*Research Council of Norway*

August 2019

**Centres for Research-based Innovation (SFI). Template for Consortium Agreements.**

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| The Research Council’s template for consortium agreements between participants in SFI consortia serves as a guide for how the rights and obligations of participants in a consortium may be regulated. This template is a specially adapted version of the Research Council’s general Template for Consortium Agreements.  The Research Council emphasises that the template is merely intended to provide a potential point of departure for a consortium agreement, that it is not necessarily exhaustive, and that other viable alternatives exist for the provisions that appear in this template. For further comments, see the footnotes. Grey highlighting indicates provisions that are mandatory in respect of the General Terms of Contract issued by the Research Council or are necessary to ensure that business enterprises taking part in the consortium do not receive state aid. The contract with the Research Council provides the framework for the provisions in the consortium agreement, and includes:* A signed **agreement document**, and as a minimum the following documents, which are integral parts of the contract:
	+ **Centres for Research-based Innovation (SFI) – Requirements and Guidelines**
	+ **The General Terms of Contract issued by the Research Council**
	+ **The project description**

In the event that the various contract documents contain provisions that contradict one another, they shall apply in the order of precedence listed above. In the event that the contract with the Research Council and the consortium agreement contain provisions that contradict one another, the contract with the Research Council shall be given precedence. The contract is attached to this consortium agreement as Appendix 1.  |

**1 Definitions**

Key terms are defined in the General Terms of Contract document that is part of the contract between the Research Council of Norway and the host institution for an SFI centre. The contract is attached to this consortium agreement as Appendix 1.

Unless the context clearly suggests a different interpretation, the definitions of the following terms and phrases used in this agreement shall apply:

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| Working Plan  | An annual plan for the research-related and financial implementation of the project that also specifies the obligations of the consortium participants. |
| Sub-project  | An activity comprising part of the overall project activities in accordance with the project description and the funding plan. |
| Research Council  | The Research Council of Norway |
| Consortium Participant | The host institution and partner(s) who, under the provisions of the consortium agreement, provide resources for the project. |
| Fair and Reasonable Conditions | Appropriate conditions, including possible financial terms or royalty-free conditions, taking into account the specific circumstances of the request for ownership or access. The conditions shall reflect the value of the results or background to which access is requested, financial and non-financial contributions, as well as the scope, duration or other characteristics of the exploitation envisaged. The terms of the consortium agreement must also be formulated to ensure that the undertakings taking part in the project do not receive indirect state aid, as is set out in the EFTA Surveillance Authority’s guidelines for state aid for research and development and innovation Section 28, paragraph b), c) or d).[[1]](#footnote-1) |
| Centre  | A Centre for Research-based Innovation (SFI) established in accordance with the Research Council of Norway’s provisions for the SFI scheme. |
| The Board  | The board of an SFI consortium. The board is the same as the board for the Centre for Research-based Innovation. |
| Affiliated Participants  | Affiliated participants are listed in Appendix 5. **Alternatively:**Legal entity that is directly or indirectly subject to the control of a consortium participant, or is directly or indirectly subject to the same control as a consortium participant. The term control is used to mean:a) direct or indirect possession of more than 50 % of the legal entity’s share capital, or a majority of its voting shares or shareholdings.b) direct or indirect possession, in real or legal terms, of determinative influence over the relevant legal entity. |
| Host Institution  | The Project Owner (research institution or company) that is responsible for implementation of the project pursuant to the contract and that is the consortium participant who represents the consortium vis-à-vis the Research Council.  |

**2 The consortium participants**

 **Host institution**

 Name of institution Enterprise number

 **Other consortium participants**

 Name of the institution/enterprise Enterprise number

 Name of the institution/enterprise Enterprise number

**3 The consortium agreement – scope, purpose and relationship to the contract**

3.1 This consortium agreement governs the relationship between participants in SFI consortia in which the host institution, on behalf of the consortium, has been awarded financial support from the Research Council to implement the project. The consortium agreement governs the organisation and implementation of the project, as well as the rights and obligations of consortium participants. The consortium is not a separate legal entity and shall not act as such in relation to parties outside of this agreement.

3.2 The parameters of the SFI scheme, including the terms and conditions for support from the Research Council, the scope of the support, the project’s objective, the project description, funding plan and reporting requirements are stated in the contract between the Research Council and the host institution, with appendices, which include the document entitled “Centres for Research-based Innovation (SFI) – Requirements and Guidelines”.

