

Project ELIXIRxNextGenIT
“ELIXIR x NextGenerationIT: consolidation of the Italian Infrastructure for Omics Data and Bioinformatics”
Area ESFRI “Health and Food”, financed by European Commission – NextGenerationEU Codice N° IR0000010

Annex 4

User Access Agreement

Agreement number:

between

Provider:

and

NOA User:

1. Parties to the Agreement

This Agreement is made

BETWEEN

Institute of Biomembranes, Bioenergetics and Molecular Biotechnology, represented by its Director prof. Cesare Indiveri, as provider of ELIXIR-IT

(in the following also called “Provider”)

hereinafter referred to as the “**Provider**”

AND

 (name of the NOA user Institution),

hereinafter referred to as the “**User**”.

The **Provider** and the **User** are hereinafter jointly referred to as the “**Parties**”.

2. Preamble

ELIXIRxNextGenIT project partners possess background knowledge (know-how, title to intellectual and/or industrial property) and proven experience in the area that is the subject of this research. The User is interested in conducting research activity to be carried out at the ELIXIRxNextGenIT Facility Manager. And in view of the foregoing, the Parties hereby agree to the following:

3. Definitions

Words beginning with a capital letter shall have the meaning defined herein, including its Annexes.

Additional definitions

- **Confidential Information:** any information, in whatever form or mode of transmission, which is disclosed by a Party (the “**Disclosing Party**”) to the other Party (the “**Recipient**”) under and for the undertaking of this Agreement and during the hosting period (relevant only in case of collaboration). A Non-Disclosure Agreement (Annex V) shall be signed prior to any disclosure of Confidential Information by the Parties sharing such Information.
- **Agreement:** this document and its annexes.
- **ELIXIRxNextGenIT Facility Manager:** The individual responsible for a specific facility handling all matters related to the NOA activities at the facility
- **ELIXIRxNextGenIT Installation:** the premises, the facilities, and the platforms of the ELIXIRxNextGenIT Facility Manager where the Project will be performed.
- **Equipment:** the specialised equipment owned/managed by the ELIXIRxNextGenIT Facility Manager.
- **Home Institution:** the home institution of affiliation of the User.
- **Intellectual Property Rights:** shall mean, but is not limited to, all copyrights, patents, trademarks (whether registered or not and all applications for any of them), trade secrets, know-how or other intellectual property rights.
- **Sample Material:** shall mean the original material provided by the User.
- **Project:** the scientific project, described in Annex I, to be carried out by the User Group at the ELIXIRxNextGenIT Operator’s Installation.
- **Project Leader/User:** the person responsible for the Project and the main user of the ELIXIRxNextGenIT Installation.
- **Remote Access:** a type of access for which no visit is needed, e.g. sample and stain procurement.
- **Results:** any information, data and/or know-how, whether patentable or not, patented or not, as well as Intellectual Property Rights pertaining thereto, generated by the Parties and arising from the performance of the Project under this Agreement.

4. Purpose of the Agreement

With the signing of this agreement the ELIXIRxNextGenIT Facility handled by the Provider will grant to the User the access to the ELIXIR-IT services as described in the guidelines for the ELIXIRxNextGenIT NOA 1st call.

The User will benefit from the appropriate scientific, technical and IT resources that are strictly needed for carrying out the Project under this Agreement, as described in Annex I. Therefore, the present Agreement

defines the terms and conditions to access to the services provided by the ELIXIR-IT research infrastructure in the frame of the ELIXIRxNextGenIT project.

Access to ELIXIR-IT's scientific, technical, and IT resources is subject to the explicit acceptance of ELIXIR-IT's Terms of Use (ToU), Acceptable Use Policy (AUP), and Services Privacy Policy (Annexed to this Agreement).

5. Data and Material

The **User** agrees that the **Material and Data** shall be used in accordance with the rules and regulations described in **Annex II**.

The **User** is responsible for obtaining the necessary **permits and authorizations** (see **Annex II**) for the execution of the **Project**.

Additionally, the **User** must sign the **Material and Data Transfer Agreement**, provided as **Annex III**.

6. Intellectual property rights.

The results generated in the framework of the Project are exclusive property of the User.

7. Confidentiality of information

The Parties agree that all Confidential Information disclosed by a Party (the "Disclosing Party") to the other Party (the "Recipient") under and for the undertaking of this Agreement shall be maintained in confidence.

This confidentiality undertaking shall apply retroactively to the period during Agreement negotiations or scientific discussions between the Parties and notably between the researchers.

