**CONSORTIUM AGREEMENT including**

**DATA TRANSFER AND USE AGREEMENT and DATA TRANSFER AND PROCESSING AGREEMENT**

dated [date]

To [form a multicenter clinical research consortium to conduct a project entitled] “[InsertProjectName]” (the **Project**).

among

|  |  |
| --- | --- |
| **[#Name, Address]** | (**Party01**) |
| **[#Name, Address]** | (**Party02**) |
| **[#Name, Address]** | (**Party03**) |
| **[#Name, Address]** | (**Party04**) |
| **[#Name, Address]** | (**Party05**) |
| **[#Name, Address]** | (**Party06**) |
| **[#Name, Address]** | (**Party07**) |
| **[#Name, Address]** | (**Party08**) |
| **[#Name, Address]** | (**Party09**) |
| **[#Name, Address]** | (**Partynn**) |

(together with any other entity accessing to this Consortium Agreement, the **Parties**)

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1. Scope
	1. **Scope**. This agreement together with its Schedules (the **Consortium Agreement**) specifies the Parties’ collaboration and their rights and obligations in relation to the Project, in accordance with the project application, description and funding decision referenced in Schedule 1 (the **Project Description**).
	2. **Hierarchy**. In case of contradiction between the terms of the main body of this Consortium Agreement and the terms of any Schedule, the terms of the main body of this Consortium Agreement shall prevail, unless the relevant Schedule makes an explicit reference to the provision of this Consortium Agreement that shall be amended.
	3. **No Agency**. This Consortium Agreement does not establish any principal-agent or similar relationship between the Parties, and nothing in this Consortium Agreement shall be interpreted as allowing either Party to represent or act in the name or for the account of the other Party. The Parties shall act in all aspects as independent contractors.
2. General Undertakings of The Parties
	1. **In General**. Each Party undertakes to use reasonable endeavours to perform and fulfil, promptly, actively and on time, all of its obligations under this Consortium Agreement – including the tasks specifically allotted to it in the Project Description (the **Allocated Work**) – in accordance with:
		* 1. its institutions’ policies;
			2. the Project Description;
			3. [the rules of the Swiss Personalized Health Network (**SPHN**) and in particular the “Funding Regulations” including “General implementation regulations for the Funding Regulation“ referenced in the Project Description];
			4. the clinical study protocols specified in the Project Description and other clinical study protocols as may be approved by the Scientific Board (the **Clinical Study Protocols**); and
			5. all applicable laws and regulations, including data protection and human research laws, and ethical guidelines.
	2. **Resources**. Each Party shall maintain and allocate sufficient resources required to carry out such tasks in a timely manner.
	3. **Collaboration**. The Parties shall promptly provide each other with all documents, objects, technical aids, and resources required to carry out the Project. The Parties will coordinate the performance of the Project and will support each other to the best of their abilities.
	4. **Subcontracting**. If necessary to implement the Project, the Parties may engage subcontractors to carry out limited parts of their Allocated Works (**Subcontractors**). The subcontracting Party shall enter with the Subcontractor into a written agreement containing terms which, at a minimum, are consistent with the terms of this Consortium Agreement and shall not conflict with the terms of this Consortium Agreement. The subcontracting Party shall be liable for the acts and omissions of its Subcontractors as if those acts and omissions had been performed by such Party and, as such, shall remain responsible for the implementation of this Consortium Agreement. Access by Subcontractors to Data and Human Samples shall be governed by Section 6.4.
3. Governance
	1. **Governance Structure**
		1. In General. The Parties shall implement a governance structure for the Project as specified in Schedule 2, composed of:
			1. the project leader (**Project Leader**) and the legal sponsor (**Sponsor**) of any clinical study or human research project study in relation to the Project (each a **Study**), as specified in Schedule 1 for the initial Study or in the relevant Clinical Study Protocol of any subsequent Study;
			2. the investigators of the Project referenced in Schedule 1 (the **Investigators**);
			3. the executive board of the Consortium (the **Executive Board**);
			4. the scientific board of the Consortium (the **Scientific Board**);
			5. the other bodies as specified in Schedule 2 or as set up by the Executive Board; and
			6. the authorized representative of each Party listed in Schedule 2 (**Authorized Representative**).
		2. Project Leader.The Project Leader is responsible for the overall management of the Study and has the responsibilities specified in this Consortium Agreement and in the Project Description.
		3. Sponsor(s). The Sponsor(s) of each Study shall take the overall responsibility for the organization and management of the Study, in accordance with this Consortium Agreement, clinical practice guidelines, the Human Research Act [RS: 810.30] and its related Ordinances.
		4. Investigators.The Investigators shall be responsible for the day-to-day supervision of the Project in accordance with the work packages and tasks defined by the Project Description, with assistance from associates and colleagues as required. They shall regularly meet or hold telephone conferences together with the Sponsor and Project Leader to discuss the progress of the Project. Face-to-face project meetings will take place as required.
		5. Executive Board.TheExecutive Board is the ultimate decision-making body that takes on behalf of the Parties all strategic decisions and that supervises activities carried out by the consortium formed hereunder and the finding of amicable solutions for any unresolved disputes between the Parties relating to the execution of the Project. Its composition, organization, and responsibilities are specified in Schedule 2. The Executive Board may delegate part of its responsibilities to other boards or subcommittees.
		6. Scientific Board.The Scientific Board is responsible for decision-making in relation to the scientific direction of the Project and to implement the coordination of the Study. Its composition, organization, and responsibilities are defined specified in Schedule 2.
	2. **Compliance**. Each Party shall procure that all governance bodies set up within the Project shall abide by the terms of this Consortium Agreement in any and all of their decisions and actions;
	3. **Replacement**. Each Party shall use reasonable efforts to keep an appropriate level of continuity in representation. Each Party shall nominate a replacement upon advance notice to the other Parties in the event that the original representative is unable to attend any scheduled meeting of a governance body. If a representative can permanently no longer participate, either Party may replace such representative at any time, upon written notice to the other Parties in accordance with Section 11.6.
	4. **Binding Effect**. The Parties agree to abide by all decisions of the Executive Board, which shall be binding on the Parties. The Parties shall ensure that decisions taken by the Executive Board are adequately communicated to personnel within each Party’s organization who have a need to know such Executive Board decisions in order to implement them. [Decisions taken by other governance bodies shall only be binding if they are ratified by the Executive Board or the Authorised Representatives.]
	5. **Changes and amendments to the Project**. Changes and amendments to the Project Description may be proposed to the Executive Board by any Party and require [simple majority] approval of the Executive Board and the relevant ethics committees to be implemented, provided always that a Party whose Allocated Work, time for performance, allocation of funds are impacted, may veto such decisions of the Executive Board, provided such veto is duly justified. In such a case, the concerned Party and the Executive Board shall discuss in good faith possible solutions to enable the continuation of the Project within 3 months.
4. Financial Conditions
	1. **Allocation**. The financial conditions and grants allocated to the Parties for the completion of the Project are specified in the Project Description. Grants shall be distributed by the Project Leader specified in Schedule 1, or in the absence of a Project Leader, by the Executive Board, always in accordance with Project Description.
	2. **Costs and Expenses**. Except as expressly stated otherwise in the Project Description, each Party shall bear its own costs and expenses incurred in relation with this Consortium Agreement.
5. Confidentiality
	1. **In General**. Without prejudice to special provisions (in particular section 6 below) or laws with regard to the processing of personal data, each Party shall at any time for the duration of this Consortium Agreement, including any extension thereof, and thereafter for a period of 5 years following the termination or expiry of this Consortium Agreement, keep confidential all proprietary and/or non-public information which is marked as being confidential at the time it is disclosed hereunder or which may reasonably be regarded as confidential, including trade secrets or know-how or other related proprietary business information and data (collectively, **Confidential Information**) and shall not use such Confidential Information for any other purpose than completing the Project.
	2. **Exclusions**. Section 5.1 shall not apply to (i) any Confidential Information which one Party can reasonably demonstrate that it (a) was previously lawfully known to it, or (b) is, and/or becomes publicly available through no fault of a Party, or (c) is independently and lawfully developed by it; (ii) any disclosure required by law, provided that the receiving Party shall notify the disclosing Parties of any disclosure required by law in sufficient time so that each disclosing Party may contest such requirement, if any disclosing Party so chooses.
	3. **Return of Confidential Information.** Subject to mandatory law, upon the expiration or termination of this Consortium Agreement for whatever reason, or at the earlier request of a Party, the other Party shall, at its own costs, return or destroy all originals and copies of Confidential Information, or, in case of Confidential Information stored in electronic, magnetic or digital media, shall erase or render unreadable all materials furnished (including without limitation, working papers containing any Confidential Information or extracts therefrom) which contain Confidential Information.
6. Data and Human Samples
	1. **In General**. The Parties must process personal data and Human Samples under the Consortium Agreement in compliance with applicable data protection laws. Each Party represents and warrants that any personal data and/or Human Samples required for use in the Project that are obtained, handled or used by it will be obtained, handled or used in accordance with all relevant laws and regulations (and where applicable, ethical guidelines) regarding their collection, use, transport and subsequent disposal and that any ethics committee approvals and, as the case may be, informed patient consents required for performing the Project and for Study will be obtained prior to the commencement of the respective part of the Allocated Work as described in detail in the Project Description.
	2. **Data.** Access to, provision and exchange of data, including the metadata, between the Parties under the Project (**Data**) shall be carried out pursuant to the Data Transfer and Use Agreement (**DTUA)** substantially in the form as specified in Schedule 3, including its annexes (**DTPA and Minimal Security Requirement**).
	3. **Human Samples**. “**Human Samples”** means human biological material, including any portion of any tissue, blood, cerebrospinal fluid, cells or sub-cellular structures such as DNA, or any derivative of such human biological material such as pathogens (bacteria, viruses, fungi, parasites), serum, stem cells, cell lines and any human biological product. Access to, provision and exchange of Human Samples under the Project shall be carried out pursuant to the terms of this Consortium Agreement, any Clinical Study Protocols and the following principles:
		* 1. only Parties that are [hospitals **//or//** university/university hospital] shall be allowed to permanently store Human Samples. Collected Human Samples will be aliquoted (split) into fragments of the original sample at the microbiology institutions of each Party that is a [university/university hospital]. One aliquot will be shipped to the Party/ies performing examinations such as sequencing and metabolomics as described in the Project Description and/or the respective Clinical Study Protocol. Leftover aliquots will be stored at each microbiology institution for at least 5 years;
			2. Human Samples shall not be disposed of or acquired as such for research purposes in return for payment or other non-cash advantage. However, the foregoing shall not apply to operations such as preparation, transport, storage etc. of Human Samples;
			3. the Parties may only use the Human Samples received under this Consortium Agreement for the Project and shall either return or destroy the Human Samples after the related activities to the providing Party, or if requested by the patient.
	4. **Access**. Parties can use and may share Data and Human Samples under their custodianship with any third party providing analyses within the Project, if and to the extent required for the Project, provided that the Data and Human Samples: (i) are disposed in accordance with all necessary patient consents, regulatory approvals and the purpose of the Project, under terms at least equivalent to those of this Consortium Agreement and the DTUA and (ii) remain confidential and are published only after the publication of the Results from the Project by the Executive Board pursuant to Section 8.
7. Intellectual Property
	1. **Definitions**. “**Intellectual Property Rights”** means all present and future rights and prerogatives, registered or not, arising from Swiss or any other national or international legislation, in copyright, rights to software, databases, trademark protection, corporate names, trade and business names, domain names, designs and patents of invention, semiconductor topography rights, know-how, confidentiality and business secrets, and rights in the nature of unfair competition right, and all other intellectual property or similar proprietary rights of whatever nature (including, without limitation, applications to register or rights to apply for registration). For the sake of clarity, Intellectual Property Rights do not include Data and/or Human Samples; “**Results**”meansanyresults generated by a Party from its participation in the Project – such as invention, data, software, algorithms, knowledge, know-how or information, whatever its form or nature, whether or not it can be protected, as well as any rights attached to it, including Intellectual Property Rights.
	2. **Duty to Inform.** Each Party generating Results shall promptly inform the [Sponsor/ Project Leader] and all Parties having contributed to such Results.
	3. **Background IP**. Each Party shall retain all title, right and interest in and to its respective Intellectual Property Rights existing as of the date of this Consortium Agreement or which is later developed independently from the Project (the “**Background IP**”). Unless otherwise agreed herein, nothing in this Consortium Agreement shall be construed as a transfer, license, and/or assignment by a Party to the other Party of ownership of, title, right or interest in and to its respective Background IP.
	4. **Foreground IP**

