

CONSORTIUM AGREEMENT

Project title: *Understanding the two faces of the COVID-19 immune response to predict the clinical course and define strategies for early and late phase intervention.*

ZonMw file N°: 5.1.2e

THIS CONSORTIUM AGREEMENT (the "**Agreement**") is based on the General Terms and Conditions Governing Grants of ZonMw, version 1st July 2013 and the decision of ZonMw to award the Grant for this Project as communicated to the Main Applicant in a Grant Letter dated 14 July 2020 with ZonMw file number 5.1.2e and shall come into effect on the date of last signature (the 5.1.2e)

BY AND BETWEEN:

1. **Universitair Medisch Centrum Utrecht**, a public legal entity (*publiekrechtelijke rechtspersoon*) existing under Dutch law, Division Imaging & Cancer Center, having its principle place of business at Heidelberglaan 100, 3584 CX, Utrecht, the Netherlands, in this matter legally represented by 5.1.2e, 5.1.2e Pharmacy and Genetics, and 5.1.2e hereinafter referred to as "**UMC Utrecht**";
2. **Stichting VUmc**, a private legal entity, established under the laws of The Netherlands, having its registered office at De Boelelaan 1117, 1081 HV, Amsterdam, The Netherlands, in this matter duly represented by 5.1.2e, 5.1.2e hereinafter referred to as "**VUmc**";
3. **The State of the Netherlands**, represented by its Minister of Health, Welfare and Sport, on behalf of the Minister represented by 5.1.2e, 5.1.2e of the National Institute for Public Health and the Environment - RIJKSINSTITUUT VOOR VOLKSGEZONDHEID EN MILIEU (RIVM), having its home office at Antonie van Leeuwenhoeklaan 9, 3721 MA Bilthoven, the Netherlands, and registered with the Dutch Chamber of Commerce under number 5.1.2e hereinafter referred to as "**RIVM**";

hereinafter referred to, individually or jointly, as "Party" or "Parties".

WHEREAS

- The Parties, having considerable experience in the field of Immunology, have submitted a Full Project Proposal for the Project entitled *Understanding the two faces of the COVID-19 immune response to predict the clinical course and define strategies for early and late phase intervention* (hereinafter referred to as the "**Project**") to the funder ZonMw as part of the ZonMw call "BOTTOM-UP". This Agreement is based upon the decision of ZonMw to award the Grant for this Project as communicated to the Main Applicant in a Grant Letter with ZonMw file number 5.1.2e dated 14 July 2020
- The Parties intend to execute the Project as detailed in the Full Project Proposal attached as **Annex 1** and in accordance with the with the General Terms and Conditions Governing the Grants of ZonMw, version 1st July 2013 and the specific conditions of the ZonMw Decision to award the Grant;
- The Parties wish to specify their respective rights and obligations in relation to the Project and wish to lay down general rules concerning the organization of the work, the management of the Project, and the use and dissemination of the Results;

PARTIES HEREBY AGREE AS FOLLOWS

1. Definitions

The definitions in the ZonMw General Terms and Conditions Governing Grants of ZonMw, applicable as from 1st July 2013 and attached to this agreement in **Annex 2** (hereinafter "**General Terms and Conditions Governing Grants of ZonMw**"), apply to this Agreement unless stated otherwise. The terms hereafter shall have the following meaning:

