

ELIXIR COLLABORATION AGREEMENT
BETWEEN THE EUROPEAN MOLECULAR BIOLOGY LABORATORY
AS PART OF AND MANDATED BY THE ELIXIR CONSORTIUM
AND THE (...)
IN ORDER TO ESTABLISH AN ELIXIR NODE

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This ELIXIR Collaboration Agreement is made by and between:

The EUROPEAN MOLECULAR BIOLOGY LABORATORY (EMBL) as part of and mandated by the ELIXIR Consortium, hosting the ELIXIR Hub located at EMBL's Outstation the European Bioinformatics Institute (hereinafter referred to as "EMBL-EBI"), located on the Wellcome Trust Genome Campus in Hinxton, UK, Cambridgeshire CB10 1SD, represented by Dr. Niklas Blomberg, ELIXIR Director,

Hereinafter called "**the ELIXIR Hub**"

and

in case of a single Node:

[Name of Institute], based in [location], represented by [...]

in case of a distributed Node:

1. Alternative [this template assumes Representing Entity and would require modifications in case of the Lead Entity]: [Name of the Representing Entity, representing all other Node members listed below; hereinafter called "**the Representing Entity**",

[List all Node members, their location and representatives]

2. Alternative: [Name of the Lead Entity, "as mandated by"], based in [location], represented by [...]; hereinafter called "**the Lead Entity**",

3. Alternative: [Name of the legal entity that assembles all institutes involved], based in [location], represented by [...].

Hereinafter called "**the [name of the country, e.g. UK] ELIXIR Node**" or sometimes also called "the ELIXIR Node",

Also called the "Party" or the "Parties".

1. Preamble

The Parties hereby agree to conclude a Collaboration Agreement (hereinafter referred to as “the Agreement”) within the framework of the “*European Life-Science Infrastructure for Biological Information*” (ELIXIR), a research infrastructure organized in the form of a central hub and distributed nodes, which shall operate, manage and sustain, in the widest sense of these terms, an interlinked collection of biological data resources, tools and literature. ELIXIR is a research infrastructure of global significance based on the principles of open access and data sharing, established for the support of scientists of all disciplines.

The Parties,

- acknowledging that ELIXIR is a distributed research infrastructure with a Hub established by the ELIXIR Consortium Agreement which is located at EMBL’s outstation, the European Bioinformatics Institute on the Wellcome Genome Campus in Hinxton, Cambridge, UK;
- acknowledging that EMBL as host of the ELIXIR Hub acts as Party to the Agreement as mandated by the ELIXIR Consortium;
- acknowledging that the collaboration between the ELIXIR Hub and an ELIXIR Node takes place within the framework set by the ELIXIR Consortium Agreement, involving in particular a previous and successful application and approval to be considered an ELIXIR Node by the ELIXIR Board;
- acknowledging that the ELIXIR infrastructure combines data, compute, training, tools and standards, all of which comprise services provided by ELIXIR;
- acknowledging that ELIXIR Nodes receive all possible support, which is necessary for the successful delivery of their services through the ELIXIR Hub to the extent that it falls within the limits of its mission;
- acknowledging that the ELIXIR Nodes will collaborate in their delivery of services in order to achieve the best quality of services;
- recognising the role of the ELIXIR Member States in providing the necessary means for the establishment and operation of ELIXIR Nodes;
- recognising that the ELIXIR Hub and the ELIXIR Nodes are striving for a sustainability of funding for the provision of their services based on the service strategy as established in the ELIXIR Programme;
- recognising that ELIXIR’s challenges can best be addressed by combining European and national operations;
- recognising that data and knowledge provided by ELIXIR will be freely accessible, although controlled access shall be implemented where this is necessary;
- recognising the need for extensive training in general areas of data resources and bioinformatics infrastructures.

Agree as follows:

2. Definitions

Any word(s) or expression(s) appearing in the Agreement shall have the meaning ascribed to them in the Agreement.

Agreement The ELIXIR Collaboration Agreement including its annexes.

Application Process Application process as outlined in ECA, Art. 8.1 et. seq.

Background All information and intellectual property rights pertaining to such information owned by a Party prior to entering the Agreement.

Commissioned Services Technical and administrative services that generally fall under the responsibility of the ELIXIR Hub which are carried out by the ELIXIR Nodes – through individual or all members of the ELIXIR Node – and are funded through the ELIXIR Budget as outlined in ECA, Art. 8.6.

Commissioned Services Contract The Commissioned Services Contract outlines the Commissioned Services for the duration of the Agreement as defined in ECA, Art. 8.6. While the Agreement sets the framework conditions for all services, including the Commissioned Services - Annex 2 includes a Commissioned Services Contract Template -, individual Commissioned Services Contracts will be concluded between the ELIXIR Hub and those members in the [add country name] ELIXIR Node that actually carry out the Commissioned Services under the conditions described in Paragraph 6.3 of the Agreement.