**[Alternative 1:** Joint IP only for common works, otherwise IP owned solely by the party generating it.]

* + 1. Joint Foreground IP. If two or more Parties have jointly generated Intellectual Property Rights, and where it is not possible to separate from each other their individual contributions, all right, title and interest in and to Intellectual Property Rights generated within the Project shall be owned jointly by the Parties who have contributed to it (**Joint Foreground IP**). The involved Parties shall set forth, by separate mutual agreement, their respective rights, duties and responsibility relating to the Joint Foreground IP, subject to the terms of Section 7.7. Such an agreement shall not cause a delay of publication of the Results any longer than defined in Section 8.2.
		2. Sole Foreground IP. All Intellectual Property Rights in Results which are neither Background IP nor Joint Foreground IP shall be owned and vest solely in the Party generating them (**Sole Foreground IP**, and together with the Joint Foreground IP, the **Foreground IP**). Such Party shall be free to use such Sole Foreground IP in any form whatsoever, subject to Section 7.7.

**Alternative 2:** The IP is jointly owned by the Parties.

All right, Intellectual Property Rights, title and interest in and to the Results shall be owned jointly by the Parties (the **Foreground IP**). The Parties shall set forth, by separate mutual agreement, their respective rights, duties and responsibility relating to the Joint Foreground IP. Such an agreement shall not cause a delay of publication of the Results any longer than as defined in Section 8.2.

