

ELIXIR CONSORTIUM AGREEMENT

ESTABLISHING

**THE EUROPEAN LIFE-SCIENCE INFRASTRUCTURE FOR BIOLOGICAL
INFORMATION (ELIXIR)**

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Preamble

The ELIXIR Members hereby agree to establish 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 and manage, 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, open to scientists of all disciplines. ELIXIR aims to be an inclusive research infrastructure that encourages the accession of new members.

The ELIXIR Members,

- acknowledging that the demand from life science researchers for data resources is constantly increasing;
- acknowledging the current data deluge and the fact that ELIXIR provides an opportunity to ensure that Europe's life sciences data is managed effectively using scalable solutions;
- acknowledging that significant coordination activities in specific areas can be shared between the ELIXIR Hub and the ELIXIR Nodes;
- acknowledging that ELIXIR Nodes will be located in ELIXIR Member States;
- acknowledging that ELIXIR Nodes will be selected institutes based on criteria of excellence and upon approval by the ELIXIR Board;
- acknowledging that ELIXIR Nodes receive all possible support through the ELIXIR Hub to the extent that it falls within the limits of its mission;
- recognising that a co-ordinated international effort in the form of ELIXIR is needed to upgrade and maintain existing data resources and to establish new resources as necessary;
- recognising the importance of supporting the various national bioinformatics scientific communities and in particular existing and potential ELIXIR Nodes, where that support is in the best interests of the ELIXIR Members in the light of ELIXIR's mission;
- recognising the importance of ensuring that the ELIXIR Nodes have the means to provide pan-European ELIXIR services as requested through the ELIXIR Members;
- recognising the national investment in establishing ELIXIR, the Hub aims to provide appropriate and proportionate support to ensure maximum coordination and integration of the respective Node within ELIXIR to achieve maximum scientific impact;
- recognising that data and knowledge provided by ELIXIR will be freely accessible, although controlled access shall be implemented where necessary;
- recognising that ELIXIR's challenges can best be addressed by combining European and national operations;
- recognising the importance of ELIXIR's management based on criteria of scientific and service provision excellence; and

- recognising the need for extensive training in general areas of data resources and bioinformatics infrastructures,

have decided as follows:

1. Definitions and Interpretation

1.1 Definitions

For purposes of this Agreement, the following terms and expressions shall have the following meaning:

Agreement	This ELIXIR Consortium Agreement, including all annexes thereto.
Node Applicant	Research institute that applies to become an ELIXIR Node.
Collaboration Agreement	Agreement concluded for a specified period between the EMBL on behalf of the ELIXIR Board and a Node Applicant, which confers it the status of ELIXIR Node.
Commissioned Services	Technical and administrative services that fall under the responsibility of the ELIXIR Hub and are funded through the ELIXIR Budget; they may be carried out by one of the ELIXIR Nodes pursuant to a Collaboration Agreement or by the EMBL pursuant to a Work Programme.
Core Responsibilities	Shall have the meaning set forth in Article 5.4.1.
Defaulting ELIXIR Member or Member State	An ELIXIR Member or Member State identified by the ELIXIR Board as being in breach of this Agreement as specified in Articles 4.4.1 and 6.2.7 of this Agreement.
ELIXIR	Has the meaning set out in the Preamble and as specified under Article 3.1.
ELIXIR Board	The principal decision-making body, which is composed of representatives of the ELIXIR Members.
ELIXIR Budget	This comprises all planned revenues and expenditures which shall be prepared annually by the ELIXIR Director, taking into account the Financial Plan and its activities as defined in Article 7.2 of this Agreement.

ELIXIR Director

An individual appointed by the ELIXIR Board to act as the executive body of ELIXIR. He/she shall represent ELIXIR externally and execute the decisions of the ELIXIR Board as further detailed in Article 6.3 of this Agreement.

ELIXIR Headquarters

The location of the ELIXIR Hub which shall be at the EMBL's outstation, the European Bioinformatics Institute on the Wellcome Trust Genome Campus in Hinxton, Cambridge, UK.

ELIXIR Hub

ELIXIR is based on a "Hub and Nodes"-model. The ELIXIR Hub shall be the central organization 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 set out in Article 3.3. Legally it shall form part of the EMBL and therefore use EMBL's legal personality.

ELIXIR Member

A Signatory of this Agreement.

ELIXIR Member State

Any Member State that is a signatory to this Agreement.

ELIXIR Node

A national or international research institute that enters into a Collaboration Agreement with the EMBL to provide services with a European dimension and that have an added value for ELIXIR.

ELIXIR Staff

Staff employed by the EMBL pursuant to the EMBL Staff Rules and Regulations and funded through the ELIXIR budget.

EMBL

The European Molecular Biology Laboratory.

EMBL-EBI

The European Bioinformatics Institute, an outstation of the EMBL.

EMBL Staff Rules and Regulations

EMBL's internal labour law established by its Member States and amended by the EMBL Council from time to time, which deals with the legal relationship between the EMBL and each person working for it. .