ECA The ELIXIR Consortium Agreement.

Effective Date The Agreement shall be deemed effective when the Parties have signed the Agreement.

ELIXIR Board A body established according to ECA, Art. 6.2 and which is composed of representatives of ELIXIR's members. It is ELIXIR's principal decision-making body as defined in ECA, Art. 6.2.

ELIXIR Budget All planned revenues and expenditures for the ELIXIR Hub, which shall be prepared annually by the ELIXIR Director,

taking into account the Financial Plan and its activities as defined in the ECA and which is approved by the ELIXIR Board.

ELIXIR Hub

The central organisation coordinating ELIXIR, acting through and under the supervision of the ELIXIR Board and the leadership of the ELIXIR Director. It shall provide administrative and technical services for ELIXIR as established under the ECA. It shall use EMBL's legal personality as mandated by the ELIXIR Consortium.

ELIXIR Member State

Any State that is a signatory to the ECA.

ELIXIR Members

Signatories of the ECA.

ELIXIR Node

A national or international research institute or a group of distributed national or international research institutes in one Member State acting as one legal entity or having appointed one single legal entity to enter into a Collaboration Agreement with the EMBL to provide services with a European dimension and that have an added value for ELIXIR. In this Agreement, whenever the expression "ELIXIR Node" is used, it can mean the ELIXIR Node as a Party to this Agreement or in a general manner an ELIXIR Node depending on the context.

ELIXIR Programme

The five-year scientific programme adopted by the ELIXIR Board defining the scientific goals of ELIXIR and establishing the steps to achieve them, in accordance with the ECA, hereinafter referred to as "Programme".

EMBL

The European Molecular Biology Laboratory.

EMBL-EBI

The European Bioinformatics Institute, an outstation of the EMBL.

Head of Node

Head of Node has the meaning set forth in Paragraph 11.1.

Hub Collaboration Plan

The Hub Collaboration Plan outlines those services that the Hub commits to provide to the ELIXIR Node in line with the ELIXIR Programme and as specified under the terms and conditions of the Agreement.

Information	Strategic information concerning the technical administration, organisation and management of the ELIXIR Hub and ELIXIR Nodes. The term Information does not relate to any data held within ELIXIR.
Lead Entity [if applicable]	Based on a separate, internal agreement the Lead Entity is mandated by all members of a distributed Node to perform a series of stipulated responsibilities as outlined in the Agreement (Paragraph 4.3). The Lead Entity acts on its own name and has recourse against the other institutes based on the separate, internal agreement.
Linked Third Party	Linked Third Party has the meaning set forth in Paragraph 14.
Node-funded Services	Technical and administrative Services that fall under the administrative and financial responsibility of the ELIXIR Node and that become part of the Service Delivery Plan, which is part of Annex 1 of the Agreement; the term Node-funded Services has the same meaning as Additional Services as defined in ECA, Art. 8.5.2.
Prior Agreement [if applicable]	The effective ELIXIR Collaboration Agreement, which was based on the Template marked as “consolidated– 10 November 2014” and which should be replaced by the Agreement before the end of its term and under the conditions as described in Paragraph 17.5.
Representing Entity [if applicable]	The Representing Entity has full representative authority to act on behalf of the ELIXIR Node i.e. on behalf of all members involved in the distributed ELIXIR Node as outlined in the Agreement (Paragraph 4.3).
Scientific Advisory Board	A body established according to ECA, Art. 6.4, which is composed of independent scientists that oversee the quality of the ELIXIR activities as supervised by the ELIXIR Board and ELIXIR Director, and carried out by the ELIXIR Nodes and the ELIXIR Hub.
Services	All services labelled ELIXIR Services or ELIXIR Resources, Node-funded and Commissioned, provided by the ELIXIR Nodes and the ELIXIR Hub including associated activities and investment necessary to properly deliver the services, such as the provision of equipment, personnel and/or training.

Service Delivery Plan

The Service Delivery Plan outlines the Node-funded Services for the duration of the Agreement.

Terms of Use

Terms of service which the ELIXIR Node is responsible to establish and which all Users have to abide by when using ELIXIR Services.

User

Any individual or group of individuals, in academia and industry, that has access to and uses ELIXIR Services.