* 1. **Licences to use Results.** Each Party generating Results hereby grants to all other Parties a royalty-free, worldwide, non-transferrable, non-exclusive, irrevocable license, with the right to grant sublicences only to Subcontractors, to access and use such Results (including any Background IP and Foreground IP therein) solely for the purpose and to the extent necessary for undertaking and completing the Project.
	2. **Licence to Foreground IP.** Each Party generating Foreground IP by using Data, Human Samples, Confidential Information or Background IP of another Party hereby grant to that Party a royalty-free, worldwide, non-transferrable, non-exclusive, irrevocable license, with the right to grant sublicenses, to access and use that Foreground IP for purposes of internal scientific research.
	3. **IP Exploitation**
		1. Exploitations of Foreground IP. With respect to the exploitation of Foreground IP (e.g. granting of licenses to third parties), the Parties shall mutually consult each other and agree upon the conditions and sharing of revenues, if any, whereby appropriate account is taken of significant non-inventive contributions (such as providing know-how, Data, Human Sample). The owners of Foreground IP shall pay to Parties having contributed to generating the Foreground IP [a fair share of *or* [...]% on] any net revenues received by Recipient for the commercialization of the Foreground IP].
		2. Patent Protection. **[To adapt to Section 7.4:** If an owner of Sole Foreground IP or the owners of Joint Foreground IP decide not to pursue or maintain a patent application based on the Results, the Executive Board may decide to protect or commercialize the Results in the name of all Parties.] If the Executive Board decides not to pursue or maintain a patent application based on a Project Invention, any Party or group of Parties may negotiate with the Parties owning the Project Invention terms and conditions for transferring the rights to protect or commercialize the respective Project Invention.
	4. **Open Source**. Notwithstanding anything to the contrary in this Section 7, the Parties agree to make software implementations necessary for making the Results available to the public upon publication by means of open source software release. In order to do so, the Parties shall consult with each other and agree on the strategy and use of any open source software and its respective licensing terms and possible effects (such as but not limited to viral effects also known as copy left effects), before the first publication of the Results. The use of open source software in the Project shall be in accordance with its respective licenses and all relevant notices retained.
1. Publications
	1. **In General**. The Parties agree that the Results shall be made public as soon as possible by the Party having generated it, unless publication goes against its legitimate interests (for instance, because the Results have not yet been protected, the Results concern trade secrets, or disclosing the Results would infringe on applicable personal data protection, security related, or other applicable obligations). Published information shall be deposited in an open access data repository to the extent reasonably possible.
	2. **Right to object**. Prior to the publication of its Results, the publishing Party shall submit to the other Parties for review a draft of the publication. Each other Party shall have [60] days to request the disclosing Party to:
		* 1. withdraw any Confidential Information provided by it, in which the affected Party shall use their best efforts to provide scientifically meaningful equivalent information for such deleted Confidential Information.
			2. postpone, for no more than [6] months, the publication of the Results for which the affected Party wishes to file a patent application (as the case may be, pursuant to Section 7.7.2).
	3. **Authorship Guidelines and Acknowledgment**. All publications of the Results must be compliant with the authorship guidelines specified in Schedule 4 (Authorship Guidelines)and shall acknowledge the role and contribution of the consortium formed hereunder and of the Parties that provided the Data and Human Sample, in accordance with best scientific practice.
2. Duration, Entry and Exit of Parties
	1. **Duration**. This Consortium Agreement will enter into force once signed by all Parties and will continue in force until [date **// or //** completion of the Project], subject to early termination decided by the Executive Board with a [two third] majority of the votes cast.
	2. **Accession**. The Executive Board shall be entitled to accept submissions of entities to become party of the consortium formed hereunder. The new entity shall execute this Consortium Agreement or an adapted version of it, or a deed of adherence in a form acceptable to the Execution Board, upon which it shall become a new Party and be subject to all the terms and conditions of this Consortium Agreement. The Parties unconditionally accept any such entity as a Party.
	3. **Exit.** Each Party may exit from the Consortium Agreement by giving [60] days advance written notice to the other Parties. The withdrawal of a Party from the Consortium Agreement shall not affect the rights and responsibilities of the other Parties.
	4. **Eviction**. In the event of a material breach of the Consortium Agreement or of other agreements for the implementation of the Project, such as the DTUA, by a Party, [the Executive Board] shall give written notice to the breaching Party to allow the latter to remedy the breach within thirty [30] days. If the breach has not been rectified within said period, the other Parties may terminate the breaching Party’s participation [through a decision of the Executive Board requiring at least two third of the votes cast in which the representative of the breaching Party shall not participate], in which case the breaching Party’s participation and all rights granted to the breaching Party according to this Consortium Agreement will cease immediately.
	5. **Effects of termination of expiry**. Upon termination or expiry of this Consortium Agreement (respectively in case of an exit or eviction of a Party, for that Party only), all Confidential Information, Data and Human Samples, if any, shall immediately be returned or destroyed, as per request of the providing or disclosing Party. Expiration or termination of this Consortium Agreement shall not relieve the Parties of any obligation accruing prior to such expiration or termination. Provisions which by their nature are intended to survive expiration or termination of the Consortium Agreement, shall survive.
3. Warranties and Indemnification
	1. **In General**. The Parties shall perform the Project and their respective Allocated Work to the best of their scientific knowledge, exercising due care, taking into account recognized scientific standards and shall endeavour to achieve the goals of the Project aimed for in the Project Description. By its nature, research involves the risk of unforeseen consequences. The Parties therefore do not make any representation that the intended goals and results of the Project will be reached, nor that their Allocated Work will lead to any particular result. [The Parties make no warranties, neither express nor implied, regarding the Results, including but not limited to warranties of originality, accuracy, non-infringement of third party rights, merchantability, completeness or fitness for a particular purpose. There is no duty to conduct searches with regard to registered intellectual property rights.]
	2. **No liability**. Subject to Sections 10.3 and 10.4 and the DTUA, the Parties assume no liability for any damages, including but not limited to any indirect or consequential loss or similar damage (e.g. loss of profit, loss of revenue or loss of contracts inter alia due to a shutdown; other costs and expenses) suffered in connection with this Consortium Agreement, provided such damage was not caused by a wilful intent or act of gross negligence. This limitation of liability shall also apply to the Parties' auxiliary persons (including but not limited to consultants and students), agents and subcontractors.
	3. **Use of Results**. The Parties use the Results at their own risk. A Party using any of the Results shall, to the fullest extent permitted by the applicable law, defend, indemnify and hold the other Parties harmless against third party claims which are based on the Party’s use of the Results.

*[Optional: to be discussed according to the configuration of the project and the will of the parties:]*

* 1. **Sponsor's liability**.  The Sponsor shall defend and indemnify a Party, its directors, agents, employees and all Study personnel from any liability or loss resulting from judgments or claims against them arising out of the activities to be carried out pursuant to the obligations of this Consortium Agreement; provided, however, that Sponsor shall not defend and indemnify a Party from liability resulting from wilful misconduct or gross negligence of such Party, its directors, agents, or employees.
1. Miscellaneous
	1. **Force Majeure****.** A Party will not be in breach of its contractual obligations in case of delay in performing, or failure to perform, its obligations to the extent such delay or failure is caused by the occurrence of any contingency beyond the reasonable control, and without any fault, of such Party, which contingencies include natural disasters of a particular intensity, war, epidemics, riot, strike, hacking, power failure or Internet network failure (**Force Majeure Event**). In such event, the time limits for performance will be extended for a period of time equivalent to the time lost due to the Force Majeure Event. In order to avail itself of the relief provided in this Section 10.4, the affected Party shall act with due diligence to remedy the cause of, or to mitigate or overcome, such delay or failure.
	2. **Assignment**. Neither Party may transfer this Consortium Agreement, or assign in whole or in part its rights or obligations under this Consortium Agreement, without the prior written consent of the other Parties. Any transfer or assignment made without such consent shall be null.
	3. **Severability**. If any provision of this Consortium Agreement is held to be invalid or unenforceable for any reason, the Parties shall replace it by a substitute provision that achieves to the fullest extent possible the same legal and economic purposes as those of the invalid or unenforceable provision. In any event, the remainder of this Consortium Agreement shall remain in full force and effect between the Parties.
	4. **Electronic Form**. The words “execution”, “signature” and similar words in this Agreement shall be deemed to include unqualified electronic signatures (e.g. Docusign or any equivalent e-signature provider) which shall be of the same legal effect, validity or enforceability as a manually executed signature; while the term “in writing” shall include communications by email or other electronic forms.
	5. **Further Actions**. The Parties shall communicate, sign and deliver any information or document, and shall take any action or decision required to effect or implement this Agreement.
	6. **Notices**. Any notice made under this Agreement shall be in writing, in English, and shall be either personally delivered or mailed by registered mail, or emailed to the Parties Authorized Representative's addresses listed in Schedule 2. Such addresses may be changed, from time to time, by means of a notice given to the other Parties in the manner provided in this Section 11.6. In the event that notification has to be made within a certain period of time, the relevant Party should have complied with such requirement if it has at the last day of such period (i) mailed, transmitted or initiated delivery procedure per registered mail, or (ii) received delivery confirmation of the electronic communication, as the case may be.
	7. **No Waiver and Enforceability**. No delay or failure by a Party to exercise any of its powers, rights or remedies under the Consortium Agreement will operate as a waiver of them nor will any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them. Any waiver to be effective must be in writing.
	8. **Amendment**. The Consortium Agreement (including this Clause) may be amended only by (i) a written instrument duly signed by the Parties or (ii) a resolution of the Executive Board in accordance with Section 3.4.
	9. **Governing Law**. This Consortium Agreement and the respective rights and obligations of the Parties shall be governed exclusively by Swiss law, without regard to its conflict of laws provisions. The provisions of the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 are excluded.
	10. **Jurisdiction**. Dispute in relation to this Consortium Agreement shall be submitted to the exclusive jurisdiction of the competent courts [at the defendant's registered office in Switzerland], subject to the right to appeal to the Swiss Federal Tribunal.