- a. **Affiliates:** any company or other legal entity, of which a Party now or hereafter owns or controls directly or indirectly more than 50 % of the voting shares or by which the Party now or hereafter is owned or controlled directly or indirectly by more than 50 % of the voting shares, or any company or other legal entity which is under common control with a Party, but any such company shall be deemed to be an affiliated company only so long as such ownership or control exists;
- b. **Background IP:** all data, know-how, knowledge, techniques, methods, models, discoveries, Materials, designs, software, trade secrets and other information, which is held by a Party prior to its accession to this Agreement or generated by that Party independently of the Project and made available by that Party for use in the Project in accordance with the terms and conditions of this Agreement and listed in Annex 3 of this Agreement which may be amended from time to time;
- c. **Budget:** the budget in the Full Project Proposal providing an estimate of the total cost to carry out the Project, including an overview of the Contributions of each Party, attached as Annex 1;
- d. **Consortium:** the group of organizations as described in the Full Project Proposal that participate in the Project;
- e. **Contribution:** the total In Cash Contribution and the monetary equivalent of the total In-Kind Contribution of a Party according to the Project Budget of the Full Project Proposal;
- f. **Coordinator:** means the Party identified in this Agreement who, in addition to its obligations as a Party, is obliged to carry out the specific coordination tasks provided for in this Agreement on behalf of the Parties to the Agreement, also referred to as "Main Applicant" or "Grant Recipient";
- g. **Decision:** the formal written decision rendered by ZonMw in response to the application for the Grant indicating that the application has been successful;
- h. **Foreground IP:** means the intellectual property rights and knowhow arising directly from the performance of the Project, including patents, copyrights or other intellectual property rights pertaining to such results following applications for, or the issue of patents, designs, supplementary protection certificates or similar forms of protection, excluding Background IP;
- i. **Full Project Proposal ("Uitgewerkte Aanvraag")** the description of the research activities, including the milestones, the deliverables and the budget ("**Project Budget**") as attached to this Agreement as Annex 1;
- j. **Funding Agency:** Netherlands Organisation for Health Research and Development, also referred to as 'ZonMw';
- k. **Grant Letter:** the ZonMw letter that contains the Decision with respect to the award of the Grant for this Project;
- l. **In Cash Contribution:** the in cash contribution of a Party to this Project according to the Project Budget;
- m. **In-Kind Contribution:** the in-kind contribution of a Party to this Project according to the Project Budget;
- n. **Materials:** means the samples, such as but not limited to antibodies, DNA, micro-organisms or samples, as specified in Annex 3 as well as the non-modified derivatives obtained directly or indirectly from the original material such as subunit, progeny or descendant, fraction, and any composition containing the same;
- o. **Project:** the project described in the Full Project Proposal;
- p. **ZonMw Funding Conditions:** the General Terms and Conditions Governing Grants of ZonMw, applicable as from 1st July 2013 and the ZonMw Decision to award the Grant for this Project;

2. Purpose of the Agreement

The Parties agree to set up a Consortium for the purpose of as further detailed in the Full Project Proposal. The purpose of this Agreement is to specify the relationship among the Parties in relation to the Project in particular concerning the organisation of the research activities as outlined in the Full Project Proposal, the management of the Project and the rights and obligations of the Parties in relation to the Foreground IP.

Nothing in this Agreement shall be deemed to create a partnership or agency or any formal business organization or legal entity among the Parties. This Consortium does not have the purpose to exploit the Foreground IP commercially as a differentiated legal entity.

3. Cooperation within the Project

Each Party who participates in this Project remains solely responsible for carrying out its relevant part of the Project. Each Party will take part in the efficient implementation of the Project, and will cooperate, perform and fulfil, promptly and on time, all of its obligations in this Project under the ZonMw Funding Conditions and this Agreement as may be reasonably required from it and in a manner of good faith as prescribed by Dutch law.

The allocation of work to be performed within the Project is described in the Full Project Proposal. The Parties commit themselves to perform the work in accordance with the Full Project Proposal, including its timelines, and to notify the Project Leader in case of any problems that might occur and may have an impact on the timely execution of the Project. Each Party will, at the Project Leader's first request, promptly provide all information needed by the Project Leader/Coordinator to fulfil its obligations towards ZonMw.

Each Party will cooperate in good faith with the Project Leader in his efforts to fulfil his obligations resulting from this agreement and the ZonMw Funding Conditions in a timely and proper manner.

Each Party will take reasonable measures to ensure the accuracy of any information (including Background IP and Foreground IP) or material it supplies to the other Parties.

4. Project governance

4.1 Structure

The organizational structure of the Consortium shall comprise the following consortium bodies:

- a. The project leader ("Project Leader");
- b. The general assembly ("General Assembly").

4.2 The Coordinator and Project Leader

The Main Applicant of the Project and hence the Coordinator is UMC Utrecht. The Parties appoint **5.1.2a** to represent the Coordinator as the Project Leader for the term of this Agreement.