3. Purpose of the Agreement

The ELIXIR Hub operates on the basis of a central organisation as a distributed operation of individual Nodes in a coordinated way as defined in Art. 2.4 – 2.6 ELIXIR Consortium Agreement. The purpose of the Agreement is to define the relationship between the ELIXIR Hub and the [add country name] ELIXIR Node. The aim is in particular to define the ELIXIR Node's rights and responsibilities towards the ELIXIR Hub. The services provided by the ELIXIR Nodes are stipulated in the Service Delivery Plan (Annex 1: Service Delivery Plan) and the Commissioned Services Contract depending on the source of funding and depending on the administrative responsibility. Annex 2 includes a Template of a Commissioned Services Contract. Based on this template Commissioned Services Contracts will be concluded between the ELIXIR Hub and those members of the [add name of the country] ELIXIR Node that actually carry out the Commissioned Services under the conditions described in Paragraph 6.3 of the Agreement.

The general obligations of the ELIXIR Hub are part of the Agreement and will be outlined in more detail in the ELIXIR Programme. The specific services that the ELIXIR Hub provides to the ELIXIR Node subject to the Agreement are listed in the Hub Collaboration Plan as annexed to the Agreement (Annex 3: Hub Collaboration Plan).

The Agreement is not intended, and nothing contained herein shall be deemed, to create any partnership, agency or joint venture amongst the Parties or any of the Parties, nor to establish any other legal entity constituted amongst any or all of the Parties, unless all Parties have agreed and expressly stated their intention otherwise.

4. Legal Structure of the ELIXIR Node

4.1 Legal structure of the ELIXIR Node: general requirements

An ELIXIR Node shall have a legal structure and may choose to adopt any legal structure within the respective domestic laws and regulations. Possible legal structures include, but are not limited to, a company or association model, the formation of a Node consortium agreement creating a new separate legal entity or the formation of a Node consortium.

4.2 Governance structure in a distributed ELIXIR Node

A distributed ELIXIR Node, which operates through a Node consortium, shall establish a governance structure, which allows for binding decision-making processes including mechanisms to monitor and enforce the ELIXIR Node's obligations constituted through the Agreement (such as the implementation of quality assurance mechanisms and systems in accordance with Paragraph 7).

Although the responsibilities for the provision of Commissioned Services remain between the Parties of the Commissioned Services Contract the [add name of the country] ELIXIR Node allows for a governance structure that is able to authorize sanctions as a response to breaches of the Commissioned Services by e.g. expulsion of these defaulting members.

It appoints a Representing Entity which carries out the tasks as described in Paragraph 4.3.

4.3 Representing Entity in a distributed ELIXIR Node

A distributed ELIXIR Node, which operates through a Node consortium shall appoint a Representing Entity.

The Representing Entity acts for itself and on behalf of all institutes that form part of the Node consortium.

In accordance with the legal structure of the [add country name] ELIXIR Node the Representing Entity confirms:

- It represents itself and all other institutes, which form part of the [name] ELIXIR Node consortium towards the ELIXIR Hub in relation to all matters arising in the context of the Agreement unless specified in the Commissioned Service Contract.
- The [add country name] ELIXIR Node legal structure possesses a governance structure which allows the Representing Entity to
 - implement ELIXIR Board decisions and consider ELIXIR SAB recommendations;
 - monitor all ELIXIR related activities;
 - monitor compliance of all members of the ELIXIR Node with ELIXIR's regulatory framework (ECA, the Agreement, policies, etc.);

4.4 Legal structure and governance structure of the [add country name] ELIXIR Node

[Para. 4 needs to be adapted on a case by case basis]

The organisations involved in the [add country name] ELIXIR Node concluded the [name of the agreement/legal nature] which entered into force [add date].

The Node consortium is governed by the [add name of the decision making body], consisting of one representative of each of the members with the Head of Node acting as the chairperson of this committee. An international Scientific Advisory Board acts as a consultative body to provide recommendations on technical, organisational and strategic matters related to the mission of the ELIXIR Node.

The [add name of the decision making body] takes all decisions in relation to the [add country name] ELIXIR Node and as specified in the [name of the underlying Node agreement].

5. Status of the ELIXIR Node

5.1 Granting of the status as ELIXIR Node

Following the successful application to become an ELIXIR Node as described in the ECA¹ and by concluding the Agreement the

ELIXIR Node, with the [add name of the institute] serving as Representing Entity, based in [add address], represented by the [add title and name], is granted the status of an ELIXIR Node for the duration of the Agreement (hereinafter called the [add country name, e.g. UK] ELIXIR Node).

¹ Art. 8.1 to 8.4 in connection with Art. 6.2.4 n. and Art. 8.5.

5.2 Collaboration with other ELIXIR Nodes [if applicable]

The [add country name] ELIXIR Node collaborates closely with the [add country name] ELIXIR Node. The services provided by [add country name] ELIXIR Node to ELIXIR are laid out in the Collaboration Agreement with the [add country name] ELIXIR Node. The list of services provided by the [add country name] ELIXIR Node to the [add country name] ELIXIR Node will be included in the Service Delivery Plan.