[signatures on the following page]

|  |  |
| --- | --- |
| **[#Entity1Name]****[#RepresentativeName]** |  |
| **[#Entity2Name]****[#RepresentativeName]** |  |
| **[#Entity3Name]****[#RepresentativeName]** |  |
| **[#RepresentativeName]****[#Entity4Name]** |  |
| **[#Entity5Name]****[#RepresentativeName]** |  |
| **[#Entity6Name]****[#RepresentativeName]** |  |

Schedule 1 – Project Description

This Schedule 1 (Project Description) is composed of the summary table below and of the following exhibits:

**Exhibit A** Project Application ref. [#InsertReference] dated [#InsertDate].

**Exhibit B** Ethical proposal application [#InsertSponsorName] dated [#InsertDate].

**Exhibit C** Clinical study protocol [#InsertName] dated [#InsertDate].

[**Exhibit D**] [#InsertDescription]

|  |
| --- |
| **Summary Table** |
| **Sponsor** | [#InsertSponsorName] |
| **Project Leader** | [#InsertProjectLeaderName] |
| **Investigators** | [#InsertInvestigatorsName] |
| **Title** | [#InsertProjectName] |
| **Short Title** | [#InsertShortProjectName] |
| **Description**  | See Exhibit A and Exhibit B. |
| **Clinical Study Protocols** | See Exhibit C |
| **Allocated Works and deliverables** | See Exhibit A. |
| **Timeline** | See Exhibit A. |
| **Financing** | See Exhibit A. |
| **[other]** | [#Insertdescription] |
| **Applicable guidelines**  | SPHN “Funding Regulations” including “General implementation regulations for the Funding Regulation“  |

Schedule 2 – Governance

This Schedule 2 (Govervance) lists the governance bodies for the Project.

1. Authorized Representative

For all matters which do not fall under the remit of a specific body, each Party shall act through its Authorized Representative listed below, which shall have the power to represent and bind the Parties, and which shall act as is the contact point within their organization.

|  |  |  |
| --- | --- | --- |
| **Name of Party** | **Authorized Representative** | **Postal Address and email address** |
| [#Entity1Name] | [#RepresentativeName] | [#PostalAdress][#EmailAdress] |
| [#Entity2Name] | [#RepresentativeName] | [#PostalAdress][#EmailAdress] |
| [#Entity3Name] | [#RepresentativeName] | [#PostalAdress][#EmailAdress] |
| [#Entity4Name] | [#RepresentativeName] | [#PostalAdress][#EmailAdress] |
| [#Entity5Name] | [#RepresentativeName] | [#PostalAdress][#EmailAdress] |
| [#Entity6Name] | [#RepresentativeName] | [#PostalAdress][#EmailAdress] |
| [#Entity7Name] | [#RepresentativeName] | [#PostalAdress][#EmailAdress] |
| [#Entity8Name] | [#RepresentativeName] | [#PostalAdress][#EmailAdress] |
| [#Entity9Name] | [#RepresentativeName] | [#PostalAdress][#EmailAdress] |

1. Executive Board

|  |  |
| --- | --- |
| **Members** | The Executive Board shall consist of one representative of each Party. The Composition of the Executive Board as of the time of signature of the Consortium Agreement is as follows:[#Name(First Name Last Name), #Party][#Name(First Name Last Name), #Party][#Name(First Name Last Name), #Party][#Name(First Name Last Name), #Party][#Name(First Name Last Name), #Party][#Name(First Name Last Name), #Party] |
| **Chairperson** | Members of Executive Board shall appoint a person who will chair the meetings (as defined below) on a rotating basis (**EB** **Chairperson**).The initial EB Chairperson is [#Name(First Name Last Name), #Party]. |
| **Responsibilities** | The Executive Board shall decide on, including but not limited to, the following matters:* + - 1. manage, oversee and coordinate the Parties’ relationship under the Consortium Agreement;
			2. evaluate the progress and activities towards achievement of the targets and results of the Project;
			3. amending the Project Description;
			4. review and determine extension of time or re-formulation of the Project;
			5. define the organization, composition and the *modus operandi* of the Project;
			6. identify and seek to resolve any issues that arise between the Parties, which cannot otherwise be resolved between the Parties;
			7. decide on the admission of new Parties;
			8. discuss other subject matters related to this Consortium Agreement;
			9. terminating this Consortium Agreement.
 |
| **Board Meetings** | The Executive Board shall meet at least [quarterly], at venues to be agreed, or at any other time [as agreed by the Parties]. Meetings may be held in person, by telephone, or by video conference. Meetings will be convened with at least [one] month written notice in advance by the EB Chairperson. Agenda items may be addressed by any member to the EB Chairperson no later than [15] days prior to the meeting date. An agenda will be provided by the EB Chairperson [10] days in advance of the meeting. |
| **Voting Rules** | Each member shall have one vote. The members shall act in good faith to cooperate with one another and seek agreement with respect to issues to be decided. The members shall first try to reach consensus. However, if consensus cannot be reached, decisions of the Board will require simple majority, unless another majority is specified in the Consortium Agreement. |
| **Minutes** | The Parties shall agree upon which member acts as secretary and prepare the minutes of a particular meeting at such meeting. The assigned Party shall send the minutes to each of the Executive Board members within [15] days after the meeting. Any member that was present to that meeting may object to the minutes, within [2] weeks of receipt, if they are incorrect by notice to the EB Chairperson. In case of objection, the EB Chairperson shall try to resolve the objection in a telephone conference, in which case the adapted minutes shall be sent a new [2]-week objection period shall start. |

1. Scientific Board

|  |  |
| --- | --- |
| **Members** | The Scientific Board shall consist of [●]. The composition of the Scientific Board as of the time of signature of the Consortium Agreement is as follows:[#Name(First Name Last Name), #Party][#Name(First Name Last Name), #Party][#Name(First Name Last Name), #Party][#Name(First Name Last Name), #Party][#Name(First Name Last Name), #Party][#Name(First Name Last Name), #Party] |
| **Chairperson** | The Executive Board shall appoint the chairperson of the Scientific Board (**SB** **Chairperson**).The initial SB Chairperson is [#Name(First Name Last Name), #Party]. |
| **Responsibilities** | Matters pertaining to the scientific direction of the Project and to implement the coordination of the Study, such as:* + - 1. Approval of further Clinical Study Protocols;
			2. Secondary data analysis;
			3. Follow-up studies;
			4. Studies analysing new data.
 |
| **Board Meetings** | [*Same as the Executive Board.*] |
| **Voting Rules** | [*Same as the Executive Board.*] |
| **Minutes** | [*Same as the Executive Board.*] |

1. [Other]

|  |  |
| --- | --- |
| **Members** | The [name] shall consist of [●]. The composition of the [name] as of the time of signature of the Consortium Agreement is as follows:[#Name(First Name Last Name), #Party][#Name(First Name Last Name), #Party][#Name(First Name Last Name), #Party][#Name(First Name Last Name), #Party][#Name(First Name Last Name), #Party][#Name(First Name Last Name), #Party] |
| **Chairperson** | The Executive Board shall appoint the chairperson of the [name] (**[xx]** **Chairperson**).The initial [xx] Chairperson is [#Name(First Name Last Name), #Party] |
| **Responsibilities** | [#Insertdescription]. |
| **Board Meetings** | [*Same as the Executive Board.*] |
| **Voting Rules** | [*Same as the Executive Board.*] |
| **Minutes** | [*Same as the Executive Board.*] |

**Schedule [3] | Data Transfer and Use Agreement (DTUA)**

For the project "[#ProjectName]"

This Schedule [3] reflects the agreement between the Parties regarding the terms governing the processing, security and sharing of Data under the Consortium Agreement, to which it forms an integral part.