EMBL Financial Rules and Regulations	Those rules and regulations that cover financial accounting, management and internal control as prescribed in Article VI 3(e) of the Agreement establishing the EMBL and supplemented by approved policies and procedures.
Financial Plan	A five year estimate of the value and timing of financial resources required to realize the Programme.
Financial Year	Has the meaning set out in Article 7.3.1.
Heads of Nodes Committee	Has the meaning set out in Article 6.5.1.
Observer	A State, legal entity or individual that attends the ELIXIR Board meetings as an observer without voting rights and normally for a limited period of time.
Programme	Five year scientific programme adopted by the ELIXIR Board to fulfil the purpose and goals of ELIXIR.
Qualified majority	<p>This means a two-thirds majority of all ELIXIR Members provided that:</p> <ul style="list-style-type: none">(i) the contributions to the ELIXIR Budget of the ELIXIR Members present and voting constitute not less than two-thirds of the total contributions to the ELIXIR Budget; or(ii) affirmative votes are cast by all but one of the ELIXIR Members present and voting.
Research Infrastructure	The term research infrastructure refers to central or distributed research facilities, databases or large-scale computing, analysis and modelling resources.
Research Institute	Publicly or privately funded national or international research performing entity.
Rules of Procedure	The rules governing the organization and operation in the widest sense of the ELIXIR Board, adopted by it in accordance with Article 6.2.4.v of this Agreement.
Scientific Advisory Board	A body 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. This involves advising the ELIXIR Board and the ELIXIR Director where necessary.

Simple majority

A vote carrying more than fifty per cent (50%) of the votes cast.

Unanimous voting

The voting by consensus of all delegates present and voting.

Work Programme

Services carried out by the EMBL as outlined under Article 5.4.3 of this Agreement.

1.2 Interpretations

- 1.2.1 Words denoting the singular shall include the plural and vice versa. Words denoting one gender shall include another gender.
- 1.2.2 The words “include”, “included” or “including” shall mean that the matters are listed without limitation.

2. Description of the Organisational structure

2.1 Legal basis

This Agreement is the legal basis for ELIXIR. It establishes an organizational structure and defines the relationship between the ELIXIR Hub and the ELIXIR Nodes. For the avoidance of doubt, this Agreement does not establish a legal entity. The ELIXIR Hub shall be hosted by EMBL as mandated by the ELIXIR Consortium. This agreement specifies the EMBL's role as a host for ELIXIR as defined under Article 2.3 and Article 5.4.1 and sets out the ELIXIR Members' rights and obligations.

2.2 Role of the ELIXIR Board

The ELIXIR Board is composed of representatives of all ELIXIR Members. It is the ultimate decision-making body that takes all strategic decisions and that supervises activities carried out by the ELIXIR Hub and its relations with the ELIXIR Nodes on behalf of the ELIXIR Members.

2.3 The EMBL's role within ELIXIR

As defined in Article 5.4.1 ELIXIR is hosted by and, as such, forms part of the EMBL which agrees to provide ELIXIR-specific services through the ELIXIR Hub to support the creation and operation of ELIXIR that are defined in this Agreement or will be defined by the ELIXIR Board. ELIXIR benefits from the EMBL's existing legal personality and its privileges and immunities as an intergovernmental institution. Tasks carried out by the EMBL for ELIXIR are subject to EMBL internal rules and regulations and policies, as applicable, including for the avoidance of doubt the EMBL Staff Rules and Regulations as well as the EMBL Financial Rules and Regulations. Staff working for the ELIXIR Hub (including the ELIXIR Director) located at the ELIXIR Headquarters shall be employed by the EMBL on the basis of the EMBL Staff Rules and Regulations. EMBL provides technical services to ELIXIR (Commissioned Services and international bioinformatics services if funding is available) as approved by the ELIXIR Board.

2.4 Distributed Infrastructure

ELIXIR has a distributed structure in which the ELIXIR Hub is connected through Collaboration Agreements to a distributed set of ELIXIR Nodes.

2.5 The ELIXIR Hub

The ELIXIR Hub is located at the ELIXIR Headquarters. The ELIXIR Hub is the central coordinating organization which provides administrative coordination services and technical support under the supervision of the ELIXIR Board and the leadership of the ELIXIR Director.

2.6 Integration of the ELIXIR Nodes into the ELIXIR infrastructure

The ELIXIR Nodes operate as integral parts of existing research institutes in ELIXIR Member States. In order to be accepted as an ELIXIR Node, a Research Institute has to successfully pass a selection process. ELIXIR Nodes shall provide technical and administrative support which shall

be financed either by the ELIXIR Budget as Commissioned Services or by other funding sources. As provided in Article 8.5, ELIXIR Nodes shall enter into Collaboration Agreements with the ELIXIR Hub.

3. Objectives and Tasks of ELIXIR, the ELIXIR Hub, the EMBL and the ELIXIR Nodes

3.1 Objectives of ELIXIR

3.1.1. The Purpose of ELIXIR

ELIXIR is a distributed research infrastructure with the purpose to coordinate, curate, store, archive, integrate and disseminate the life-science data produced by life science researchers in Europe and elsewhere, within an appropriate secure framework, which provides open access to the data, whilst safeguarding data ownership.

3.1.2. Provision of life-science data resources

In a coordinated manner between the ELIXIR Members, ELIXIR implements measures to carry out those tasks as listed in Article 3.2. New biological data resources, identified as desirable by the scientific community, shall be further developed within ELIXIR, with the appropriate funding being raised as required.

3.1.3. The mission of the ELIXIR Hub

The ELIXIR Hub carries out scientific, technical and administrative tasks. ELIXIR's ultimate decision making body is the ELIXIR Board, which decides scientific, technical and administrative matters. The ELIXIR Board is assisted by the ELIXIR Director, the Scientific Advisory Board and the Heads of Nodes Committee. ELIXIR Nodes, located in the ELIXIR Member States, contribute to the tasks of ELIXIR.

3.2 Tasks of ELIXIR

ELIXIR shall:

- a. provide data resources;
- b. provide services, training and assistance to establish a fully integrated and sustainable network of resources and tools that will facilitate data dissemination and international collaboration;
- c. promote standards;
- d. provide appropriate computer infrastructure for processing, archiving and analysing the data;
- e. provide infrastructure for tools;

- f. support applications for funding of ELIXIR related activities; and
- g. provide other services as decided by the ELIXIR Board.