6. Provision of Services by the ELIXIR Node

6.1 Types of Services

The ELIXIR Nodes provide technical and administrative services to the bioinformatics community. Depending on the source of funding and on the administrative responsibility the services either qualify as Node-funded Services (Annex 1: Service Delivery Plan) or Commissioned Services (Annex 2: Commissioned Services Contract Template).

6.2 The Service Delivery Plan

6.2.1 The Service Delivery Plan includes Node-funded Services that fall under the administrative and financial responsibility of the ELIXIR Node.

6.2.2 The Service Delivery Plan defines

- a. the nature of the Node-funded Services to be delivered, [in case of Node-Node collaboration] and depending on what has been agreed, also services to other Nodes],
- b. the dependencies and complementarities of services in the case of a collaboration involving several ELIXIR Nodes,
- c. the timeliness of Node-funded Services,
- d. the quality of Node-funded Services,
- e. the internal quality assurance system established by [the ELIXIR Node] and how the Node-funded Services will be evaluated,
- f. the long-term plans for service life-cycle management, and
- g. the safeguards that ensure that [the ELIXIR Node] continues to be able to fund and fulfil its obligation to deliver Node-funded Services.

6.2.3 The Service Delivery Plan may be revised and minor amendments may be introduced, if this is agreed or applied for by the Head of Node and authorised by the ELIXIR Director.

6.2.4 A material revision and amendment of the Service Delivery Plan may be introduced only, if the following requirements are satisfied:

- a. either of the Parties to the Agreement make an application for the respective change of the Service Delivery Plan explaining the need for the proposed changes, which are required to address changes that could not have been foreseen when the Service Delivery Plan was adopted, with a notice period of 3 months, and
- b. the Scientific Advisory Board evaluates the proposed changes, and
- c. the ELIXIR Board accepts to adopt the changes into the Service Delivery Plan.

6.2.5 The Service Delivery Plan is valid until

- a. the Agreement is terminated in accordance with ECA, Art. 8.8, or
- b. the Parties, in the process of revising this Service Delivery Plan, have failed to reach an agreement and have served notice within a period of no less than 6 months.

6.3 The Commissioned Services Contract

6.3.1 The ELIXIR Board may commission technical or administrative services from the ELIXIR Node that would normally fall under the responsibility of the ELIXIR Hub.

These services will be funded through the ELIXIR Budget, subject to the provision and receipt of sufficient funding from the ELIXIR Budget (Commissioned Services).

6.3.2 Commissioned Services Contracts are concluded between the ELIXIR Hub and those members in the [add country name] ELIXIR Node that actually carry out the services. While these members are responsible for the provision of the Commissioned Services their provision takes place within the framework of the Agreement unless specified otherwise in the Commissioned Services Contract.

6.3.3 The annexed Commissioned Service Contract Template shall be used for that purpose and to describe those Commissioned Services that these members of the [add country name] ELIXIR Node shall deliver to the ELIXIR Hub, or to other ELIXIR Nodes or to third parties as described in the ELIXIR Programme.

6.3.4 The Commissioned Services Contract Template defines the following essential parts:

- a. the nature of the services to be delivered,
- b. the dependencies and complementarities of services in the case of a collaboration involving several ELIXIR Nodes,
- c. the timeliness of the services,
- d. the quality of services,
- e. the internal quality assurance system the ELIXIR Node has established and how the Commissioned Services will be evaluated, and
- f. the long-term plans for service life-cycle management.

The content of the Template is not open for revisions between the Parties except under the conditions explained in the Template itself.

6.3.5 The ELIXIR Node shall provide a report that makes the allocation of funds in its delivery of the Commissioned Services transparent for all ELIXIR Members.

6.3.6 The Commissioned Services Contract may be revised and minor amendments may be introduced, if this is agreed or applied for by the Parties and authorised by the ELIXIR Director.

6.3.7 A material revision and amendment of the Commissioned Services Contract may be introduced only, if the following requirements are satisfied:

- a. either of the Parties to the Agreement make an application for the respective change of the Commissioned Services Contract explaining the need for the proposed changes [which are

- required to address changes that could not have been foreseen when the Commissioned Services Contract was adopted] with a notice period of 3 months, and
- b. the Scientific Advisory Board evaluates the proposed changes, and
 - c. the ELIXIR Board accepts to adopt the changes into the Commissioned Services Contract.

6.3.8 The Commissioned Services Contract will be valid until

- a. the period set in the Commissioned Services Contract, or
- b. the Agreement is terminated in accordance with ECA, Art. 8.8, or
- c. the Parties, in the process of revising the Commissioned Services Contract, fail to reach an agreement, and have served notice within a period no less than 6 months.

7. Internal Quality Assurance System

Complementary to the quality assurance through the SAB, the ELIXIR Node is responsible to implement internal quality assurance mechanisms and systems in order to ensure that the Node-funded and Commissioned Services provided within ELIXIR meet the high quality standards required.