By entering into the Consortium Agreement, each Party providing Data to another Party (the **Provider**) and each Party receiving such Data (the **Recipient**, and together with the Provider, the **Parties**) automatically enter into the Data Transfer and Use Agreement formed pursuant to this Schedule [3] (**DTUA**) for as long as they are each a Party to the Consortium Agreement.

**WHEREAS**

1. The Parties have been granted support by SPHN [and PHRT] for their joint research project [#CompleteProjectName] (hereinafter referred to as “[#ProjectName]”). A Party providing Data to another Party under this Agreement shall be considered a Provider for the purposes of this Agreement. A Party receiving Data from another Party under this Agreement shall be considered a Recipient for the purposes of this Agreement.
2. The Provider is the controller of data on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (**Data**), as set forth in **Annex I** of this DTUA and its exhibit I;
3. The Recipient wishes to conduct the [#ProjectName] research project (**Research)** with the Data made available by the Provider. The Provider is willing to provide such Data to the Recipient under the terms and conditions as follows hereafter.

**I. Definitions**

Unless defined below, terms shall have the meaning described in the applicable law; in case there is no definition in the law, the SPHN Glossary <https://sphn.ch/document/sphn-glossary/>

definition shall apply.

For the purpose of this DTUA, capitalized terms which are not defined herein shall have the meaning given to them in the Consortium Agreement.

**II. Data Provision**

1. **DTPA**. The Data shall be made available to Recipient subject to the Parties entering into a Data Transfer and Processing Agreement with the BioMedIT Nodes substantially in the form as specified in Annex I (DTPA).
2. **Form.** The Data shall be provided to the Recipient by the Provider in a Coded form and in a format to be agreed upon by the Parties as perexhibit Iof **Annex I.** The Recipient shall not have the key.
3. **Provider’s Warranties about Data Provision.** The Provider warrants that it is entitled to supply the Data and that all necessary consents and/or authorizations for the transfer and/or use of the Data to/by the Recipient have been obtained.
4. **No Provider’s Warranties about Data.** It is expressly understood that the Provider does not warrant or guarantee that the Data will be accurate, complete, or useful for any particular purpose.
5. **No Provider’s Warranties about Third Parties’ Intellectual Property Rights.** The Provider offers no warranty that the use of Data and/or Confidential Information will not infringe or violate any patent or other proprietary rights of any third party.

**III. Data Processing**

1. **Purpose**. The Recipient and the Recipient’s Authorized Representative agree that the Data: (a) is to be used only for the academic purposes as described in the Project Description; (b) may not itself be commercialized and (c) shall not be transferred to or accessed by any third party, for any purposes whatsoever, without the prior written agreement of the Provider and in compliance with the informed consent of the data subjects.
2. **Right of use.** The data subject retains her/his right to decide on the use of the Data provided. The Confidential Information provided is and remains the property of the Provider.
3. **Security**. The Recipient shall process the Data in a manner that ensures appropriate security of the Data, including protection against unauthorized or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organizational measures (‘integrity and confidentiality’), as further described in **Annex II**, as well as in the “*Ethical Framework for Responsible Data Processing in Personalized Health Research*” and in the *“SPHN Information Security Policy*”, as both updated occasionally, accessible at:

<https://sphn.ch/document/ethical-framework/>

<https://sphn.ch/document/information-security-policy/>

The Recipient agrees to immediately report (i) any actual or suspected data protection breach, including a breach against applicable data protection regulation, data protection section of this DTUA, (ii) any actual or suspected impairment or inadequacy of the Recipient in fulfilling data protection section of this DTUA, and (iii) any application to receive or any actual access to data by an authority, unless such reporting is not admissible under statutory provisions for important reasons of public interest.

The Recipient shall have in place procedures so that any person it authorizes to have access to the Data, including the Recipient’s Authorized Representative and their authorized users, will respect and maintain the confidentiality and security of the Data. Any person acting under the authority of the Recipient shall be obligated to process the Data only on instructions from the Recipient’s Authorized Representative.

The Recipient and the Recipient’s authorized users shall not (i) provide any output or Results of the Data to any third party, except as expressly permitted in this DTUA or in the Consortium Agreement; or (ii) sell, lease, sublicense, copy or provide the Data to any third party, except as expressly permitted in this DTUA in the Consortium Agreement.

1. **No Re-Identification**. The Recipient shall not carry out any procedures with the Data (linking, comparison, processing) with the intention to identify the data subject, unless requested by a data subject according to section III.6. below.
2. **Rights of the data subject.** The Provider shall secure the exercise of the data subject’s rights, including access rights, the right to rectification and erasure, and the right to object. The Parties shall respond to requests from the data subject within one month after having received the notification. Moreover, the Parties will provide any data subject with a copy or the content of this DTUA upon their request or if required by law. In case of a production request by a data subject, either Party may summarize any part of this DTUA (including its Annexes) to the extent necessary for confidentiality and data protection reasons. Finally, any data subject may raise damages and other claims pursuant to the applicable law relating to the transfer and/or processing of their Data under this DTUA against either Party.
3. **Revocation of Consent**. In case of data subject’s total or partial revocation of consent, the Provider must inform the Recipient of this revocation without delay depending on the consent signed by the data subject and must provide the pseudo-identifier of the data subject that revoked access to his/her Data. In such case, if applicable, the Recipient shall comply with Provider’s requests to anonymize their Data according to the HRO, unless one of the exceptions listed in Article 10 of the HRO applies. A written notification shall be sent to the Provider upon receipt and after completion of the request.
4. **Data Storage and Processing**. The Data should not be kept by the Recipient longer than necessary for the purpose of the Research, and the Data processing must be limited to the purpose pursued, provided that the data subject does not decide otherwise.
5. **Data transfer via the BioMedIT Nodes.** The Parties agree that the Data transfer will be performed as agreed in writing by the technical representatives of the BioMedIT Nodes, as set forth in **Annex I** of this DTUA and in accordance with all applicable laws.

**IV. Compliance** **with Law**

Each Party undertakes to comply at all time with all applicable Swiss laws, applicable international statutes, regulations and guidelines, especially all laws, statutes and regulations concerning human research and personal data protection, including any necessary regulatory approvals.

**V. Liability and Third-Party Rights**

1. **Liability**. Each Party shall be liable to the other Party for actual costs, charges, damages, expenses or losses suffered by the other Party resulting from any of the first Party’s violation of this DTUA.
2. **Third Party Rights**. The Parties agree that a data subject shall have the right to enforce, as a third-party beneficiary, this DTUA against the Recipient or the Provider, for their respective breach of their contractual obligations, with regard to his or her Data. In cases involving allegations of breach by the Recipient, the Parties agree that the Provider may take appropriate action to enforce their rights against the Recipient. A data subject is entitled to proceed directly against the Provider that has failed to use reasonable efforts to determine that the Recipient is able to satisfy its legal obligations under this DTUA (the Provider shall have the burden to prove that it took reasonable efforts).

