the Project by contributing at least ten percent (10%) of the overall project budget (as laid down in the Grant Award Decision) to acquire an (exclusive) right to use Results generated by the Grant Recipient(s) in a Field of Use or acquire ownership of those Results.

#### 4.2 Results and Background Information

1. Results are owned by the Party that generates them.
2. In case Results are generated by two or more Parties jointly, the contribution of each of the Parties to these Results being indivisible, these Results will be jointly owned by such Parties in equal undivided shares, unless it is obvious that this division of ownership is disproportionate in relation to the respective contributions to such Results. The co-owners will, by mutual agreement, draw up written agreements with regard to the protection and commercial use of these joint Results in a ‘Joint Ownership Agreement’ (‘JOA’). In such JOA, the co-owners shall make arrangements for the commercial use of the joint Results, and/or for licensing the joint Results to third parties. These arrangements shall comply with the NWO Grant Rules 2017 and European legislation on state aid.  
   However, where no JOA has yet been concluded, each Party shall be:
   1. entitled to use their jointly owned Results for non-commercial research and education on a royalty-free basis, and without requiring the prior consent of the other joint owner(s), and
   2. free to use such Result for its own purposes (including commercial activities) subject to the conditions under a) and b) hereunder; and/or
   3. entitled to grant non-exclusive licenses to third parties, without any right to sub-license, subject to the conditions under a) and b) hereunder:
      1. at least forty-five (45) days prior notice must be given to the other Party.
      2. a fair and reasonable market price must be provided to the other Party to be agreed upon in writing, in advance.
3. This Agreement does not affect the ownership of any Background Information.
4. Prior to the start of the Project, Parties will identify and agree on the Background Information that they will make available for the purpose of executing the Project. Such Background Information shall be listed in Annex 4. Legal restrictions or limits of use on such Background Information, if any, shall not contravene the terms of This Agreement and in particular articles 4.2.5 and 4.2.6.
5. Parties hereby grant, rights to use their Background Information free of charge on a non-exclusive, non-transferable, and non-sublicensable basis to the Party needing the Background Information for the purpose of executing the Project and solely for the duration of this Agreement.
6. If Background Information is needed for the (commercial) exploitation or the utilisation of Results, the Party holding the rights to that Background Information will, on conditions to be agreed upon, grant the right of use concerned to the Party requiring such rights. These conditions will be reasonable or on market terms.
7. Parties hereby grant rights to use their Results free of charge on a non-exclusive, non-transferable, and non-sublicensable basis to the Party needing Results for the purpose of executing the Project and solely for the duration of this Agreement.

#### 4.3 The Option

1. Grant Recipient(s) hereby grant to the Project Stakeholder(s) that contribute(s) at least ten percent (10%) of the Project budget an Option to acquire an exclusive or non-exclusive right to exploit Results in the respective Project Stakeholder’s Field of Use or acquire ownership of those Results.
2. A Project Stakeholder may exercise the Option for any specific part of the Results by written notification to the respective Grant Recipient within three (3) months of being informed of the Results.
3. Upon exercising the Option, Parties concerned shall promptly enter negotiations in good faith to reach agreement on fair and reasonable conditions within six (6) months of the written exercise of the Option. The licence or transfer agreement shall include at least the following provisions:
   1. The respective Project Stakeholder obtains the right to use and exploit the Results in its Field of Use;
   2. The respective Project Stakeholder pays to the Grant Recipient(s) that own the Results a fair and reasonable market price. If the Project Stakeholders have contributed at least thirty percent (30%) of the Project Budget, Parties may consider the contributions as an indication of a fair and reasonable market price in exchange for a non-exclusive licence in the Field of Use of the respective Project Stakeholder, notwithstanding state aid rules;
   3. The respective Project Stakeholder shall make best endeavours to exploit the Results in its Field of Use and report to the Grant Recipient(s) on the progress of the exploitation frequently;
   4. Grant Recipients shall retain the right at all times to use Results for further non-commercial research and education on a royalty-free basis;
   5. Grant Recipient(s) shall not be held liable for any loss or damage incurred by the respective Project Stakeholder arising out of the use or exploitation of Results. The respective Project Stakeholder shall indemnify Grant Recipient(s) against claims from third parties arising out of the use or exploitation of Results by or through the respective Project Stakeholder.
   6. The licence or transfer agreement shall take into account the Ten Principles for Socially Responsible Licensing as laid down in the NFU report on ‘Ten Principles for Socially Responsible Licensing’.
4. In the event that a Project Stakeholder has failed to exercise the Option within the set timeframe the Option for the Results concerned shall lapse and the respective Grant Recipient(s) shall be free to offer the Results concerned to a third party.