The Project Leader will act as an intermediary between the Parties and ZonMw. The Project Leader is furthermore tasked with:

- a. Keeping accounts of the funds distributed to the Project by ZonMw and any other funding organisation and the distribution of these funds to the Parties;
- b. Keeping accounts of the In-Kind Contributions and the In Cash Contributions of the Parties for the purpose of the Project;
- c. Notifying the Parties of any official notifications from ZonMw in relation to the Project;

The Coordinator shall not be entitled to act or to make legally binding declarations on behalf of the other Parties.

4.3 The General Assembly

The General Assembly will be chaired by the Coordinator, unless decided otherwise by the General Assembly.

The General Assembly will consist of one representative of each Party ("Member").

The General Assembly is responsible for strategic and scientific management of the Project and will review, discuss and decide on all relevant decisions regarding the Project, including:

- a. Changes to the Full Project Proposal;
- b. Changes to the Budget;
- c. Changes to the Agreement;
- d. Additions to the list of Background IP as set out in Annex 3;
- e. Withdrawal of a Party;
- f. Termination of the participation of a defaulting Party
- g. Termination of the Project and the Agreement.

Any changes to the Full Project Proposal, the Budget or this Agreement as discussed in the General Assembly might require prior written consent of the Funding Agency.

4.4 Decision making and conflict resolution

Each Member has one vote. A Party may not vote with regard to the decision relating to its identification to be in breach of its obligations nor to its identification as a defaulting Party.

Decisions shall be taken by a majority of the votes validly cast at a meeting.

The General Assembly will identify a defaulting Party. It will formally notify the defaulting Party (served personally or sent by mail with recorded delivery or telefax with receipt acknowledgement) of its failure to perform its obligations under the Agreement and give it 30 days to cure the breach. If the breach is not cured within that term or if the breach cannot be cured or the defaulting Party notifies the General Assembly that it cannot or will not cure the breach, the General Assembly will vote on termination of the defaulting Party and decide within the General Assembly on the re-allocation of tasks and funds to a new party.

A Party that is declared a defaulting Party shall bear all actual and reasonable costs incurred by the other Parties under the Project as a result of the defaulting Party's breach of obligations. The General Assembly is further entitled to recover any payments already paid to the defaulting Party until the effective date of the declaration of the Party as a defaulting Party.

A non-defaulting Party may request the General Assembly to terminate its participation in the Project and to this Agreement. A Party leaving the Consortium will, upon request of the Project Leader, promptly transfer any unspent and uncommitted part of the funding to the Party that is ultimately responsible for the application and use of the funding.

Termination or withdrawal by a Party will not affect any rights or obligations of that Party incurred prior to the date of termination or withdrawal. This includes the obligation of that Party to make its Background IP and, if applicable, its Foreground IP, available to the Parties for the performance of the Project.

4.5 Meetings

The General Assembly will meet 6-monthly either in a telephone conference or in person, at dates determined by the Project Leader after consultation with other Members, or as often as necessary if requirements from this Agreement would necessitate more frequent meetings. Members will be noticed at least 30 days before the date about the meeting and its agenda.

Any Member shall use its best efforts to be present or represented at any meeting and may appoint a substitute or a proxy to attend and vote at any meeting and shall participate in a cooperative manner in the meetings.

The Project Leader shall produce written minutes of each meeting which shall be the formal record of all decisions taken. He shall send draft minutes to all Members within 14 (fourteen) calendar days of the meeting.

The minutes shall be considered as accepted if, within 14 (fourteen) calendar days from sending, no Member has objected in writing to the Project Leader with respect to the accuracy of the draft of the minutes.

All relevant email, letter and fax communication between the Parties will also be sent to the Project Leader.

The minutes of additional meetings between some or all of the Parties will be sent to the Project Leader.