**VI. Miscellaneous**

The provisions of Section [11] of the Consortium Agreement shall apply *mutatis mutandis*.

**VII. Annexes**

**Annex I:** BioMedIT infrastructureData Transfer and Processing Agreement

**Annex II:** Minimal Security Requirement

**ANNEX I: BIOMEDIT INFRASTRUCTURE DATA TRANSFER AND PROCESSING DTUA**

[Multiple Nodes]

(the "**DTPA**")

between

[name], [(registration number if any)],[address]

[name], [(registration number if any)],[address]

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

(the “**Provider**” and “**Recipient**”, together the“**Principals**”)

and

**SIB Swiss Institute of Bioinformatics** (Core-IT,Romand BioMedIT Node) with a business address at Quartier Sorge - Bâtiment Amphipôle, 1015 Lausanne, Switzerland

and

**University of Basel** (SciCore, Basel BioMedIT Node) Petersplatz 1, Postfach, 4001 Basel, Switzerland.

and

**ETH Zurich** (Scientific IT Services - SIS, Zurich Node), Hauptgebäude, Rämistrasse 101, 8092 Zürich, Switzerland

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

(each a **Regional Node** and together the **BioMedIT Nodes**)

(for the purposes of this DTPA, each Provider, Recipient and Regional Node a **Party**, and together the **Parties**)

WHEREAS

1. The Principals have signed a consortium agreement for the [#ProjectName], containing a Data Transfer and Use Agreement (the **DTUA**).
2. The BioMedIT Nodes form together a coordinated Swiss nationwide network of secured IT network, consisting of high performance compute and storage infrastructure, in order to support computational biomedical research and clinical bioinformatics. For the sake of clarity, and subject to the provisions of this Agreement, the Regional Nodes are independent legal entities and act as independent contractors.
3. Within the framework of their access and use of the Data, the Principals wish to benefit from the BioMedIT Nodes services to *inter alia* store and transfer Data from Provider to Recipient.
4. The BioMedIT Nodes agree to provide such services under the terms and conditions of this DTPA.
5. Definitions

Except as otherwise defined in this DTPA, capitalized terms, whether used in singular or plural form, shall have the same meaning as set forth in the DTUA.

1. Scope

This DTPA applies to all Data, including personal Data relating to any concerned data subjects, that are transferred to and processed by the BioMedIT Nodes in the name and on behalf of the Principals under the Study and the DTUA.

1. Services
2. **In General**. Subject to, and in accordance with, the terms of this DTPA, each Regional Node undertakes to provide to the Principals the services specified in Section III.2 (the **Services**) to the best of its ability using all reasonable skill and care, and always subject to the Principals’ compliance with all its obligations under this DTPA.
3. **Scope**. The Services consist of, except as otherwise specified in **Exhibit 1**, the following:

hosting of the Data on the BioMedIT Nodes;

transferring Data from the Provider to the Recipient in accordance with this DTPA; and

other processing activities as required under this DTPA or as reasonably requested by the Principals.

1. **Means of Transfer**. Except as otherwise agreed in writing, Data shall be transferred by providing to the Recipient remote secured access to the Data in accordance with the security standards specified in Section IV.3.1 below. The Parties shall decide on a case by case basis from which Regional Node the Data shall be made available.
2. **Collaboration with and between Regional Nodes**. Services are provided by the Regional Nodes as described in **Exhibit 1**. The Parties shall specify in **Exhibit 1** which Regional Node shall be primarily responsible for providing the Services. Each Regional Node undertakes to collaborate with the other Regional Nodes, and to assist them, as may be required for the proper providing of the Services.
3. **Power**. The Provider’s Authorized Representative and the Recipient’s Authorized Representative shall have the individual power to give instructions to, and receive notification from, the BioMedIT Nodes, on behalf of, respectively, the Provider and the Recipient, for all actions relating to the Data.
4. **Payment of Fees**. Costs associated to the Services to be provided by Regional Nodes shall be determined by mutual agreement between the Parties once the project for which Provider needs the BioMedIT Nodes has been validated by the competent ethics committee.

[Or]

The Services are part of the SPHN initiative and are provided without any associated costs, unless it surpassed a specifically defined upper limit of compute, storage or human resources.

1. Data Processing Terms
2. **Supply of Data.** Provider shall provide the Data to the selected Regional Node, or make the Data available to it, in the form and as specified in **Exhibit 1**.
3. **Scope of Processing**
	1. In General. The Parties acknowledge and agree that:

the subject matter and details of the processing are specified in this DTPA and its **Exhibit 1**;

the BioMedIT Nodes are joint processors of the Data;

the Principals are joint controllers of the Data; and

each Party shall comply with its obligations under any applicable laws with regard to the processing of the Data (including data protection laws, as well as laws, statutes and regulations concerning human research and personal data protection).

Nature and Purpose of Processing. The BioMedIT Nodes shall process the Data on behalf of the Principals and solely for the purpose of providing the Services or as otherwise expressly instructed jointly by the Provider’s Authorised Representative and the Recipient’s Authorised Representative. For the sake of clarity, the BioMedIT Nodes shall have no obligation to carry out any instruction which they consider, at their sole discretion, to be unlawful, ambiguous, doubtful or unclear (in which case the Parties shall collaborate in good faith to find a solution agreeable to all).

* 1. Restrictions. The BioMedIT Nodes shall not, without the prior written consent of Provider:

subcontract any of their processing operations of the Data (except to another Regional Node); and

transfer the Data in any country outside Switzerland (it being agreed that the Data may be accessed and processed by the Principals outside Switzerland, in which case they shall be responsible for compliance with any applicable data protection obligation).

Return of Data. Upon termination of the DTPA, or earlier as requested by the Provider, the BioMedIT Nodes shall, within reasonable time following a written request by Provider, provide Provider with a final extract of the Data and permanently delete all copies of such Data still under its control. In any case, the BioMedIT Nodes shall be allowed to permanently delete the Data 60 days after termination of the DTPA.

1. **Security**
2. 1. Security Requirements. Each Party shall comply with the security requirements set forth in Section III.3 of the DTUA.

Security Incidents. Each Regional Node processing Data shall, if it becomes aware of any accidental or unauthorized access to the Data, inform the Principals as soon as possible by any useful means (in particular via the Provider’s Authorised Representative). The Regional Node shall, to the extent possible, describe the nature of the security incident, as well as any measures taken by it to mitigate potential risks and the measures that it recommends the Principals to take. The Principals shall be responsible for complying with the legal provisions applicable to them, in particular any obligations of the Principals to provide a notification of the incident to any competent authority and/or the data subjects. In this context, the Regional Node shall provide the Principals with any assistance reasonably required by them in order to comply with their obligations.

1. **Register of Processing Activities**
	1. The Principals acknowledge that the BioMedIT Nodes may be required by the law to:

collect and store certain information, including the name and contact details of each processor and/or controller with whom the BioMedIT Nodes act and, where applicable, the local representative of the controller and/or the data protection officer as well as the categories of processing carried out; and

make such information available to any competent authority.

The Principals undertake to provide the BioMedIT Nodes with all information reasonably necessary for the BioMedIT Nodes to meet their obligations.