- a) The Recipient hereby undertakes, until no longer needed after the end of this Agreement:
- not to use Confidential Information otherwise than for the purpose of the performance of the Project under the Agreement as defined in the Article 4 (Purpose of the Agreement) and the Annex I;
 - not to disclose Confidential Information to any Third Party unless (i) having received the prior written consent of the Disclosing Party and (ii) said Third Party enters into an appropriate agreement with Recipient;
 - to ensure that internal distribution of Confidential Information by a Recipient shall take place on a strict need-to-know basis according to the Article 4 (Purpose of the Agreement) and Annex I;
 - on written demand, to return to the Disclosing Party all Confidential Information, which has been supplied to or acquired by the Recipient including all copies thereof and to delete all information stored in a machine-readable form. If needed for the recording of on-going obligations or due to statutory requirement, the Recipient may however request to keep a copy for archival purposes only;
 - both Parties further undertake to ensure that their staffs, as referred to hereinabove, comply with the provisions of article of the Agreement regarding Confidential Information and who are bound to the

Recipient by obligations of non-use and secrecy no less stringent than those contained in this Agreement.

- b) The above shall not apply for disclosure or use of Confidential Information, if and in so far as the Recipient can show that:
- the Confidential Information becomes publicly available by means other than a breach of the Recipient's confidentiality obligations;
 - the Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential;
 - the Confidential Information is subsequently received from a third party who has the lawful right to disclose such information and without notice of restriction on further disclosure;
 - it was developed completely independently, and in good faith, by staff who did not have access to the Confidential Information;
 - it was already in the Recipient's possession prior to the execution of the Agreement, without any secrecy obligation or restriction of use.
- c) The Recipient shall apply the same degree of care with regard to the Confidential Information disclosed within the scope of this Agreement as with its own confidential and/or proprietary information.
- d) Each Party shall promptly advise the other Party in writing of any unauthorised disclosure, misappropriation or misuse of Confidential Information after it becomes aware of such unauthorised disclosure, misappropriation or misuse.
- e) If any Party becomes aware that it will be required, or is likely to be required, to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, it shall, to the extent it is lawfully able to do so, prior to any such disclosure notify the Disclosing Party, and comply with the Disclosing Party's reasonable instructions to protect the confidentiality of the information.

Information given by a Party to the other Party in connection with the present Agreement is provided as is, without warranty of any kind. Consequently, the Party who receives the provided information will be solely liable for the subsequent use of this information and shall bear all the related risks and costs.

8. Data Protection

By signing this Agreement, the Parties agree to process personal data in pursuit of its objectives, in compliance with Legislative Decree No. 196 of June 30, 2003 (Personal Data Protection Code), as amended and supplemented by Legislative Decree No. 101/2018, which aligns national legislation with European Regulation 2016/679 (General Data Protection Regulation – GDPR). This regulation governs the protection of natural persons regarding the processing of personal data and the free movement of such data. The Parties mutually consent to the processing and disclosure of their respective personal data in accordance with the methods and purposes outlined in the aforementioned privacy notice.

The processing of data through the provided services shall be governed by the terms and conditions specified in the service privacy policy annexed to this Agreement.

Regarding ELIXIR-IT, the privacy notice on personal data processing is available in the dedicated section of the institutional website at <https://www.cnr.it>.

9. Publication

Outcomes (publications, presentations, patents, etc.) resulting from work carried out in the frame of this Project must acknowledge ELIXIRxNextGenIT as follows: “This work (or Part of this work) was granted by the European Commission – NextGenerationEU, Project ELIXIRxNextGenIT “ELIXIR x NextGenerationIT: consolidation of the Italian Infrastructure for Omics Data and Bioinformatics”, code n. IR0000010. The Facility Manager and the Scientific Coordinator of the ELIXIRxNextGenIT must be informed of such outcomes.

10. Due diligence

Both Parties shall exercise due caution and reasonable diligence to preclude conflicts that may affect the application of this Agreement. Each Party is aware of the laws and regulations relating to its activity within the framework of the performance of the Project. In the field of health, safety and environment, in particular, each Party acknowledges that it is aware of the applicable rules, the observance of which is an essential part of its obligations. Each party shall perform the Agreement in compliance with their national and international laws in the framework of the project.

11. Amendment of the Agreement

No changes, alterations or modifications to this Agreement will be effective unless by mutual agreement in writing and signatures by the authorised representative of the Parties.