Appendix 1: The contract between the Research Council and the host institution

Appendix 2: Centres for Research-based Innovation (SFI) – Requirements and Guidelines

In the event of any contradiction between the contract with appendices, including the document “Centres for Research-based Innovation (SFI) – Requirements and Guidelines”, and this consortium agreement, the contract with appendices, including the document with “Requirements and Guidelines”, shall have priority.

The following attached documents shall also be part of the consortium agreement between the parties, although the contract with the Research Council, the document “Centres for Research-based Innovation (SFI) – Requirements and Guidelines” and this signed consortium agreement shall have priority:

Appendix 3: The individual consortium participant’s obligations to the consortium to perform research activity and provide financial resources in accordance with the project description and the funding plan for the centre.

Appendix 4: The background brought to the project by the individual consortium participant.[[2]](#footnote-2)

Appendix 5: List of affiliated participants.

Appendix 6: Description of the consortium participants’ areas of commercial interests.

Appendix 7: Description of how ownership of a project result that has been produced by several parties in a collaborative effort shall be regulated.

3.3 Each consortium participant is required to contribute resources to the implementation of the project and the fulfilment of the contract pursuant to the duties and obligations specified in this consortium agreement, the project description and the funding plan. With regard to one another, the consortium participants bear joint responsibility for implementation of the project and for achieving the results outlined in the project description.

**4 Changes in the consortium participants, the consortium's board and administration**

4.1 ***New consortium participants***

 A consortium’s board, cf. Section 4.3 below, takes decisions on the inclusion of new consortium participants, which, subsequent to acceptance, will have the right to be represented on the board. The board shall consult with the consortium participants prior to taking such a decision. In cases when a new consortium participant has the same commercial interests as one of the current consortium participants, the consent of the consortium participants concerned is required.

 The new consortium participant must be party to the consortium agreement and sign a separate agreement under which the new consortium participant undertakes a commitment to:

* perform its own activity related to and relevant for the project;
* contribute financial resources and its own R&D efforts, royalty-free, to activities under the project, as defined in more detail in Appendix 3 to the consortium agreement.

4.2 ***The withdrawal of a consortium participant***

4.2.1 A consortium participant may request to withdraw from the consortium, and thus to abdicate its rights and be exempted from its obligations pursuant to the consortium agreement. The request must be submitted with a minimum of six months’ notification to the board. If the withdrawal of one or more consortium participants leads to a reduction in funding and loss of essential expertise, the consortium’s board must attempt to secure the resources needed to achieve the objectives stated in the project description.[[3]](#footnote-3)

4.2.2 A consortium participant that withdraws from the consortium pursuant to Section 4.2.1 maintains its ownership and access rights to the project results as set out in Section 10 below.

4.2.3 The board has the right to terminate the agreement with a consortium participant that failed to fulfil its obligations under this agreement.

4.3 ***The board and the administration***

4.3.1 The consortium is to have a board, a director and a management group, if relevant. The centre’s director and the management group, if any, will be appointed by the host institution in consultation with the consortium participants. The centre’s director shall report to the board.

4.3.2 The consortium board shall ensure that the intentions and plans underlying the contract for the project are fulfilled, and that the activities discussed in the project description and the funding plan are completed within the approved time frame. The board will further ensure that the interaction between the centre, the host institution and the other consortium participants functions smoothly.

4.3.3 Each consortium participant is entitled to appoint one member to the board. Consortium participants are free to replace board members, but are required to keep the project management apprised of who is representing the consortium participant.[[4]](#footnote-4)

4.3.4 The chair of the board will be appointed by the host institution in consultation with the consortium participants.[[5]](#footnote-5)

4.3.5 The board shall be summoned to meetings with reasonable notice, usually no less than two weeks prior to the meeting date. The convening letter should be accompanied by an agenda and the documentation needed to deal with the items on the agenda.

4.3.6 The board has a quorum when more than half the members are present or participate in the vote. The board’s decisions will normally be agreed on unanimously among the members that are present or participate in the board’s deliberations. In ongoing matters that do not affect the individual consortium participant’s rights under the consortium agreement or the contract, the board may take decisions by a simple majority provided that the host institution’s representative votes in favour. Otherwise, a 2/3 majority is required.

 In matters regarding the termination of a consortium participant, more than half of the board’s voting members must be present or participate in the board’s deliberation of the matter, and a 2/3 majority vote in favour will be required for the board to take a decision. The consortium participant about which the question of termination applies does not have the right to vote on the matter.