1. Representations and Warranties
2. The Principals represent and warrant that:

the Data to be transferred to and processed by the BioMedIT Nodes has been collected, transferred and processed in accordance with the requirements of all applicable laws, rules and regulations, including all applicable data protection laws and regulations;

the transfer to the BioMedIT Nodes and the processing of the Data by the BioMedIT Nodes (including any further transfer to the Recipient) as set forth in this DTPA is (i) admissible under all applicable laws, rules and regulations and (ii) is not prohibited by a statutory or contractual duty of confidentiality;

prior to any collection, transfer, or processing of personal data, the Principals have provided to the concerned data subjects all required information (including in relation to any processing activity contemplated under this DTPA) and complied with any notification and registration obligations under any applicable laws and regulations;

the Principals will not require the BioMedIT Nodes to undertake a processing of Data that they would not be permitted to carry out themselves; and

they have and will verify that the technical and organizational measures, as required by all applicable laws, rules and regulations, undertaken by the BioMedIT Nodes, in particular with those specified in Section III.3 of the DTUA, are sufficient to protect the transferred and processed Data from any unauthorized processing. The Principals warrant that the technical and organizational measures set forth in Section III.3 of the DTUA are sufficient in this regard.

1. Information, Assistance and Notifications
2. **Compliance**. Each Party shall provide the other Parties with all the necessary information so that they can demonstrate compliance with their obligations under the applicable data protection legislation.
3. **Rights of the Concerned data subjects**. The Principals are responsible that the concerned data subjects are provided with their right of access, rectification, deletion or objection. The BioMedIT Nodes will fully and in a timely fashion cooperate with the Principals in, and when applicable provide to the Principals the necessary services for, fulfilling such requests or inquiries of the concerned data subjects.
4. **Impact assessments and prior consultation**. The BioMedIT Nodes undertake, to the extent they can reasonably be expected to do so in light of the nature of the processing and the information available to them, to assist the Principals in ensuring its compliance with its impact assessment, prior consultation and records of processing activities obligations (if any).
5. **Notification and Assistance**. The BioMedIT Nodes shall promptly inform, and cooperate with, the Principals if they believe that they may no longer be able, or are no longer able, to comply with this DTPA, particularly in case they receive or must reasonably expect to receive a request or order of a competent authority requiring them to disclose, or refrain from further processing, some or all personal Data to which this DTPA applies.
6. **Audits**. The provisions of **Exhibit 2** shall apply regarding audits.
7. Data ownership, Intellectual Property, Confidentiality
8. **Data Ownership and Right to Use**
	* 1. Ownership. As between the Principals and the BioMedIT Nodes, and without prejudice to the data subjects' rights to the Data pursuant to applicable laws on data protection and on Human research, all rights to the Data are and remain the property of the Principals and all right, title, and interest in the same (including any Intellectual Property Right) is reserved by the Principals. Subject to Section VII.1.b) below, nothing in this DTPA is intended to assign or grant the BioMedIT Nodes any Intellectual Property Rights or other rights in the Data.

Use of Data. The Principals grant to the BioMedIT Nodes a right to access and use the Data for the sole purpose of, and only to the extent necessary for, providing the Services, including a license to collect, process, store, generate, and display the Data.

Acceptable Use Policy. The Principals undertake to comply with the *Acceptable Use Policy* specific to each Regional Node.

1. **Confidentiality.** For the purpose of this DTPA, Confidential Information means any data, documents or other material (in any form) that is identified as confidential in writing at the time it is disclosed hereunder by a Party to its counterpart. Without prejudice to special provisions or laws with regard to the processing of personal data, each Party shall treat the Confidential Information confidential for the duration of this Agreement, including any extension thereof, and thereafter for a period of five (5) years following termination or expiry of this Agreement. Excluded from this obligation of confidentiality shall be any Confidential Information of which one Party can reasonably demonstrate that it (a) was previously known to them, or (b) is, and/or becomes, publicly available during said five (5) year period through no fault of a Party, or (c) is independently and lawfully developed by one Party. This obligation of confidentiality shall not apply to any disclosure required by law, provided that a Party shall notify its counterpart of any disclosure required by law in sufficient time so that the counterpart may contest such requirement, if it so chooses. Subject to mandatory law, upon the expiration or termination of this Agreement for whatever reason, or at the earlier request of a Party, the other Party shall, at its own costs, return or destroy all originals and copies of Confidential Information, or, in case of Confidential Information stored in electronic, magnetic or digital media, shall erase or render unreadable all materials furnished (including without limitation, working papers containing any Confidential Information or extracts therefrom) which contain Confidential Information.
2. **IP in BioMedIT Nodes**. As between the Principals and the BioMedIT Nodes, the BioMedIT Nodes shall be and remain the sole owner of all Intellectual Property Rights in and to the BioMedIT Nodes, as well as any other infrastructure used to provide the Services. Nothing in this DTPA is intended to assign or grant the Principals or any other party any Intellectual Property Rights or other rights of the BioMedIT Nodes.
3. Liability
4. Subject to Section VIII.2 below, each Party shall be liable to the other Parties for actual costs, charges, damages, expenses or losses suffered by the other Parties resulting from its breach of any of its obligation or warranty under this DTPA.
5. Each Party disclaims any liability for any indirect damages or losses, whether foreseen or foreseeable, related to the loss of use, interruption of business, loss of actual or anticipated profit, loss of revenue, loss of anticipated savings, loss of opportunity, loss of goodwill, loss of reputation, loss of, damage to or corruption of assets or data, or any other indirect, incidental, exemplary, or consequential damages or losses of any kind, regardless of the form of action, whether in contract, tort or otherwise.
6. Term
7. **Term**. This DTPA shall be binding between the Parties upon its execution by all Parties and shall remain in effect until expiration or termination of the DTUA, unless terminated earlier in accordance with this Section of IX of the DTPA.
8. **Termination for Convenience**. Each Party may terminate this DTPA for any reason at any time upon 3 months prior written notice to the other Parties. A termination by a Party shall have the effect of terminating the DTPA for all Parties, except as otherwise agreed in writing by the non-terminating Parties.
9. **Termination for Cause**. Each Party may terminate the DTPA with immediate effect, if another Party has materially breached or is in material breach of its obligations and such breach is not cured, or the breaching Party is not diligently pursuing a cure, within 30 days after written notice of breach.
10. **Survival**. All terms which are expressed or intended to survive, and any provisions of the DTPA necessary for its interpretation or enforcement will continue to apply regardless of the reason for termination of the DTPA.
11. Miscellaneous
12. **Amendment**. This DTPA may be modified only by a written instrument duly executed by each Party.
13. **Independent Contractors**. Nothing in this DTPA is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any Party the agent of any other Party, nor authorize any Party to make or enter into any commitments for or on behalf of another Party. No Party shall have the power to incur any obligations in the name of, or on behalf of, or pledge credit of, the other Parties in any manner whatsoever.
14. **Electronic Form**. The words “execution”, “signature” and similar words in this DTPA shall be deemed to include unqualified electronic signature (e.g. Docusign or any equivalent e-signature Provider) each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, while the term "in writing" shall include communications by email.
15. **Assignment**. No Party may transfer this DTPA, or assign in whole or in part its rights or obligations under this DTPA, without the prior written consent of all other Parties. Any transfer or assignment made without such consent shall be null.
16. **Force Majeure**. No Party shall be considered in default under this DTPA if all or any of its obligations are delayed or prevented as a result of a situation of force majeure, such as natural disasters of a particular intensity, war, epidemics, riot, strike, power failure or Internet network failure, or any other cause that is reasonably beyond the control of the affected Party.
17. **Entire DTUA**. This DTPA contains all of the terms and conditions agreed upon by the Parties relating to its subject matter and supersedes all prior agreements, negotiations, correspondence, undertakings and communications of the Parties, whether oral or written, with respect to such subject matter.
18. **Hierarchy**. In the event of conflict with a schedule to this DTPA, this main body of this DTPA will govern, unless the schedule specifically states its intent to do so and cites the section or sections amended.
19. **Severability**. If any provision of this DTPA is held to be invalid or unenforceable for any reason, the Parties shall replace it by a substitute provision that achieves to the fullest extent possible the same legal and economic purposes as those of the invalid or unenforceable provision. In any event, the remainder of this DTPA shall remain in full force and effect between the Parties.
20. **No Waiver**. The failure of any of the Parties to enforce any of the provisions of this DTPA or any rights with respect thereto shall in no way be considered as a waiver of such provisions or rights or in any way affect the validity of this DTPA. The waiver of any breach of this DTPA by any Party shall not be construed as a waiver of any other prior or subsequent breach.
21. Governing Law and Jurisdiction
22. **Governing Law.** This DTPA shall be governed by and construed in accordance with Swiss substantive law, without reference to its conflict of laws provisions.
23. **Jurisdiction**. Any dispute or difference arising out of or in relation to this DTPA shall be subject to the exclusive jurisdiction of the Swiss courts at the registered seat of the defending Party, subject to the right of appeal to the Federal Tribunal.