12. Reporting

The User accepts to receive and answer to queries from the ELIXIRxNextGenIT project after the project termination concerning e.g.: a brief report on the completion of the Project, a satisfaction survey about the services delivered; a statement on the satisfaction of the services used during the hosting period, for outreach purposes (website, social media, reports).

13. Miscellaneous

This Agreement consists of this core text and the Annexes, which are part of the Agreement. This Agreement supersedes all previous statements made by either Party and all previous agreements, understandings and arrangements between the Parties in respect of the Project. In the event any portion of this Agreement is deemed to be invalid or unenforceable, such portion shall be deemed severed and the Parties agree that the remaining portions of this Agreement shall remain in full force and effect. Neither Party is authorised to represent the respective other Party or to execute or accept any declaration on behalf of the respective other Party. Each Party hereto retains the right to conduct its own business, operations or activities as it sees fit. Nothing contained herein shall be interpreted or construed as precluding Parties from carrying out independent research directed in the same field than the Project.

14. Termination

Either of the Parties shall be duly entitled to terminate the Agreement for the following reasons:

- **By mutual consent of the Parties:** The User shall notify the ELIXIRxNextGenIT Operator in writing of that intention, to enable it to proceed to terminate the Agreement.
- **Due to material breach of obligations:** In the event of any material default by either Party in performance of any of its obligations under the Agreement, the non-defaulting Party may, when such default is capable of remedy, give the defaulting Party a written notice to rectify such default within the time specified therein, or by default, within one (1) month after receiving from the non-defaulting Party such written notice. If the defaulting Party fails to comply with the requirements of the said notice, or in the event that the defaulting Party's default be incapable of remedy, the non-defaulting Party shall be entitled to terminate the Agreement by serving notice in writing on the defaulting Party to such effect, with no compensation and without prejudice to any rights under the Agreement or otherwise.
- **In case of insolvency or bankruptcy:** If either Party becomes insolvent or if a petition in bankruptcy is filed against it, or a receiver, administrator, administrative receiver or liquidator is appointed (hereinafter the "Insolvent Party"), the other Party shall have the right to terminate the Agreement immediately on notifying the Insolvent Party or receiver, administrator or liquidator or on notifying, anyone in whom the Agreement may become vested, without prejudice to the existing rights and obligations of the Parties.
- **Due to force majeure:** If for any reason a Party is forced to terminate this Agreement, a notice of termination shall be sent to the other Party through a reliable means of communication.

Termination shall not affect any accrued rights or duties, and the provisions of the Confidentiality and Intellectual property rights clauses of this Agreement.

15. Signature

The Parties sign the Agreement in digital format in one original copy with digital legal signature.

16. Signatures

For the ELIXIRxNextGenIT Provider:

Name of the Representative _____

Affiliation _____

Signature

Place and Date

For the ELIXIRxNextGenIT Provider Facility Manager:

Name of the Representative _____

Affiliation _____

Signature

Place and Date

For the User:

I confirm that I intend to execute the Project applied for and agree to the terms and rules outlined in this Agreement.

Name _____

Signature

Place and Date

For the ELIXIRxNextGenIT acknowledgement,

The Scientific Coordinator **Francesca De Leo**

Signature : _____

Place and Date: _____

17. List of Annexes to the User Access Agreement

Annex I - Description of the Project

Annex II - Sample Description

Annex III - Material Transfer Agreement

Annex IV - Standard Non-Disclosure Agreement

Annex I – Description of the Project

Proposal filling

Research proposals must be submitted in English. Abbreviations should be explained. The proposal should include:

- Project Title.
- Researchers and research institutions involved (general information and contacts)
- Brief curriculum vitae of the proposer (max 1000 words)
- Abstract (max 300 words)
- Description and purpose of the project including Title, Innovation, Approach, Aims, preliminary data in support of the proposed experiments, experimental design and anticipated results (max 1000 words)
- Requested service(s), as described in Annex I of this call
- Nature and number of samples to be analysed and any technical information.

Annex II – Sample Material

Safety concerns

If applicable, add a description

Ethical concerns

If applicable, add a description

Ethics compliance

If applicable, add a description

General use of Sample Material

The ELIXIRxNextGenIT Facility Manager agrees that the Sample Material:

- should be used solely for the project purposes.
- should only be handled by appropriately trained persons in suitable laboratory conditions.