#### 4.4 Publication, Confidentiality and Personal Data

1. Article 4.1 of the NWO Grant Rules 2017 is applicable.
2. Before a Publication can be released, each Party intending to publish shall submit a draft of the Publication thirty (30) days before publication thereof to the other Parties.
3. Parties may object to the publication within thirty (30) days after receipt of a copy of the intended Publication on any of the following grounds:
   1. that they consider the protection of Results and/or the objecting Party’s Background Information would be adversely affected by the proposed Publication;
   2. that the intended Publication includes Confidential Information of the objecting Party.

The publishing Party shall, in mutual consent, adapt the Publication in such a way that the objections are removed. However, the scientific Integrity may not be affected. The Publication may be delayed by the Project Leader for a maximum period of four (4) months following the submitting date mentioned in clause (2) of this article in order to file a patent application. Parties may extend this period by mutual consent up to six (6) months.

1. For the duration of this Agreement and for five (5) years thereafter, Parties shall be obliged to observe secrecy in respect of all Confidential Information from the other Party with which they become acquainted during the Project and/or in respect of which they have been informed explicitly that confidentiality is necessary for the other party. This duty to observe confidentiality shall not be applicable to:
   1. information which is in the possession of a Party at the moment that this Party is informed of the Confidential Information;
   2. information which is generally known on the day on which a Party is informed thereof by the other Party;
   3. information which has been legitimately obtained by a Party from third parties, without restriction of disclosure;
   4. information which has become generally known after the date on which a Party has been informed thereof, other than through the illegitimate action or negligence of this Party;
   5. information that is required to be disclosed by an order of any court of competent jurisdiction or governmental authority provided that the Receiving Party if legally possible (i) notifies the Disclosing Party; and (ii) complies with the Disclosing Party’s reasonable instructions to protect the confidentiality of the Confidential Information.
2. Parties shall process personal data in accordance with the applicable data protection legislation. In the event an exchange of personal data between Parties is required for the execution of the Agreement, Parties shall separately make appropriate additional arrangements in line with the applicable data protection legislation.

### TAILOR-MADE AGREEMENTS on intellectual property, publication and confidential information (delete if not applicable)

Enter your own agreement *(Use Word Style ‘Kop 4’ to define any headings. See article 4 for minimum agreement requirements)*

## Annex 2: Research Proposal, including Declaration(s) co-funding

Attach Annex 2

## Annex 3: Grant Award Decision NWO

Attach Annex 3

## Annex 4: Background Information notice

It is agreed between Parties that, to the best of their knowledge the following Background Information is hereby identified and agreed upon for use for performance of the Project.

Any limitations included in this Background Information Notice shall not contravene the terms of this Agreement and shall not exclude that, if Background Information is needed for the (commercial) exploitation or the utilisation of Results, the Party holding the rights to that Background Information will, on conditions to be agreed upon, grant the right of use concerned to the Party requiring such rights. These conditions will be reasonable or on market terms.

| Name Party | Description of Background Information | Specific limitations and/or conditions for use for performance of the Project |
| --- | --- | --- |
| Name Party | Description of Background Information | Explanation |
| Name Party | Description of Background Information | Explanation |
| Name Party | Description of Background Information | Explanation |

## Annex 5: Financial information NWO

Bank details Dutch Research Council – NWO:

IBAN: NL89ABNA0642330824

BIC: ABNANL2A

Bank address:

Postbus 283

1000 EA Amsterdam

Invoicing address:

Nederlandse Organisatie voor Wetenschappelijk Onderzoek – NWO

Afdeling Financiën

Postbus 93138

2509 AC Den Haag

Business address:

Laan van Nieuw Oost Indië 300

2593 CE Den Haag

VAT number: NL.002305884.B01

KvK Den Haag (Chamber Of Commerce): 27367015

## Annex 6: Accession document

Accession

of a new party to the Agreement of the Project entitled: [project title]

[Name Project Stakeholder] having its principal office in [address], [country], hereinafter referred to as ‘[ZZ]’, legally represented by [name legally representative]

hereby agrees to become a party to the aforementioned Agreement and accepts all rights and obligations thereunder as of [date]**.**

[Name project leader] as stated in the Grant Award Decision of the Project [project title] attached to the Agreement, belonging to the full signed Consortium Agreement in your ISAAC account, in the project documents tab, hereinafter referred to as Project Leader

hereby declares that the Parties have agreed to the accession of [Name Project Stakeholder] to the Agreement as of [date], and that the Project Leader is authorized by the Parties to sign this Accession document.

This Accession document has been made and signed in duplicate in.

Organisation Grant Recipient: On behalf of the consortium of

[Name Organisation Project Stakeholder][project title]

Place & Date: [Place & Date]Place & Date: [Place & Date]

Signature: [Signature]Signature: [Signature]

Name Legal representative, function: Name of Project Leader

[Name Legal representative, function][Name project leader]

1. VAT is applicable to the contribution of a Project Stakeholder unless this Project Stakeholder waives any (Option to) IPR it might have under this Agreement in consideration of its contribution. For any avoidance of doubt, this waiver does not include IPR that a waiving Project Stakeholder has generated itself or jointly. [↑](#footnote-ref-1)