3.3 Tasks of the ELIXIR Hub

Without prejudice to the tasks listed under Article 3.2, the ELIXIR Hub shall:

- a. manage and administer ELIXIR activities;
- b. coordinate services (e.g. data delivery, technical and user training activities or others if required);
- c. provide services and support to the ELIXIR Nodes and the user community;
- d. establish links with other life science infrastructures;
- e. support applications for funding of the ELIXIR activities; and
- f. coordinate applications for pan-European funding to support ELIXIR.

3.4 Tasks of the ELIXIR Nodes and EMBL

Without prejudice to the tasks as listed under Article 3.2, EMBL and the ELIXIR Nodes shall provide services to the ELIXIR Hub as defined under Article 5.4.1, Article 5.4.2 and Article 8.5.2.

4. Membership and Observers

4.1 Membership

4.1.1 Eligibility

The following entities are eligible to become members in ELIXIR:

- a. Member states of the Council of Europe.
- b. Other states may be declared eligible by decision of the ELIXIR Board.
- c. Intergovernmental organisations with legal personality established under international or EU law (including, for the avoidance of doubt, European Research Infrastructure Consortia – “ERIC”).
- d. The EMBL.

4.1.2 Application

An application to the Chair of the ELIXIR Board shall include a commitment to the mission of ELIXIR as stated in this Agreement as well as recognition of the obligations linked to membership as outlined in Article 5.

4.2 Observers

4.2.1 Observer status

Observer status may be granted to

- a. States that are willing to contribute to ELIXIR, but are not yet in a position to join as Member States; and
- b. Entities that were invited by the ELIXIR Board to attend the ELIXIR Board meetings as observers on a regular basis.

4.2.2 Term of Observer status

Observer status can be granted upon request to the Chair of the ELIXIR Board for a period of up to two years, however, this period must terminate at the end of a Financial Year. It can be renewed by the ELIXIR Board for successive terms of two years subject to the conditions in Article 5.2. The ELIXIR Board establishes the terms of admission of Observers.

4.3 Withdrawal of an ELIXIR Member or Observer

4.3.1 Withdrawal of an ELIXIR Member State

An ELIXIR Member State may withdraw from ELIXIR at the end of a Financial Year by providing one year's written notice sent to the Chair of the ELIXIR Board. The ELIXIR Board shall formally record the withdrawal.

4.3.2 Legal consequences of withdrawal of an ELIXIR Member State

An ELIXIR Member that withdraws from ELIXIR is not entitled to claim any compensation or goodwill value whatsoever and shall continue to contribute to the ELIXIR Budget until its withdrawal is effective. Any outstanding contributions will be paid and obligations fulfilled before withdrawal of membership is confirmed.

4.3.3 Withdrawal of the EMBL

The EMBL may withdraw with effect at the end of a Financial Year provided that it gives at least 24 months' notice of its intention to withdraw from this Agreement.

4.3.4. Withdrawal of an Observer

Observers may withdraw at any time during the first two years after their acceptance as Observers. After renewal the Observer may withdraw at the end of a

Financial Year by providing one year's written notice sent to the Chair of the ELIXIR Board.

4.4 Expulsion of a Defaulting ELIXIR Member or Observer

4.4.1 Termination of membership or observership

Without prejudice to the ELIXIR Board's power to suspend the delegate's rights of a Defaulting Member State according to Article 6.2.7, the ELIXIR Board shall also have the power to terminate the membership of a Defaulting Member or the observer status of an Observer if the following conditions are met:

- a. The ELIXIR Member or Observer is in serious breach of one or more of its obligations under this Agreement or causes, or threatens to cause, a serious disruption to the operations of ELIXIR; and
- b. The ELIXIR Member or Observer was provided with the opportunity to present its defence to the ELIXIR Board and any such defence was heard by the ELIXIR Board; and
- c. The ELIXIR Member or Observer has failed to rectify such breach within such time as stipulated by the ELIXIR Board (except, for the avoidance of doubt, where such breach concerns a payment default referred to in Article 6.2.7).

4.4.2 Legal consequences of expulsion

An ELIXIR Member or Observer that is expelled from ELIXIR shall not be entitled to claim any compensation or goodwill value, nor reimbursement of any contribution made in respect of the Financial Year during which it is expelled, nor shall be entitled to waive any outstanding contribution owed to the ELIXIR budget, in whole or in part. Any outstanding contributions shall be paid and obligations fulfilled promptly upon confirmation of the expulsion of an ELIXIR Member or Observer.

5. Obligations of ELIXIR Members and Observers

5.1 Financial contributions of the ELIXIR Member States

5.1.1 Financial Contributions

Each ELIXIR Member State shall contribute annually to the ELIXIR Budget in accordance with the Financial Plan as described under Art. 7.1.1. The ELIXIR Member States are jointly responsible for ensuring that the ELIXIR Hub activities are sufficiently funded to maintain positive cash balance.

5.1.2 Calculation of contributions

Financial contributions shall be calculated once at the beginning of the Financial Plan on the average Net National Income at factor cost (NNI) of each ELIXIR Member for the three preceding calendar years for which statistics are available. Annex 1 includes the scale of financial contributions for expected Member States.

5.1.3 Date of payment

The ELIXIR Director shall notify ELIXIR Member States of the amounts of their annual contributions and, in agreement with the ELIXIR Board, of the dates on which payments shall be made and how such payments shall be made.

5.1.4 Accession of new Member

If, after this Agreement has entered into force, a country becomes a Member, the financial contributions of the other ELIXIR Members referred to in Article 5.1.2 remain unchanged. Contributions by the new Member shall be treated as additional contribution until the end of the current Financial Plan.