4.6 The Principal Investigator

1. Each Party appoints its lead scientist on the Project as principal investigator ("**Principal Investigator**").
2. The Principal Investigator of each Party is responsible for supervision and direction of the Project at the Party's organisation.
3. The Principal Investigator is responsible for:
 - a. Communication with the other Principal Investigators and the Project Leader;
 - b. Reporting the progress of the research under the Project to the Project Leader on a six-monthly basis and at the General Assembly;
 - c. The timely and proper preparing of the ZonMw progress reports and final report;
 - d. Hosting the ZonMw site visit;

5. Involvement of third parties

Parties may not sub-contract any part of their research activities under the Full Project Proposal except with the prior written approval of the other Parties.

The Party engaging a third party in the execution of its share of the research activities under the Full Project Proposal is responsible for the execution of those activities by the third party and for the third party's compliance with the provisions of this Agreement and the obligations of the parties resulting from the ZonMw Funding Conditions.

The Party engaging a third party in the execution of its share of the research activities under the Full Project Proposal will ensure that the third party will assign any rights to the Results it has generated.

6. Duration and termination

This Agreement will go into effect on the Effective Date and will continue in effect up and until the termination or completion of the Project but no later than 24 months after the Effective Date.

Each Party may terminate this Agreement in relation to another Party prior to the termination date in the event of that other Party's bankruptcy (*faillissement*) or a moratorium of payments (*surseance van betaling*) or entering into a debt rescheduling arrangement (*schuldsaneringsregeling*) immediately upon the occurrence of the relevant event.

In case of breach of a Party of its substantial obligations as provided in the Agreement, the termination of the participation of the such defaulting Party will take place in accordance with the provisions of Clause 4.4 (*Decision making and conflict resolution*).

This Agreement shall automatically terminate without any further demand and without liability of any Party to the others upon the first to occur of the following events:

- in case no Decision is awarded by the Funding Agency;
- termination of the entire Decision by the Funding Agency.

Neither Party shall by reason of withdrawal or termination be relieved from:

- its responsibilities under this Agreement or the Decision in respect of that part of that Party's work package which has been carried out (or which should have been carried out) up to the date of withdrawal or termination; or
- any of its obligations or liabilities arising out of such withdrawal or termination.

The provisions of the clauses of this Agreement relating to liability, confidentiality (with five (5) years), intellectual property rights and publications shall survive the term or termination of this Agreement for any reason whatsoever to the extent needed to enable the Parties to pursue the remedies and benefits provided for in those Clauses. For the avoidance of doubt, termination or withdrawal shall not affect any rights or obligations incurred prior to the date of the termination.

7. Force Majeure

If the performance by either Party of any of its obligations under this Agreement (except a payment obligation) is delayed or prevented by circumstances not reasonably foreseeable at the time of the signing of this agreement and beyond its reasonable control (*Force Majeure*), that Party will not be in breach of this Agreement because of that delay in performance.

The Party concerned will give written notice to the other Parties without undue delay, describing the Force Majeure event(s), its anticipated duration and use of reasonable efforts to resume performance as soon as possible.

If the delay in performance is more than 3 months, the other Parties may terminate this Agreement with immediate effect by giving written Notice to the other Party. Where applicable, the transfer of tasks of such Party – if any – to a new Party shall be considered and decided upon by the General Assembly. Such decision should be subject to the agreement of the Funding Agency, which shall be duly informed, and object of the signature of a specific addendum to all relevant agreements.

8. Financial provisions

The Party responsible for the application and use of the Grant will make the funds available for the Project to the Parties upon receipt from ZonMw, according to the Budget.

Each Party is responsible for justifying its costs in accordance with generally accepted accounting and management principles and practices.

Each Party will be refunded based on actual and duly justified costs.

9. Liabilities of the parties

9.1 No warranties

Any information or advice, including Confidential Information, Materials, Data, Background IP and Foreground IP, made available for the Project under this Agreement, is made available "as is", and each Party understands and agrees that such is experimental in nature and is made available without any representation or warranty, express or implied, including any implied warranty as to the merchantability, satisfactory quality or fitness for any particular purpose, or, except as expressly provided for herein, any warranty that the use of the same will not infringe or violate any patent or other proprietary rights of any party.

9.2 Limitation and exclusion of contractual liability

No Party will be responsible to any other Party for any indirect or consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue or loss of contracts, provided such damage was not caused by a willful act.