**Acknowledged and approved by the Principals**

**Provider Recipient**

**[NAME] [NAME]**

**Duly Authorized Representative Duly Authorized Representative**

[Name] [Name]

[Title] [Title]

**SIB Swiss Institute of Bioinformatics** (Core-IT, Romand BioMed-IT Node)

Ron Appel

SIB Executive Director

Date:

Heinz Stockinger

Head of Core-IT

Date:

**University of Basel** (sciCORE, Basel BioMed-IT Node)

Torsten Schwede

Vice President for Research, University of Basel
Date:

Thierry Sengstag

Deputy director - sciCORE computing center

Date:

**ETH Zurich** (Scientific IT Services - SIS, Zurich Node)

Bernd Rinn

Head of SIS

Date:

Rui Brandao

Head of IT-Services

Date:

**Exhibit 1 to the DTPA – Description of Data and Service**

*This Exhibit 1 must at least include the information provided for in Sections III.2, III.4 and IV.1-2 of the DTPA.*

1. **Description and format of Data**

See Annex I to the DTUA.

1. **Supply of Data to the BioMedIT Nodes**

[●]

# Transfer of Data

Data will be transferred to the BioMedIT Nodes within a standardized and secure way, i.e. using the network-internal Data Transfer Tool. Data is stored and processed in compliance with the SPHN Information Security Policy.

# Data access

The Provider’s Authorised Representative and the Recipient’s Authorised Representative defines who will be authorized to access the Data. Access of authorized users to the project space requires two-factor authentication. Furthermore, authorized users can only access the infrastructure from within trusted IT environments (either from within a Swiss university network, a university hospital network or via VPN).

1. **Services**

[●]

**Exhibit 2 to the DTPA – Information and Audits of Security Measures**

1. Scope. The provisions of this Exhibit apply to personal data contained in the Data.
2. Information. The BioMedIT Nodes shall make available to the Principals, all documents and information reasonably necessary to demonstrate their respective compliance with the applicable data protection law and their obligations arising therefrom.
3. Right of audit. The BioMedIT Nodes shall allow the Principals or an independent auditor appointed by the Principals to conduct audits (including inspections) to verify the BioMedIT Nodes' compliance with their obligations under the applicable data protection law. Any audit shall be constrained to infrastructure needed to perform the SERVICES and related measures. The BioMedIT Nodes shall provide reasonable assistance with respect to the audits described in this clause 3. Upon conclusion of the audit, the Principals shall forward the complete audit report to the BioMedIT Nodes, free of charge.
4. Request. Any request under clause 2 (Information) or clause 3 (Audits) must be communicated to the BioMedIT Nodes in writing and indicate (i) the Data concerned, (ii) the reasons for which the conditions referred to in clause 2 (Information), respectively clause 3 (Audits) apply to these Data, (iii) the specific documents to be reviewed, respectively the specific obligations of the BioMedIT Nodes to be audited, and (iv) that the Principals expressly undertake to use the information collected only to ensure that the BioMedIT Nodes are in compliance with their obligations with regard to the concerned Data. Unless there are exceptional circumstances, the Principals may not make more than one request per year.
5. Exercise of rights. Upon receiving a request in accordance with the preceding clause, and provided that all conditions are met, the BioMedIT Nodes shall comply with the request as follows:
6. the BioMedIT Nodes shall inform the Principals, with regard to the review of documents (clause 2 [Information] above), of the period during which they may consult the documents at the BioMedIT Node's offices. Unless otherwise expressly agreed by the BioMedIT Nodes, the Principals shall not be authorised to make copies of the documents consulted. Alternatively, the BioMedIT Nodes may decide to provide the documents electronically;
7. the BioMedIT Nodes shall inform the Principals with regard to audits (clause 3 [Audit] above) of (i) the date or dates on which the audits may take place and (ii) the scope of the audit, in particular the inspections that may be carried out, in order to check the BioMedIT Nodes' compliance with their obligations under the DTPA. The Principals' internal costs or the costs of the independent auditor appointed by them shall be borne entirely by the Principals. The BioMedIT Nodes may invoice the Principals for their own costs associated with the preparation for and execution of the audit based on the costs incurred by the BioMedIT Nodes. The BioMedIT Nodes may object to any independent auditor appointed by the Principals if, in their opinion, the auditor is not sufficiently qualified, is a competitor of the BioMedIT Nodes, or in any other way would not be able to perform its duties properly. In this case, the Principals may either carry out the audit itself or propose another auditor to the BioMedIT Nodes.
8. Confidential information. The provisions contained in this clause 2 shall not be interpreted as requiring the BioMedIT Nodes to provide the Principals with (i) any information relating to trade secrets of the BioMedIT Nodes or any information of a confidential nature or (ii) any information concerning other users of the BioMedIT Nodes' services. The BioMedIT Nodes may make the review of documents (clause 2 [Information] above) or the conduct of an audit (clause 3 [Audits] above) subject to the conclusion of a specific confidentiality agreement.

**\* \* \* \***

**Annex II: Minimal Security Requirement**

Recipient shall ensure that the technical and organisational measures provided by the Data Processor are sufficient to guarantee the confidentiality, integrity, availability and resilience of the systems with regard to processing of data. In particular, the Recipient must:

* deny unauthorized persons access to facilities and data processing systems;
* ensure that unauthorised persons are prevented from reading, copying, altering or deleting data in/from data processing systems;
* ensure that unauthorized persons are not able to read, copy, modify or remove data upon the electronic transfer of data as well as during the transport of data carriers or saving of data thereon;
* ensure that it is possible to examine and verify if, when and by whom data was entered into the data processing system;
* ensure that data is protected from accidental destruction or loss;
* ensure that data received is not combined with other data unless explicitly authorized by the competent ethics commission for the specific research project and necessary to conduct the specific research project;
* restrict the disclosure and handling of data to those persons who require it to conduct the specified research project and to be able to identify each of them;
* ensure adequate organisational measures to protect data, especially by selecting, instructing and supervising employees involved in the processing of data diligently and appropriately, by guaranteeing the availability of: adequate confidentiality and data protection guidelines, regular data protection and privacy trainings, documentation of all organisational measures;
* ensure that the effectiveness of technical and organisational measures is regularly reviewed and assessed;
* implement corrective measures and immediate reporting in case of any suspected data security breach.

Schedule 4 – Authorship Guidelines

[All publications of the Results must be compliant with the authorship guidelines of the Swiss Academies of Arts and Sciences, as updated from time to time, accessible at:

<http://www.akademien-schweiz.ch/en/dms/E/Publications/Guidelines-and-Recommendations/integrity/Academies_Authorship.pdf>.

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