5.1.5 Special circumstances

The ELIXIR Board may decide to take into account any special circumstances of an ELIXIR Member State and adjust its contribution accordingly for a limited and defined period.

5.1.6 Delayed or early payments

If an ELIXIR Member State fails to make any payment due to ELIXIR under this Agreement, within four weeks of the payment date as determined under Art 5.1.3, the ELIXIR Board shall have the right to charge interest on the overdue amount. In case of early payments the respective ELIXIR Member State will be paid interest. The interest rate shall be proposed by the ELIXIR Director on an annual basis, together with the proposed ELIXIR Budget, which covers costs incurred through late payment. Interest on any delayed payments shall be charged without prejudice to the provisions of this Agreement regarding the payment of contributions.

5.2 Financial contributions by Observers

Observer status of States according to Article 4.2.1.a shall be renewed at the end of each two year period provided that the renewing State pays a contribution equal to 30% of the financial contribution, which such State would have to pay if it were an ELIXIR Member. The renewed observership shall start on the first day of the next Financial Year.

5.3 Obligations of Intergovernmental Organisations other than the EMBL

The ELIXIR Board shall specify the obligations of any Intergovernmental Organisations other than the EMBL prior to their approval as a member.

5.4 Services carried out by the EMBL within the framework of ELIXIR

5.4.1 The EMBL's Core Responsibilities

Subject to the provision and actual receipt of sufficient funding from the ELIXIR Budget and of an adequate Financial Plan, the EMBL shall be responsible for the following services which are deemed essential for the operation and management of the ELIXIR Hub and the accomplishment of ELIXIR's goals (the "Core Responsibilities"):

- a. Employing ELIXIR staff.
- b. Making facilities and infrastructure available to the ELIXIR Hub.
- c. Entering into agreements with third parties for the purpose of achieving ELIXIR's goals.
- d. Acting as a Party in legal disputes with third parties arising out of actions performed or omissions committed in the framework of ELIXIR.

5.4.2 Commissioning of additional technical and administrative services from the EMBL

In the event that the ELIXIR Board requires technical or administrative services in addition to the Core Responsibilities contained in Article 5.4.1, and subject to the provision and actual receipt of sufficient funding from the ELIXIR Budget, it shall commission such additional services from the EMBL as "Commissioned Services".

5.4.3 Work Programmes

The EMBL shall describe the Core Responsibilities as well as the Commissioned Services and additional services in Work Programmes, which shall run over the same five year term as the Financial Plan and the Programme and which shall be submitted to the ELIXIR Board for approval together with the Financial Plan and the Programme. The Core Responsibilities and the Commissioned Services shall be funded through the ELIXIR Budget. The Work Programmes may also include additional services which EMBL may agree to provide and which are not funded by the ELIXIR Budget.

5.4.4 Evaluation of Work Programmes

Work Programmes shall be regularly evaluated by the Scientific Advisory Board as determined by the ELIXIR Board.

6. Governance

6.1 Governance structure

The organisational structure of ELIXIR shall comprise the following bodies:

- The ELIXIR Board
- The ELIXIR Directorate
- The Scientific Advisory Board
- Heads of Nodes Committee
- Other Committees established by the ELIXIR Board

6.2 The ELIXIR Board

6.2.1 Role and Purpose of the ELIXIR Board

- a. The ELIXIR Board shall be the ultimate decision-making body of ELIXIR, which enables the representatives of the ELIXIR Members to make collective decisions on all matters related to ELIXIR, which shall then be put into effect by the ELIXIR Director.
- b. The ELIXIR Board determines ELIXIR's policy in scientific, technical and administrative matters, in particular by providing guidelines to the ELIXIR Director on his or her duties and monitoring them. It both implements and monitors ELIXIR's establishment and operation, and decides on necessary resources and components which are appropriate for inclusion in ELIXIR, with advice from the Scientific Advisory Board.

6.2.2 Composition

- a. The ELIXIR Board is composed of representatives of all ELIXIR Members that act as delegates. Each ELIXIR Member shall have not more than three delegates, which may be accompanied by advisers the latter not having voting rights.
- b. Members of the Heads of Nodes Committee shall not be nominated as Delegate.
- c. The ELIXIR Board shall elect a Chair and two vice-chairs.
- d. The ELIXIR Board shall establish its own Rules of Procedure.

6.2.3 Observers within the ELIXIR Board

Observers may attend ELIXIR Board meetings under the conditions set forth in Article 4.2.1. For the avoidance of doubt, Observers do not have any voting rights.

6.2.4 Powers of the ELIXIR Board

The ELIXIR Board shall have the exclusive power to issue the following decisions. Each decision must be voted on at a Board meeting that is quorate in accordance with Article 6.2.6 below. No decision shall be taken unless there is a two-thirds majority of all ELIXIR Members present and voting, unless otherwise stipulated in this Agreement:

Members and observers

- a. Consider and approve the entry of an interested entity as a member in ELIXIR and determine any conditions of its accession by unanimous vote of the ELIXIR Members;
- b. Consider and approve obligations of Intergovernmental Organisations other than the EMBL by unanimous vote of the ELIXIR Members;
- c. Decide on the expulsion of a Defaulting ELIXIR Member according to Article 4.4.1;
- d. Decide on the suspension of rights of a Defaulting ELIXIR Member State as a Board member in case of delayed contributions;
- e. Approve any applications to become an Observer;