The Sample Material supplied to the ELIXIRxNextGenIT Facility Manager does not grant or imply any transfer or concession of Intellectual property rights. In particular, this supply does not include the right for the ELIXIRxNextGenIT Facility Manager to sell, rent or transfer the Sample Material to Third Parties.

The Users is responsible for maintaining, using and sending the Sample Material and, where relevant, its packaging. To use appropriate precautions to minimise any risk of harm to persons, property, and the environment, and in compliance with domestic and foreign laws, regulations, and guidelines.

The User agrees to provide written notice to the ELIXIRxNextGenIT Facility Manager when the purpose for which the Sample Material is used has changed significantly from the purpose that was stated at the time of supply.

Warranty-liability

As the Sample Material is of experimental nature, the ELIXIRxNextGenIT Facility Manager does not provide any warranty as regards its condition, activity, usefulness, efficiency and purity. ELIXIRxNextGenIT Facility Manager cannot guarantee the absence of any contamination, including viral and microbial.

The User shall be solely liable for all risks, in particular in the event of material damage or any other incident or loss that may be occasioned by the use, testing or manipulation of the Sample Material.

Annex III – MATERIAL AND (if applicable) DATA TRANSFER AGREEMENT

BETWEEN

Consiglio Nazionale delle Ricerche (CNR), as partner of ELIXIRxNextGenIT, represented by the (INSERIRE NOME DIRETTORE ISTITUTO CNR O DIPARTIMENTO UNIBA (in the following also called “Provider”)

(in the following also called “Provider”)

AND

... (name of the NOA user Institution),

hereinafter referred to as the “User”.

Recitals:

- a) The project "ELIXIR x NextGenerationIT: consolidation of the Italian Infrastructure for Omics Data and Bioinformatics" (ELIXIRxNextGenIT); is a project in the framework of NextGeneration EU plan with the aim of empower the capacity of the Italian node of ELIXIR. The European infrastructure for life science data, supporting basic and translational research by providing bioinformatics services and facilitating access to data in the fields of biological sciences. The Italian Node of ELIXIR is coordinated by the National Research Council (CNR) and has been formally established as a Joint Research Unit (JRU) among all partners including research institutes, universities and technological institutions.
- b) Provider is the CNR or University of Bari as partner of ELIXIRxNextGenIT (which has extensive expertise, skills and specific Know-how on the bioinformatic services offered through ELIXIR-IT platforms and validated by QM Policy approved;
- c) Recipient is _____;
- d) Parties are interested in discussing possibilities of entering into research/industrial relationships or to promote and transfer research applications in the industrial field in order to _____ (in the following called the “Purpose”); (precisare le finalità del trasferimento dei dati e del materiale: test, misure, ecc.).
- e) Recipient received from Provider (material and) (if applicable) data for the testing/examination/etc _____ in order to _____ in the following called the “Purpose”);

- f) Provider is prepared to supply Recipient with (Material) (if applicable) and Data and Recipient is willing to accept such (Material and) (if applicable) Data from Provider under the terms and conditions as set forth hereinafter.

Accordingly, the Parties have agreed as follows:

Definitions:

- **Recipient scientific coordinator:** The name and address of the recipient scientist authorized by the Recipient organization authorized to receive and use the Material/Data;
- **Recipient:** Organization receiving the Material/Data;
- **Provider:** CNR or University of Bari (as partner of ELIXIRxNextGenIT) (if applicable);
- **Material/Data:** Shall not include: Modifications, or other substances created by the recipient through the use of the Material/Data;
- **Modifications:** Substances created by the Recipient which contain/incorporate the Material/Data;
- **Commercial purposes:** The sale, lease, license, or other transfer of the Material/Data or modifications to a for-profit organization. Commercial purposes shall also include uses of the Material/Data or Modifications by any organization, including Recipient, to perform research contract, to screen compound libraries, to produce or manufacture products for general sale, or to conduct research activities that result in any sale, lease, license, or transfer of the Material/Data to a for-profit organization;
- **Non-Profit Organization:** A University or other institution of higher education or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

Provider agrees to transfer to Recipient the following Material (and Data):

1. _____ (indicare quantità e specifiche tecniche precise)
(in the following called "Material/Data").

This (Material) and related Data transferred by Provider to Recipient (in the following called "Data") are the property of Provider, including Background Technology (any know-how and patent right in connection with the Purpose, developed or acquired by either Party prior to the signing, or thereafter independently of the performance of the scientific activity but useful for the execution of such Purpose). Each Party shall retain full ownership of its Background Technology and shall be granted the right to use the other Part's Background Technology for the sole purpose of performing the scientific activity. Each Party will be free to disclose its Background Technology at any time during the performance of the Scientific Program (scegliere una delle 2 definizioni) under the Agreement.