The total aggregate liability of each Party to all other Parties for all losses, damages, or injuries of any kind arising out of or relating to this Agreement or its subject matter is limited to EUR 150,000 (one hundred and fifty thousand euro), except for and to the extent that such loss or damage is directly caused by a willful act (*opzet*) or gross negligence (*bewuste roekeloosheid*) of that Party and cannot be restricted or excluded by applicable law.

10. Intellectual Property.

10.1 Ownership of Background IP

Each Party shall remain the owner and shall retain control of the Background IP owned by it. The Parties must – on a royalty-free basis – give access to the other Parties to Background necessary for their research activities under this Agreement.

10.2 Ownership of Foreground IP

Foreground IP shall be owned by the Party whose employee(s) generated such Foreground IP, or on whose behalf such Foreground IP have been generated.

10.3 Protection, maintenance and costs of Foreground IP

Each Party is responsible for the application, acquisition and / or maintenance of its own Foreground IP and shall bear the costs relating to it.

In the event Parties jointly generate the Foreground IP and where their respective share of the invention or the work as the case may be cannot be ascertained (hereafter: „**Joint Foreground IP**”), the Parties concerned together are responsible for the application, acquisition and / or maintenance of that Joint Foreground IP. These Parties shall own such Joint Foreground IP in equal parts and contribute in equal parts to the costs of application, acquisition and / or maintenance of the Joint Foreground IP.

In the event of Joint Foreground IP, Parties shall make additional arrangements with regard to strategy, tasks and costs of application, acquisition and / or maintenance of that Joint Foreground IP and may designate a lead Party considering the circumstances. The lead Party shall timely discuss with the other Party or Parties applications, reports etc. in order to give the other Party or Parties the opportunity to comment thereon.

In the event of Joint Foreground IP each Party shall, and shall ensure that its employees, researchers, research fellows, individuals equivalent to those persons, give full cooperation and shall execute all documents, deeds and so forth as may reasonably be required in connection with the registration, protection and / or maintenance of that Joint Foreground IP.

10.4 Access rights Background IP

Parties hereby grant each other non-transferrable, non-exclusive, royalty free, fully paid up access rights to the Background IP contributed by it for the duration of the Project to the extent needed to enable the performance of the Project and to the extent each Party is authorized to grant such access rights.

10.5 Access rights Foreground IP

Parties hereby grant each other non-transferrable, non-exclusive, royalty free, fully paid up access rights to the Foreground IP, to the extent necessary to enable the performance of the Project and to the extent each Party is authorized to grant such access rights.

10.6 Access rights (Joint) Foreground IP

Parties hereby grant to each of the Parties non-transferable, non-exclusive, royalty free, fully paid up access rights for research and educational purposes for non-commercial use to their Foreground IP and Joint Foreground IP.

10.7 Transfer rights Foreground IP

If for the commercial use of its Foreground IP, a Party needs access rights to Background IP, or another Party's part in such Party's Foreground IP, the owning Party or Parties, as the case may be, may grant that Party access rights on market terms and conditions as applicable in the relevant international market to be further determined in good faith at that time.

10.8 Transfer rights Joint Foreground IP

In the event of Joint Foreground IP, neither Party is entitled to grant access rights or transfer or assign or make available in any other way any Joint Foreground IP to any third party without prior written consent of the other owning Party, which shall not be unreasonably withheld. The Parties owning the Joint Foreground IP shall in good faith determine and negotiate the terms and conditions to grant access rights or transfer or assign or make available in any other way any Joint Foreground IP to that third party.

The aforementioned terms and conditions with that third party shall include arrangements with regard to publication, remuneration at international market conditions, research and educational license for each of the Parties and the obligation to further develop and / or commercialize the Joint Foreground IP.