Funding of ELIXIR

- f. Approve the Financial Plan by unanimous vote of the ELIXIR Members;
- g. Approve the ELIXIR Budget annually by Qualified Majority of the ELIXIR Members;
- h. Decide on modifications of the financial contributions of all ELIXIR Member States by Qualified Majority under the circumstances as set out in Article 5.1.5 and following adjustment according to Article 6.2.4 i.;
- i. Decide on the adjustment of the financial contributions of an ELIXIR Member State in the event that special circumstances are brought to the attention of the ELIXIR Board as set out in Article 5.1.5 by unanimous vote, and the affected country must abstain from voting;

- j. Decide whether to recommend to the EMBL Council the acceptance of gifts or special contributions if required so by the EMBL's Financial Rules and Regulations and as described under Article 7.6.2;
- k. Approve the annual financial report on the use of the ELIXIR Budget ;
- l. Approve the auditor's reports in relation to ELIXIR;

Scientific strategy

- m. Approve and modify the Programme for ELIXIR by unanimous vote of the ELIXIR Members;

Cooperation with ELIXIR Nodes, the EMBL and other co-operations

- n. Decide whether to accept the application of a Research Institute to become an ELIXIR Node;
- o. Agree to enter into a proposed Collaboration Agreement with an ELIXIR Node;
- p. Agree to a Work Programme proposed by the EMBL to the ELIXIR Board;
 - Regarding Core Responsibilities as described under Article 5.4.1 by unanimous vote of the ELIXIR Members;
 - Regarding Commissioned Services as described under Article 5.4.2 and additional services as described under Article 5.4.3 by two-thirds majority.
- q. Decide whether to not renew an existing Collaboration Agreement with an ELIXIR Node;
- r. Decide whether to terminate a Collaboration Agreement with an ELIXIR Node during the term of the Collaboration Agreement;
- s. Decide on modifications to a Work Programme
 - Regarding the Core Responsibilities as described under Article 5.4.1 by unanimous vote of the ELIXIR Members;
 - Regarding the Commissioned Services as described under Article 5.4.2 and additional services as described under Article 5.4.3 by two-thirds majority;
- t. Decide whether to terminate Commissioned Services or other services from the EMBL as described under Article 5.4.2 and Article 5.4.3;

- u. Establish co-operation with non-Member States, national bodies in those states, international governmental or non-governmental organizations (such as national research institutes) and definition on the conditions and terms of such co-operation by unanimous vote of the ELIXIR Members;

Rules and Regulations

- v. Establish the Rules of Procedure;
- w. Without prejudice to the overall framework of the EMBL Council's decisions, the EMBL Financial Rules and Regulations, Staff Rules and Regulations and Internal Policies, the ELIXIR Board may adopt and revise such rules, regulations and policies as may be required for the operations of ELIXIR, provided they are consistent with the aforementioned EMBL rules, regulations and policies;

Advisory bodies and committees

- x. Establish advisory bodies, committees and working groups and such further subsidiary or advisory bodies as it sees necessary for ELIXIR's proper functioning and the achievement of ELIXIR's goals. Subordinate bodies shall adopt their own rules of procedure;
- y. Appoint members of the Scientific Advisory Board;

ELIXIR Director

- z. Appoint and dismiss the ELIXIR Director;

Miscellaneous

- aa. Approve reports;

General Clause

- bb. Decide upon any matters pertaining to ELIXIR or its operations submitted to it by the ELIXIR Director or by any ELIXIR Member and that are not subject to different majority requirements according to Article 6.2.4 by a Simple Majority.

6.2.5 Meetings

- a. The ELIXIR Board shall meet at least once a year. The Board may meet in extraordinary sessions. Both the ordinary and extraordinary meetings shall be held at the ELIXIR Headquarters, unless otherwise decided by the ELIXIR Board.

- b. The meetings of the ELIXIR Board shall be convened by the chair of the ELIXIR Board at least once a year and at any time upon written request of at least 50% of the ELIXIR Members, according to the formalities set out in the Rules of Procedure.

6.2.6 Voting Rules and Quorum

- a. Each ELIXIR Member that is represented by its delegates or by a proxy holder at the meeting shall have one vote.
- b. For the avoidance of doubt, the chair of the ELIXIR Board does not have a casting vote.
- c. Board meetings shall be quorate if two-thirds or more of the ELIXIR Members are present or represented.
- d. Abstentions shall not be taken into account into the calculations of the majorities.
- e. The resolutions passed at the meetings of the ELIXIR Board in accordance with this Agreement shall be binding on all ELIXIR Members, including those absent or dissenting.

6.2.7 Suspension of rights of ELIXIR Members States as a Board Member

If an ELIXIR Member State owes outstanding contributions which equal or exceed the amount of the contributions due from that Member State for the previous two preceding years, the ELIXIR Board may decide to suspend the rights of a Defaulting Member, in particular those linked to its representation in the ELIXIR Board. Such Defaulting Member shall be deemed to be in serious breach of its obligations under this Agreement for the purposes of Article 4.4.1.

6.3 ELIXIR Directorate

6.3.1 Role of the ELIXIR Director

The ELIXIR Director is responsible for implementing the decisions of the ELIXIR Board. Furthermore, the ELIXIR Director is responsible to the Director General of EMBL for the observance of the EMBL Rules and Regulations.

6.3.2 Major tasks of the ELIXIR Director

The ELIXIR Director shall:

- a. In accordance with the EMBL's internal rules and regulations and policies and the decisions of the ELIXIR Board, manage and administer ELIXIR and the ELIXIR Hub staff.