8. User Access to Services provided by the ELIXIR Node(s)

8.1 Training

The ELIXIR Node will provide the basic training or support to the Users which it deems necessary in the use of Services provided by the Node as described in the Service Delivery Plan and/or the Commissioned Services Contract.

8.2 Terms of Use

The ELIXIR Node will provide clear Terms of Use for services. The Terms of Use should at least ensure that the User

- a. is obliged to be aware of the Node's IP and Data policies;
- b. complies with the provisions of the ELIXIR Ethics Policy as established and approved by the ELIXIR Board;
- c. complies with any further relevant ELIXIR policies in scientific, technical and administrative matters as determined and adopted by the ELIXIR Board in accordance with ECA, Art. 6.2.1. b); and
- d. is responsible for any loss, damage or injury as a result of his/her failure to comply with the ELIXIR Node's Health & Safety policies and procedures and as a result of wilful behaviour.

8.3 Breach of User Agreement

The ELIXIR Node will report to the ELIXIR Director any breaches by a User of the User Agreement, or any misuse of Services.

8.4 Refusal of access

The ELIXIR Node shall not refuse access to individual users unless it has reasonable grounds to do so.

9. Confidentiality

9.1 Confidentiality against third parties

Each Party is committed to confidentiality against third parties for all Information that have not been published and are conveyed in confidence by the other Party provided that tangible materials are marked as confidential, and provided that information given orally is identified as confidential at the time of disclosure, and confirmed as confidential in writing within fifteen (15) days. The receiving Party shall not use any Information and objects for any purpose other than in accordance with the terms of the Agreement. The disclosure of confidential Information or objects requires written consent by the other Party.

9.2 Exceptions

The confidentiality clause mentioned above under Paragraph 9.1 excludes:

- a. Objects or types of Information which have been developed or are being developed by the receiving Party independently of any disclosure by the other Party;
- b. Objects or types of Information which are part of the generally accessible state of technology or which reach this status without the fault of the receiving Party;
- c. Objects or types of Information which were already in the possession of the receiving Party at the time of the announcement or
- d. Objects or types of Information which were lawfully disclosed to a partner from a third party who is in lawful possession thereof without any commitment to confidentiality.
- e. Objects or types of Information which is needed to be communicated to comply with applicable laws or with a court of administrative order.

9.3 Term of confidentiality clause

The above-mentioned confidentiality clause ends five years after the termination of the Agreement. The Parties shall impose the same confidentiality on all of their affiliates and subcontractors, their employees and any other personnel working for them, who may have access to confidential Information.

10. Provision of Services by the ELIXIR Hub

10.1 General obligation to provide services to the ELIXIR Node

The ELIXIR Hub's general obligations with respect to all ELIXIR Nodes are described in general terms in ECA, Art. 3.3. The ELIXIR Hub's obligations to provide technical and administrative services to the whole bioinformatics community and to the Node in particular is part of the ELIXIR Programme, as evaluated by the Scientific Advisory Board and adopted by the ELIXIR Board. The ELIXIR Hub is responsible in particular to

- a. Convene the Head of Nodes Committee;

- b. Support the ELIXIR Node in the aligning of national priorities;
- c. Coordinate joint applications for grants and other funding opportunities in collaboration with other ELIXIR Nodes; and
- d. Provide technical and administrative support to the ELIXIR Node as appropriate and stipulated in more detail in the ELIXIR Programme.

10.2 Hub Collaboration Plan

The specific services which the ELIXIR Hub provides to the ELIXIR Node form part of the Hub Collaboration Plan which is annexed to the Agreement and defines the nature of services to be delivered and their timeliness (Annex 3: Hub Collaboration Plan).

11. Governance

11.1 Head of Node

11.1.1 Appointment of the Head of Node

The ELIXIR Node appoints a Head of Node.

11.1.2 Role and tasks of the Head of Node

The Head of Node is the strategic contact point for the ELIXIR Director in all matters related to the Agreement. The Head of Node is an individual employed by a member of an ELIXIR Node (in case of a distributed Node normally the Representing Entity) with a seat in the Heads of Nodes Committee.