11. Materials

During the Project, Parties may provide to each other Materials. Each Party receiving Material from another Party ("Recipient" and "Provider") will conform to the following terms and conditions:

- a. Provider will retain all intellectual property rights in and to Materials provided under this Agreement;
- b. Recipient shall use the Materials solely for the purposes of carrying out the Project;
- c. Recipient will not use Materials in humans or for testing of humans for any purpose;
- d. to the extent required by applicable laws and regulations, Provider shall maintain, document and retain records of informed consent from each study participant or the participant's legally authorized representative in accordance with applicable laws and regulations;
- e. Recipient acknowledges that in case of human samples the individual concerned shall at all times have the right to request Provider to destroy their Material. In the event of such a request, Recipient shall promptly destroy the Material in an approved manner, unless the patients' Material has been fully de-identified;
- f. the Parties acknowledge that in case of a finding, (an unsought and unsuspected result of the research), Recipient shall provide all relevant information to Provider to allow Provider to inform the individual concerned;
- g. Recipient shall not sell or transfer received Materials to any other person or entity or bring it in the public domain. Recipient shall keep and treat the Material confidential. Recipient may only disclose non-individually identifiable information regarding the Material in a summary form that aggregates more than one individual's clinical information for scientific journal publication, in all events to the extent permitted under applicable laws and regulations.
- h. Parties shall comply with all applicable laws and regulations in the use of received Materials;
- i. Within 30 days of completion of the Project or termination of this Agreement, whichever is earlier, Recipient shall discontinue its use of, and shall, at the sole discretion of Provider, return or destroy the Material.

12. Data Protection

During the Project, Parties may provide to each other research data, which may constitute Personal Data ("Data"). Each Party receiving Data, as described in Annex 3, from another Party ("Recipient" and "Provider") will conform to the following terms and conditions:

- a. Provider will retain all intellectual property rights in and to the Data provided under this agreement;
- b. Parties shall comply with all applicable requirements of the GDPR including all local implementing legislation and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties;
- c. Parties are data controllers in respect of all Personal Data processed pursuant to this agreement;
- d. Recipient shall use received Personal Data solely for the purposes of carrying out the Project;
- e. any transfer of Personal Data to countries that are not recognized as providing adequate protection measures for Personal Data processing outside the EU or the EEA will only be allowed if Parties have agreed on adequate safeguards;
- f. each Party ("Indemnitor") shall indemnify the other Party or Parties and hold them harmless for any claims or actions by third parties and for any fines imposed by the data protection authorities directly arising from (i) an attributable shortcoming on the part of Indemnitor or its processors in the fulfilment of its obligations under this Article, or (ii) any violation by Indemnitor or its processors of the applicable legislation governing the processing of Personal Data;
- g. within 30 days of completion of the Project or termination of this agreement, whichever is earlier, Parties shall destroy any received Personal Data in their possession or control.

13. Publication procedure

After the parties have discussed their specific contribution to the project, the intention is to publish in collaboration, as further provided in the following clauses. Exemption to this is the already – before the start of the Project - generated data using the parties corresponding materials which can be published without previous consultation.

Parties acknowledge that the Project is a collaborative effort, and that a joint publication is anticipated to be authored by the participating researchers. Parties shall not independently publish any results of the Project before other than in accordance with this clause.

In case no joint publication has been made within 12 months of completion of the Project and a Party wishes to publish in written form, oral presentation or make public in any other form, information relating to the Background IP, Foreground IP or any other information regarding the Project –confidential or not– will submit in writing to the Project Leader the intended publication 45 days before the intended publication date or before the date of submission for disclosure to review the publication. The intended publication will clearly state the intended publication date.

The Project Leader will promptly make the intended publication available to the other Parties.

The intended publication is Confidential Information and as such protected in the manner this Agreement provides for.

The Parties will have 45 days to review the intended publication. If the Parties do not respond within this term, the publishing party is free to proceed with the intended publication or presentation without further delay.

The Parties can, by giving written notice to the Project Leader, raise an objection with regard to the inclusion of their Confidential Information or may request a delay for a maximum of 90 days after receipt of the first written notice by the Project Leader, in order to seek patent or similar protection for the Results that are proposed to be published.

During the period for review mentioned above, the Parties may comment on the scientific content of the proposed publication. The publishing party agrees that all reasonable comments made by the Party in relation to a proposed publication or presentation will be incorporated into the publication or presentation. Furthermore, the Parties may cause the publishing party to remove from the projected publication any Confidential Information received by it that are not constituted results of the Project. The publishing party shall not unreasonably withhold or delay its consent to the reasoned request from such Party.