- b. Prepare the Programme for which it will seek the advice of the Heads of Nodes Committee, supervise and execute the Programme and oversee the Financial Plan.
- c. Present an annual scientific report to the ELIXIR Board.
- d. Present an annual financial report to the ELIXIR Board on the use of the ELIXIR Budget.
- e. Propose each year no later than 1 October an ELIXIR Budget showing detailed estimates of the projected income and expenditure of ELIXIR for the following financial year.
- f. Attend the meetings of the ELIXIR Board in a non-voting capacity.
- g. Inform the ELIXIR Board about all relevant matters related to ELIXIR that would either require a decision or acknowledgement.
- h. Appoint and dismiss ELIXIR Staff in accordance with the EMBL Staff Rules and Regulations.
- i. Negotiate and prepare Collaboration Agreements with Nodes (under Article 8.5) and a Work Programme with the EMBL (under Article 5.4.2).

6.3.3 ELIXIR staff working at the ELIXIR Hub

- a. Staff working for the ELIXIR Hub shall be responsible for providing administrative and technical support to the ELIXIR Hub and in particular to the ELIXIR Director and the Scientific Advisory Board.
- b. The ELIXIR Director as well as ELIXIR Staff shall be employed by EMBL in accordance with the EMBL Staff Rules and Regulations.
- c. ELIXIR Staff shall be accountable to the ELIXIR Director for the execution of all technical and administrative services undertaken to implement the decisions of the ELIXIR Board.

6.3.4 Appointment of the ELIXIR Director

- a. The ELIXIR Director is appointed by the ELIXIR Board and shall perform all tasks assigned to it as detailed in this Agreement.
- b. If a vacancy should arise the ELIXIR Board appoints an interim ELIXIR Director pending a recruitment process.

6.3.5 Dismissal and resignation of the ELIXIR Director

- a. The decision to dismiss the ELIXIR Director is to be taken by the ELIXIR Board.
- b. In case of resignation of the ELIXIR Director, EMBL shall inform the ELIXIR Board at once by notifying the Chair of the ELIXIR Board in writing.

6.4 The Scientific Advisory Board**6.4.1 Role and purpose**

The Scientific Advisory Board shall provide advice to the ELIXIR Board and ELIXIR Director in relation to ELIXIR activities from a scientific perspective.

6.4.2 Composition

- a. The Scientific Advisory Board shall be composed of highly qualified, internationally recognized scientists selected on the basis of their competence in all aspects of ELIXIR. The Scientific Advisory Board should strive for a gender balanced composition.
- b. The Scientific Advisory Board members shall be appointed in their own right and not as representatives of the ELIXIR Members.

6.4.3 Selection and appointment of Scientific Advisory Board members

- a. The ELIXIR Director, after consultation with the ELIXIR Members, shall propose to the ELIXIR Board a list of candidates which the ELIXIR Board shall take into account during the selection process.
- b. The members of the Scientific Advisory Board shall be appointed by the ELIXIR Board for a period of three years.
- c. The Scientific Advisory Board shall establish Rules of Procedure.

6.5 Heads of Nodes Committee**6.5.1 Role and purpose**

The Heads of Nodes Committee shall be composed of representatives of the ELIXIR Nodes and EMBL-EBI. The Heads of Nodes Committee shall give advice to the ELIXIR Board and Director in relation to ELIXIR activities. The

ELIXIR Director shall consult the Heads of Nodes Committee to establish the Programme which he/she will submit to the ELIXIR Board.

6.5.2 Members of the Heads of Nodes Committee

- a. Every ELIXIR Node that entered a Collaboration Agreement with the ELIXIR Hub shall appoint one representative, which shall act as the head of the ELIXIR Node and shall have a seat on the Heads of Nodes Committee.
- b. EMBL-EBI shall appoint one representative, which shall act as the head of the EMBL-EBI's participation in ELIXIR and shall have a seat on the Heads of Nodes Committee
- c. The Heads of Nodes Committee shall establish its own rules of procedure.

6.6 Other Committees established by the ELIXIR Board as necessary

The ELIXIR Board and the ELIXIR Director may establish other committees as and when appropriate. The ELIXIR Board shall define the terms of reference and membership of such committees.

7. Finance

7.1 Financial planning and budget

7.1.1 Financial Plan

Every five years the ELIXIR Director shall submit a proposal for the Financial Plan to the ELIXIR Board for consideration and approval. This sets out the basis for each ELIXIR Member State's contributions in this five year period and the maximum agreed budget for ELIXIR for that same period. The Financial Plan shall be based on the agreed Programme.

7.1.2 Annual contributions

No Member State shall be required to pay more or less than their normal annual contribution agreed in the Financial Plan. Article 5.1.5, Article 7.5 Sentence 2 and Article 9 remain unaffected.

7.1.3 ELIXIR Budget

The ELIXIR Director shall also, by no later than 1 October of each year, submit to the ELIXIR Board for consideration and approval an ELIXIR Budget setting

out detailed estimates of projected income and expenditure for ELIXIR activity of the ELIXIR Hub for the following financial year.

7.1.4 Foreign currency movements

The ELIXIR Director shall, at the time of budget submission for the following year, also provide to the ELIXIR Board an estimate of the impacts of foreign currency movements on the current year's ELIXIR Budget. The ELIXIR Board shall consider how these foreign currency movements have impacted the ELIXIR Director's ability to deliver the Programme and what, if any, financial remedy should be applied.

7.2 Funding of the ELIXIR Hub

The ELIXIR Hub shall be financed by

- Financial contributions of Member States
- Financial contributions of Observers according to Article 5.3
- Gifts
- Special contributions other than gifts, as set out in this Agreement
- Grants

Funding is subject to approval of the ELIXIR Board.

7.3 Accounts

7.3.1 Financial Year

The Financial Year of ELIXIR shall run from 1 January to 31 December.