The tasks of the Head of Node include, but are not limited to the following:

- a. Ensure and coordinate the delivery of all services provided by the Node as established by the annexed Service Delivery Plan;
- b. Monitor the delivery of Commissioned Services;
- c. Become a member of the Heads of Nodes Committee as established by ECA, Art. 6.5 and participate in its meetings;
- d. Become a member of the Collaboration Oversight Group as established by Paragraph 11.2 of the Agreement and participate in its meetings;
- e. Ensure smooth information exchange related to ELIXIR both internally within the Node and towards the ELIXIR Hub. The Head of Node reports any collaboration agreements with other Nodes within ELIXIR to the ELIXIR Director;
- f. Inform the ELIXIR Director in the event of financial difficulties that could affect delivery of Services;
- g. Ensure that the ELIXIR Director is informed of the use of the ELIXIR label in grant or further funding applications and has authorised it where necessary;
- h. Monitor the compliance of the Node with the Agreement, ELIXIR Policies, national regulations and international best practices;
- i. Monitor compliance with the Terms of Use as adopted by the ELIXIR Node;
- j. Monitor the internal quality assurance mechanism the Node has adopted;

- k. Assist the Scientific Advisory Board in carrying out the scientific evaluation of the Node; and
- l. Provide evidence to the Ethics Advisory Committee in carrying out a review of the ethical measures in place at the ELIXIR Node.

11.2 Collaboration Oversight Group

11.2.1 Composition

The Collaboration Oversight Group is established by the Parties and comprises the ELIXIR Director, the Head of Node and other individuals they may appoint.

11.2.2 Role and tasks of the Collaboration Oversight Group

The Collaboration Oversight Group is established to ensure a regular exchange of information, joint coordination and monitoring of tasks and responsibilities of the Parties. It may propose and initiate subsequent steps to further the collaboration of the ELIXIR Hub and ELIXIR Node. The rights and obligations of the ELIXIR Director and the Head of Node remain unaffected by the decisions of the Collaboration Oversight Group. The Collaboration Oversight Group shall:

- a. Identify key performance indicators and establish target values which may be used for the assessment of the service delivery of the ELIXIR Node in accordance with the Service Delivery Plan and the Commissioned Services Contract;
- b. Monitor the implementation of the Service Delivery Plan and the provision of the Commissioned Services and measure the progress of the ELIXIR Node by applying the established key performance indicators and target values;
- c. Discuss breaches of the Agreement by the ELIXIR Node or breaches of the Commissioned Service Contract by individual members and outline possible consequences; and
- d. Monitor the compliance of the ELIXIR Node with the ELIXIR Ethics Policy and other ELIXIR Policies.

11.2.3 Meetings of the Collaboration Oversight Group

The Collaboration Oversight Group shall meet at least once a year as well as at any reasonable request of any of the Parties, to follow-up and decide on all substantial issues that ensure the best implementation of the Service Delivery Plan and the Commissioned Services Contract. The Collaboration Oversight Group shall establish rules of procedure.

12. Assessment of the ELIXIR Node

12.1 Evaluation by the Scientific Advisory Board

The ELIXIR Node shall be evaluated by the Scientific Advisory Board [as determined by the ELIXIR Board]. Upon recommendation of the Scientific Advisory Board the ELIXIR Board shall decide whether it wishes to renew or terminate the Agreement (in whole or in part) with the ELIXIR Node.

12.2 Review by the Ethics Advisory Committee

The ELIXIR Node shall also provide the Ethics Advisory Committee with evidence and information concerning the ethical measures in place in order to ensure that they comply with the ELIXIR Ethics Policy as determined by the ELIXIR Board. Upon recommendation of the Ethics Advisory Committee, the ELIXIR Board shall decide whether it wishes to renew or terminate (in whole or in part) the Agreement with the ELIXIR Node.

13. Liability

13.1 Compliance with national rules and regulations

The Parties confirm that they will operate in line with any applicable national rules and regulations.

13.2 Limitations on liability

They will hold each other liable only for wilful injury or gross negligence. In the event of gross negligence, liability shall be limited to the contract-typical, foreseeable damage, unless it concerns a breach of essential contractual obligations. The same rules apply with respect to damage suffered by delegated personnel during the time of their delegation. Damage suffered by third parties will be borne by the Party whose personnel are responsible for it according to the applicable national laws.

13.3 Liabilities in case of a distributed Node

Pursuant to Paragraph 13.2, in the event that a distributed Node undertakes to jointly provide Services to the bioinformatics community, the members of the Node providing the Services are severally liable for any damage suffered by the ELIXIR Hub in relation to the Services provided.

14. Linked Third Party

14.1 Introduction

The ELIXIR Hub intends to apply for grants to the European Commission to support activities fostering ELIXIR's mission. Grant agreements are usually signed by the ELIXIR Hub in its capacity as a coordinator who thereby becomes a beneficiary to the grant. ELIXIR Nodes, or more often individual members of the ELIXIR Node, should also be involved in the grant. If the beneficiary offers their involvement as Linked Third Parties (LTP), and if they qualify as such (e.g. specified in the grant agreement) this Paragraph ensures that each participating Node member is informed about its responsibilities as outlined below and agrees to them.