Any other use of data beyond the aim established in this agreement is strictly prohibited. Commercial use of ----- data or results deriving from ----- data is strictly prohibited as well, unless approved by an ad hoc agreement extending the here described Terms of use.

2.

This Material (Data) will be used by Recipient solely in connection with the Purpose of this Agreement, for _____ and more specifically for _____ (*specificare*). By signing this Agreement and accepting the Material (Data), Recipient is considered responsible for appropriate handling of the Material (Data) and guarantees that suitable conservation conditions are available and will be applied in the recipient's laboratory. This Material (Data) will not be multiplied or reproduced in any other way, further distributed to others without Provider's written consent. This Material and the Data shall not be used for commercial purposes, such as production or sale of _____ (*indicare, se necessario*). Recipient will normally test the Material and at least once a year, at the very latest one year after the date of signature of this Agreement, report to Provider in written form. All costs arising out of the tests are for account of Recipient, not in any way Recipient can require any kind of allowance from Provider. Provider is at all times entitled to inspect the use of the Material at Recipient without any written or telephonic announcement in advance. (da cancellare per DATA Transfer).

3. To the extent permitted by law, Recipient agrees to treat in confidence, for a period of 3 (three) years from the date of its disclosure, **any of the Material** and/or Data that is/are marked "CONFIDENTIAL" (hereinafter "Confidential Information"), except for information that:
- was previously known to Recipient or that is or becomes publicly available through no fault of Recipient or
 - which is lawfully disclosed to Recipient without a confidentiality obligation or
 - that is independently developed by Recipient without the benefit of any disclosure by Provider.

Recipient shall use the same degree of care in maintaining the confidentiality of the Confidential Information as it uses with respect to its own information that is regarded as confidential and/or proprietary. Furthermore, Recipient will restrict the access of all Confidential Information to only those of its employees, consultants and external collaborators who have need to be informed for the purposes for which the Confidential Information is provided.

4. All publications or any other dissemination relating to the use of the Material/Data shall indicate acknowledge ELIXIRxNextGenIT as follows: "This work (or Part of this work) was granted by the European Commission – NextGenerationEU, Project ELIXIRxNextGenIT "ELIXIR x NextGenerationIT: consolidation of the Italian Infrastructure for Omics Data and Bioinformatics", code n. IR0000010. The Facility Manager and the Scientific Coordinator of the ELIXIRxNextGenIT must be informed of such outcomes.

5. The Material and/or Data is being supplied to Recipient with no warranties of any kind, either expressed or implied. There are no expressed or implied warranties of merchantability or fitness for a particular purpose, or that the use of the Material and/or Data will not infringe any patent, copyright, trademark or other third party's proprietary rights.

6. The Material and/or Data will be delivered to the Recipient after the signature of this Agreement. The Recipient will cover all the expenses regarding transport of the Material which may occur.

7. Nothing in this Material and/or Data Transfer Agreement shall or may be construed as granting Recipient any right or licence to Material or Data for any use other or further than the ___ (*specificare, tenendo conto di quanto indicato in premessa e al punto 2*), described here above.

8. This Agreement shall be governed by and construed in accordance with the laws of Italy. The Parties agree on settling any dispute, arising from this Agreement, out of court. If an amicable settlement cannot be reached, all disputes arising out of or in connection with this Agreement shall be settled in first instance by the relevant court in Rome.

9. No amendment or modification of this Agreement shall be valid or binding on the Parties unless made in writing and signed on behalf of each of the Parties by their respective duly authorized representatives.

10. This Agreement shall become effective upon the latest date of signing and will expire _____ (*indicare*). The obligations of confidentiality will be in effect for five (5) years starting from the above effective date.

PROVIDER

CNR-IBIOM or IBFM
Or University of Bari Department of

By:
Title: Director
Date:

.....

By: ___(*scientific coordinator*)

Title:
Date:

RECIPIENT

.....

By:
Title:
Date:

Certification: I hereby certify that the recipient organization has accepted and signed an unmodified copy of the present MTA

.....

By: __(*Recipient scientific coordinator*)

Title:
Date:

ELIXIRxNextGenIT

By the Scientific Coordinator:
Dr. Francesca De Leo.
Date:

.....