7.3.2 Accounts

The EMBL shall maintain separate ELIXIR accounts in accordance with EMBL's financial regulations, policies, processes and rules. The EMBL shall ensure that all income and expenditure in respect of ELIXIR activities is separately identifiable within its accounts. The EMBL shall report on the income and expenditure of ELIXIR through an annual ELIXIR Income Statement, which shall form part of the EMBL Annual Accounts (Annex 2).

7.4 Audit

The incomes and expenditures of ELIXIR shall be subject to an annual external audit, which shall form a part of the EMBL annual audit. The EMBL's external auditors shall provide the ELIXIR Board with a separate audit report on ELIXIR income and expenditure at ELIXIR's own cost.

7.5 Overhead costs

The EMBL shall be entitled to charge ELIXIR for overhead costs related to its services in accordance with the EMBL's financial regulations, policies, processes and rules. The EMBL charges ELIXIR any costs incurred by the EMBL as a result of ELIXIR having a negative cashflow.

7.6 Core principles of financial management of ELIXIR

7.6.1 Administration of ELIXIR Budget

The EMBL shall, in accordance with the decisions made by the ELIXIR Board, administer the ELIXIR Budget of the ELIXIR Hub. The ELIXIR Budget will be managed in accordance with the Agreement establishing the EMBL and the EMBL Financial Rules and Regulations.

7.6.2 Gifts

Any gift, the value of which exceeds €250.000, and all special contributions require approval of the ELIXIR Board and approval of the EMBL Council such approval to be provided in accordance with the EMBL Financial Rules and Regulations. Gifts should be consistent with the purposes of ELIXIR and the EMBL.

8. ELIXIR Nodes

8.1 Application process for ELIXIR Nodes

The application process shall comprise the following steps:

- Proposal by ELIXIR Member
- Evaluation of Node application
- Negotiation phase
- Legal integration of the ELIXIR Nodes into ELIXIR through Collaboration Agreements
- Regular evaluation

8.2. Right of Proposal

Node Applicants shall be proposed by ELIXIR Members. The ELIXIR Board invites ELIXIR Members to hand in proposals according to procedures decided by the ELIXIR Board.

8.3 Formal eligibility criteria

ELIXIR Members shall only propose Node Applicants that fulfil the following cumulative criteria:

- a. be or be part of a 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.

8.4 Procedure for evaluating Node applications

Proposals are evaluated by the Scientific Advisory Board, according to procedures decided by the ELIXIR Board.

8.5 Collaboration Agreements

8.5.1 Status as ELIXIR Node

Upon its acceptance, the successful Node Applicant shall conclude a Collaboration Agreement with the EMBL, acting on behalf of the ELIXIR Hub. By signing the Collaboration Agreement the Node Applicant shall become an ELIXIR Node. The details of the Collaboration Agreement shall be determined by the ELIXIR Director, who shall take into account observations of the ELIXIR Node Applicant, and shall be subject to final approval by the ELIXIR Board.

8.5.2 Provision of technical services

Collaboration Agreements shall define the provision of technical services (Commissioned Services and additional services) through the ELIXIR Nodes and set out the mechanisms for their provision.

8.6 Commissioning of technical services by ELIXIR Nodes

In the framework of the Commissioned Services, the ELIXIR Board may decide to sub-commission certain technical services from the ELIXIR Nodes. Such Commissioned Services

performed by the ELIXIR Nodes shall be funded through the ELIXIR Budget and the terms and conditions under which they are provided shall be detailed in a Collaboration Agreement.

8.7 Procedure for evaluation of ELIXIR Nodes

ELIXIR Nodes shall be regularly 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 (in whole or in part) the Collaboration Agreement with the ELIXIR Node.

8.8 Termination of Collaboration Agreement

8.8.1 Termination by ELIXIR Node

The ELIXIR Node may terminate the Collaboration Agreement by giving at least twelve (12) months' notice in writing to the ELIXIR Director.

8.8.2 Termination by ELIXIR Board

The ELIXIR Board may terminate the Collaboration Agreement in case of a serious breach of the Collaboration Agreement by the Node by giving at least three months notice in writing to the Head of the ELIXIR Node. The Collaboration Agreement shall terminate immediately in the event that an ELIXIR Node loses at least one of the formal eligibility criteria as listed under Article 8.3.

8.8.3 Expiry and renewal conditions of Collaboration Agreement

The ELIXIR Board may decide to renew the Collaboration Agreement unless the following cumulative conditions apply:

- a. Receipt of an evaluation of the Scientific Advisory Board that contains specific reasons which merit a decision not to renew the Collaboration Agreement;
- b. Decision by the ELIXIR Board to terminate the Collaboration Agreement; and
- c. Six months notice in writing before the regular end of the Collaboration Agreement to the ELIXIR node.

If the formal eligibility criterion as described under 8.3.b. ceases to apply, the ELIXIR Board may make the decision to renew or terminate the Collaboration Agreement without any involvement of the Scientific Advisory Board.

The decision not to renew the Collaboration Agreement has to be notified in writing to the ELIXIR Node six (6) months prior to the expiry of such Collaboration Agreement.

9. Liability

9.1 The EMBL as aggrieved party

Each ELIXIR Member State shall be liable to the EMBL for any direct, indirect or consequential loss or similar damage related to or resulting from the operation or management of the ELIXIR Hub or from Commissioned Services by the EMBL according to Article 5.4, provided that such loss or damage was not caused by the EMBL's willful act or gross negligence.

9.2 Claims by third party

Each ELIXIR Member State agrees to indemnify and hold the EMBL harmless from and against any and all such direct, indirect or consequential loss or similar damage to a third party as a result of the operation or management of the ELIXIR Hub or from Commissioned Services from the EMBL according to Article 5.4, provided that such damage was not caused by the EMBL's willful act or gross negligence.