All publications will be in accordance with international recognized scientific and ethical standards concerning publications and authorship, including the Uniform Requirements for Manuscripts Submitted to Biomedical Journals, established by the International Committee of Medical Journal Editors. Copyrights concerning Publications of the Clinical Trial remain with the authors of the Publication, regardless of any other provisions regarding intellectual property rights.

14. Confidentiality

For the purpose of this Agreement, confidential information ("**Confidential Information**") means:

- a. any information disclosed in writing or other tangible form by one Party ("**Disclosing Party**") to another Party ("**Receiving Party**") for use in the Project and marked as CONFIDENTIAL,
- b. or, any information initially disclosed orally and then summarized and confirmed in writing as CONFIDENTIAL within 30 days after the date of oral disclosure.

The Receiving Party may not disclose the Confidential Information to any of the other Parties or to a third Party, except with explicit written consent of the Disclosing Party.

The Confidential Information includes, without limitation:

- a. the Full Project Proposal;
- b. any and all Background IP listed in Annex 3 of this Agreement and made available by a Disclosing Party to a Receiving Party for use in this Project;
- c. the Results of the Parties;

Confidential Information does not include information that:

- a. is known or open to the public or otherwise in the public domain at the time of disclosure;
- b. becomes part of the public domain by any means other than breach of this Agreement by a Receiving Party;
- c. is already known to the Receiving Party at the time of disclosure and is free of any obligations of confidentiality;

- d. is obtained by the Receiving Party, free of any obligations of confidentiality, from a third party that has a lawful right to disclose it.

If disclosure of Confidential Information other than as expressly permitted under this Agreement is required by law, that disclosure does not constitute a breach of this agreement so long as the Receiving Party:

- a. notifies the Disclosing Party in writing at the earliest possible date of the disclosure so as to allow the Disclosing Party to take legal action to protect its Confidential Information,
- b. discloses only that Confidential Information required to comply with the legal requirement, and
- c. continues to maintain the confidentiality of this Confidential Information with respect to the other Parties and third Parties.

These obligations of non-use and non-disclosure of Confidential Information survive termination of this agreement and continue for a period of five (5) years after termination.

15. Applicable law

This Agreement affecting the rights and obligations between the Parties will be construed in accordance with and governed by Dutch Law.

In the event the Parties have been unable to amicably resolve any dispute arising out of this Agreement the competent court of Midden-Nederland, location Utrecht, the Netherlands, shall have exclusive jurisdiction.

16. Inconsistencies

In case of an ambiguity or inconsistency between the ZonMw Conditions on the one hand and this Agreement on the other hand, ZonMw Conditions will take precedence of this Agreement.

17. Notices

All formal notices ("**Notices**") given by one Party to another Party pursuant to this Agreement will be in writing and will be delivered to the Contact Person of the other Party by (i) personal delivery, (ii) registered mail, (iii) registered courier, (iv) fax or (v) electronic mail, and in the latter two confirmed by mail, at the Party's address specified in this Agreement as listed in Annex 4.

18. Assignment

Except as specifically provided for in this Agreement, the rights and obligations arising from this Agreement shall not be assigned to third parties (including Affiliates) without the prior written approval of the other Parties.

19. Amendment

Amendments and modifications to the text of this Agreement require a separate written agreement to be signed between all Parties.

Signatures follow on next page

This Agreement has been agreed and signed by:

5.1.2e

5.1.2e

For: Universitair Medisch Centrum Utrecht

Name: 5.1.2e

Place: Utrecht

Date: 27-11-2020

5.1.2e

Signature

For: Universitair Medisch Centrum Utrecht

Name: 5.1.2e

Place: Utrecht

Date: 27-11-2020

5.1.2e

Signature

For: RIVM, on behalf of the Minister of Health, Welfare and Sport

Name: 5.1.2e

5.1.2e

5.1.2e

Place: Bilthoven

Date: 23-11-2020

5.1.2e

Signature

For: VuMC

Name: 5.1.2e

Place: Leiden

Date: 24-11-2020