14.2 Legal Link in case of LTP involvement

The Parties assume that the Agreement serves as a legal link between the ELIXIR Hub and all members of the [country name] ELIXIR Node, which are mentioned as LTP in the grant agreement and which are represented by the Representing Entity, including, if applicable, the Representing Entity.

14.3 Responsibilities by LTP

In the event of participation of any or all members of the [country name] ELIXIR Node in a grant as LTP the participating Node member(s) ensure(s) that

- they fulfil the same conditions for participation and funding under the respective Framework Programme as the ELIXIR Hub in its function as beneficiary and as outlined in the grant agreement; and
- the EC, the European Court of Auditors (ECA), and the European Anti-Fraud Office (OLAF) can exercise their rights as defined in the respective grant agreement.

14.4 Liability in relation to participation as LTP

14.4.1 Any or all participating members of the [country name] Node ensure that

- they comply at all times with the terms and conditions set out in this Agreement and in the grant agreement when implementing the action tasks attributed to them;
- in case of their participation as LTP, they shall hold the ELIXIR Hub free and harmless against any and all claims or lawsuits or otherwise cost or damage, which may result from a failure to comply with the same.

14.4.2 The LTP shall compensate the ELIXIR Hub in its function as beneficiary for any damage it sustains as a result of

- the implementation of the action by the LTP and/or
- as a result of recourse by the EC based on the grant agreement in such cases where the damage was caused by the LTP.

15. Intellectual Property

15.1 Background

The Parties shall inform each other prior to the commencement of and continually throughout the duration of service, to the best of their knowledge and belief, of any Background Intellectual Property, provided that this is necessary for the conduct of service. Each of the Parties will inform the Hub of any legal restrictions of which they are aware that may affect the use of their respective Background for the provision of services.

In respect of any Background, information or other materials supplied by one Party to another hereunder, the supplier Party shall be under no obligation or liability other than as expressly stated herein and no warranty condition or representation of any kind is made, given or to be implied as to the sufficiency, accuracy or fitness for purpose of such information or materials, or the absence of any infringement or any proprietary rights of third parties or the other Parties, by the use of such Background, information or other materials and the recipient Party shall in any case be entirely responsible for the use to which it puts such information and materials.

15.2 Liability

The Parties cannot be held liable for acts or omissions committed by the Party performing work under the Agreement. They shall not be liable for any defaults of any products or services created on the basis of knowledge resulting from the collaboration, including, for instance, anomalies in the functioning and performance thereof, nor for claims of infringement of third party rights.

15.3 Indemnities

Each Party shall indemnify each other Party against all loss, damage or injury incurred by each such other Party resulting from any claim, complaint, proceeding or cause of action brought by a third party alleging or arising from (i) gross negligent or wilful misconduct or (ii) infringement of third party intellectual property rights by itself, its employees or its sub-contractors.

15.4 Publications

The Head of Node shall give prior notice of any planned publication arising from the direct support of ELIXIR such as through the provision of Commissioned Services or dedicated ELIXIR funds including a set of the data to be published to the other Party at least 30 days before this information is made public. Any objection to the planned publication shall be made within 25 days after receipt of the notice. If no objection is made within the time limit stated above, the publication is permitted. Any objections will be resolved amicably and are only valid when the objecting Party proves that their possible intellectual property protection and/or confidential Information possibly will be damaged by the publication. The objecting Party can request a publication delay of not more than 90 calendar days from the time it raises the objection. After 90 calendar days the publication is permitted, provided that Confidential Information of the objecting Party has been removed from the publication. Publications shall mention “ELIXIR”.

15.5 Inventions

The Parties agree that all Background shall remain the sole property of an owning Party unless the Parties have agreed otherwise. Inventions, including but not limited to research, processes, developments, ideas, discoveries, concepts, know-how, methodologies, models, database rights, design rights, etc. belong to the Party whose personnel or subcontractors have made them (“Inventors”). Joint inventions belong to the Parties according to the intellectual contribution of the Inventors. The Inventors will lay down their contributions in an invention record and the Parties, as the case may be, will agree in writing in each case on the procedures for the management of the intellectual property, the commercial exploitation and the sharing of cost and revenue.

15.6 Use of the ELIXIR label

Services that are part of the Service Delivery Plan and the Commissioned Services Contract may be labelled as “ELIXIR Services” by the [name of the country] ELIXIR Node and by the ELIXIR Hub.

Neither Party shall use the ELIXIR’s label in any grant application, press release or product advertising, or for any other commercial purpose without the prior written consent of the ELIXIR Director, as mandated by the ELIXIR Board.

16. Ethics

Services delivered under the Agreement shall be in line with relevant laws and regulations and that consider best practices as well as with the Ethics Policy adopted by the ELIXIR Board. The ELIXIR Hub shall remind the ELIXIR Node of its obligation to ensure compliance of all relevant laws and regulations (and, where applicable, local ethical guidelines) when handling, storing, or processing personally identifiable data resulting from biomedical research.