9.3 Distribution of losses among ELIXIR Member States

Liability shall be incurred from the date that the loss or damage arose until such time as the loss or damage is remedied. The financial consequences of the liability borne by each ELIXIR Member State shall be calculated pro rata based on each Member State's ordinary contributions in the year that the loss/damage was incurred. Should the loss or damage cover multiple years a separate calculation shall be made for each year, but only for those Member States at the time of the original loss or damage.

9.4 Insurance coverage for ELIXIR

The EMBL represents and warrants that it has taken out insurance as required by the Host Site Agreement between the EMBL and the Government of the United Kingdom.

10. Intellectual Property

The activities of ELIXIR Hub are limited to the provision of technical services and administration. As ELIXIR is an infrastructure framework and does not conduct research itself, it is not expected that Intellectual Property will be developed directly from its activities or operation, rather it is expected to promote the creation of Intellectual Property by researchers using ELIXIR infrastructure. The ELIXIR Members therefore agree that all data and technical services enabling access and support of the data shall be provided on an open access and/or open source basis and shall be put into the public domain under the applicable licenses. However, in the event that an invention would result from the activities or the operation of ELIXIR that may be protected and commercialized, the ELIXIR Members agree that such an invention shall be reported to the ELIXIR Board. The invention shall be the property of the entity carrying out the work generating that invention. The ELIXIR Members shall then by mutual agreement decide on a case-by-case basis on the best course of action.

11. Ethics policy

The ELIXIR Board shall establish an ethics policy that is in line with relevant laws and regulations and that considers best practices. It shall put in place measures to ensure that activities required as part of the ELIXIR Hub's mission shall be in line with this ethics policy. The ELIXIR Board shall implement mechanisms to ensure that ELIXIR Nodes as well as all other collaboration partners in the context of ELIXIR are made aware of their 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.

12. Effectiveness, Entry into force and Accession of new ELIXIR Members

12.1 Signature, effectiveness and entry into force

This Agreement shall be open for signature by eligible entities according to Article 4.1.1. It shall enter into force thirty days after the date on which five countries and the EMBL have expressed their consent to be bound by the Agreement.

For any eligible entity that expresses its consent to be bound by the Agreement subsequent to the entry into force of the Agreement, the Agreement shall enter into force for that entity thirty days following the date of its consent.

12.2 Accession of a new ELIXIR Member

A new ELIXIR Member enters into this Agreement as of the date of its signature of this Agreement.

12.3 Duration

Without prejudice to Articles 4.3, 4.4 and 12.1, this Agreement shall be in full force and effect until 31 December 2017 and tacitly renewed.

13. Termination and consequences

13.1 Termination

This Agreement may be terminated by consensus of all ELIXIR Members. It shall be terminated automatically and with immediate effect if there are less than three ELIXIR Member States remaining and/or if the EMBL has withdrawn in accordance with Article 4.3.3.

13.2 Liquidation

In the event that this Agreement is terminated, the EMBL shall be entrusted with the liquidation of the assets and property allocated to ELIXIR, excluding property and assets put at the disposal of ELIXIR by the EMBL and which were not acquired for the purposes of ELIXIR (the ownership of such assets shall return to the EMBL). The proceeds of such liquidation shall first be used to meet any outstanding liabilities incurred by ELIXIR. Any remaining assets and monies shall be apportioned among the remaining ELIXIR Members in proportion to their overall financial contribution at the time of dissolution. Any remaining liabilities or deficit shall be apportioned between the remaining ELIXIR Members.

14. Language

This Agreement is drawn up in English. The English language shall govern all documents, notices, meetings, proceedings and processes relative thereto and shall be the working language for ELIXIR.

15. Inconsistencies and severability

Should any provision of this Agreement become invalid, illegal or unenforceable, it shall not affect the validity of the remaining provisions of this Agreement. In such a case the ELIXIR Members shall be entitled to request that a valid and practicable provision be negotiated which best fulfils the purpose of the original provision.

16. Notices

Any notice to be provided under this Agreement shall be in writing to the addresses and recipients as listed in the most recent address list kept by the ELIXIR Director based on the initial list of ELIXIR Members and other contact persons.

17. Amendments

This Agreement may be amended in writing and by mutual consent of all ELIXIR Members.

18. Assignment

No rights or obligations of the ELIXIR Members arising from this Agreement shall be assigned or transferred, in whole or in part, to any third party without the other ELIXIR Member's prior formal approval, which shall not be unreasonably withheld, delayed or conditioned.

19. Applicable law

This Agreement shall be applied in accordance with and governed by

- (a) international law; and subsidiary
- (b) the law of England and Wales in the case of matters not, or only partly, regulated by acts referred to in (a) above

20. Settlements of Disputes

Any dispute, controversy or claim arising out of or in relation to this 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 apportionment is reasonable, taking into account the circumstances of the case.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments or Entities, have signed this Agreement in a single original which shall be deposited in the archives of the EMBL which shall transmit certified copies to all Signatories.

Annex 1: Scale of contribution of expected Member States based on NNI for the years 2014 – 2018 (effective April 2013)

[illegible]

Annex 2: Template for income and expenditures for a Financial Year

<u>Income</u>	ELIXIR Budget	Current Year	Prior Year
Member State Contributions			
Gifts and donations			
Other income			
Total Income			
<u>Expenditures</u>			
Technological activities			
Technical project expenditure			
Directorate and administrative activities			
Staff related costs			
Running costs			
Equipment and depreciation			
Overheads			
Other expenditure			
Total Expenditure			
Surplus/(Deficit) for the Year			