The ELIXIR Node is responsible to implement its own Ethics Policy in order to ensure that the services provided within ELIXIR comply with the ELIXIR Ethics Policy and national rules and regulations as well as international standards of best practice.

17. Term and Termination of the Agreement

17.1 Term of the Agreement

The Agreement shall be effective as of the Effective Date and shall remain valid for a period of 5 years. The Service Delivery Plan and the Commissioned Services Contract remain valid for the same period of time, unless otherwise stated in the respective annex or unless they have been amended and/or terminated in accordance with Paragraphs 6.2.3 – 6.2.5 and 6.3.5 – 6.3.7 of the Agreement.

17.2 Termination by the ELIXIR Node

The ELIXIR Node may terminate the Agreement at any time before the end of the term by giving at least twelve (12) months' notice in writing to the ELIXIR Director.

In the case of a serious breach of the Agreement by the ELIXIR Hub, the ELIXIR Node may terminate the Agreement by giving at least three (3) months notice in writing to the ELIXIR Hub, as mandated by the ELIXIR Board.

17.3 Termination by ELIXIR Hub

The ELIXIR Hub, as mandated by the ELIXIR Board, may terminate the Agreement in case of a serious breach of the Agreement by the ELIXIR Node by giving at least three months notice in writing to the respective Head of Node.

The Agreement shall terminate immediately in the event that the ELIXIR Node ceases to comply with any one or more of the formal eligibility criteria as described in the ECA, which are the following:

- a. be or be part of a legal entity with legal personality under its domestic law, or in the case of multiple distributed research organisations with the status of one ELIXIR Node, to have created or appointed one accountable legal entity with legal personality under its domestic law;
- b. be located in an ELIXIR Member State and
- c. be able to demonstrate its financial sustainability in view of the activities it proposes to carry out for ELIXIR.

17.4 Requirements for renewal of the Agreement

The Agreement can be renewed by the Parties if the following cumulative conditions apply:

- a. Receipt of an evaluation of the Scientific Advisory Board that supports a continuation of the collaboration;

- b. Agreement by both Parties to renew the Agreement, which can be assumed once the Agreement would expire in less than six months before the regular end of the Agreement without any notice in writing from either Party to not renew the Agreement;
- c. The ELIXIR Node continues to fulfil formal eligibility criteria as described under ECA, Art. 8.3.b.

17.5 Replacement of Prior Agreement [if applicable]

The Parties acknowledge that the Prior Agreement is hereby replaced in its entirety by this Agreement. With the Effective Date the Prior Agreement shall be terminated and all provisions of the Prior Agreement are superseded in their entirety and replaced and shall have no further force or effect.

18. General Provisions

18.1 Inconsistencies and severability

Should any provision of the Agreement become invalid, illegal or unenforceable, it shall not affect the validity of the remaining provisions of the Agreement. In such a case the Parties to the Agreement will try amicably to agree on a new clause retrospectively which will substitute the invalid clause.

Any loopholes shall be closed by mutual agreement to fit the original intent of the Parties.

18.2 Notices

Any notice to be provided under the Agreement shall be in writing to the registered addresses of the respective Head of Node or the ELIXIR Director.

18.3 Amendments

The Agreement may be amended in writing and by mutual consent of the Parties.

18.4 Assignment

The rights and provisions detailed in the Agreement can be assigned only with prior approval of the other party.

19. Governing Law

The Agreement shall be construed in accordance with and governed by the laws of [please chose: England and Wales or Germany]. The delivery of ELIXIR Services by the ELIXIR Node shall be conducted in accordance with the applicable national laws.

20. Settlement of Disputes

Any dispute, controversy or claim arising out of or in relation to the Agreement, or the existence, interpretation, application, breach, termination or invalidity thereof, which is not settled through the good offices of the Chair or Vice-Chair of the ELIXIR Board, shall be settled on the basis of the PCA Arbitration Rules 2012. The number of arbitrators shall be three. The language to be used in the arbitral proceedings shall be English.

The appointing authority shall be the Secretary-General of the Permanent Court of Arbitration. Each Party shall bear its own costs of arbitration. The arbitral tribunal may apportion its costs between the Parties if it determines that appointment is reasonable, taking into account the circumstances of the case.

In witness whereof, the Parties have caused the Agreement to be executed by their duly authorised representatives as of the Effective Date.

[name of institute]
(Representing Entity)

The EMBL as part of and mandated
by the ELIXIR Consortium, hosting the
ELIXIR Hub

Date [Name]

Date Niklas Blomberg
ELIXIR Director

Annex 1 – Service Delivery Plan including key performance indicators

Annex 2 – Commissioned Services Contract Template

Annex 3 – Hub Collaboration Plan