**5 Consortium participants’ R&D activity and financial support**

5.1 The interests and competencies of the consortium participants constitute the basis for their participation in the project and the contract with the Research Council.

5.2 Each consortium participant shall perform the R&D activity that the party in question has undertaken pursuant to the project description, and provide the financial support specified in Appendix 3.

5.3 With the approval of the board, a consortium participant may assign parts of the R&D activity for which it is responsible to an appropriate subcontractor. This does not release a consortium participant from its obligations to the other consortium participants. A consortium participant may not serve as a subcontractor for another consortium participant.

5.4 In the event a consortium participant does not perform the agreed R&D activity in a satisfactory manner, the board may decide to transfer responsibility for the work in whole or in part to another consortium participant, based on specified terms and conditions. Such a transfer does not release the consortium participant in question from its other obligations pursuant to Appendix 3.[[6]](#footnote-6)

**6 Location, responsibility for human resources and agreements with employees and other affiliated partners**

The consortium participants agree to establish by contract the location of the research activities and the manner in which the employer’s responsibility will be handled for staff affiliated with the project. Under normal circumstances, employer responsibility and employment shall not be changed for employees who participate in the project.

The consortium participants undertake a commitment to sign any agreements with owners, employees (including individuals with dual employment), partners, sub-contractors, and others that are required to fulfil the relevant participant’s obligations under this agreement, including measures to ensure the necessary access to background and project results.

**7 Working plan, reporting and payment**

7.1 In order to render more concrete and follow up the measures in the project description, an annual *working plan* shall be drawn up as a point of departure for the technical and financial implementation of the project and to stipulate the obligations of the various consortium participants, cf. Section 5.2 and Appendix 3. Working plans are adopted by the consortium board. The revised annual working plan also forms the basis for reports to be submitted to the Research Council.

7.2 The host institution is responsible for coordinating scientific and financial reporting to the Research Council. Consortium participants shall without undue delay submit all project results, reports, accounting documentation and other documents that the host institution requires to fulfil its obligations to the Research Council.[[7]](#footnote-7)

7.3 The host institution is responsible for ensuring that funds disbursed by the Research Council are managed in compliance with the contract, pursuant to the guidelines laid down by the consortium board. Consortium participants that are undertakings are not eligible to receive any of the support from the Research Council.

**8 Background**

8.1 The background that is made available to the project upon entry into force of the consortium agreement, including any restrictions on the use of it, is specified in Appendix 4.[[8]](#footnote-8)

8.2 Any consortium participant wishing to make background available to the project over and above that described in Section 8.1 shall notify the board of this. The board will decide whether this will be a relevant contribution to the project and whether it will be used in the project. Appendix 4 shall be updated on an ongoing basis as approved by the board.

8.3 Any results from the project that do not comprise background pursuant to Appendix 4 and are not approved by the board as background pursuant to Section 8.2 will automatically be assigned the status of project results. If relevant intellectual property rights or know-how are not already registered in Appendix 4, the owner of these has the opportunity to document that it was in possession of such intellectual property rights or know-how prior to the project result and these may therefore be approved and registered by the board as background pursuant to Section 8.2.

8.4 The consortium participants shall have royalty free access rights to the background that is necessary for the implementation of their own work in the project, as set out in the Working Plan.

8.5 Access rights to background, that is necessary to be able to utilise their own results from the project commercially, shall be granted on the basis of Fair and Reasonable Conditions.

8.6 The ownership of background will be maintained by the consortium participant that brought it into the project.

**9. Project results**

***9.1 Ownership rights to project results***

9.1.1 Each consortium participant will have ownership rights to the project results produced (generated) by that participant, its employees or suppliers.

9.1.2 When a project result has been produced by several parties in a collaborative effort, the ownership of that project result shall be regulated as described in Appendix 7.

9.1.3 Consortium participants shall notify the board of all project results. Project results shall be treated confidentially for 90 days from the time such notification was provided. The consortium participant that owns a project result that may be of commercial value is under obligation to protect the result in the manner and to the degree that is deemed appropriate. If ownership rights are shared between two or more consortium participants, the Project Owner shall ensure that the appropriate protection measures are put in place, with all expenses to be covered by the relevant owners. Should one of the consortium participants not wish to protect a project result, then that participant must allow the other consortium participants to establish protection at their own expense, according to agreed upon terms.

***9.2 Access rights to project results***

9.2.1 For the duration of the project period, the consortium participants shall have royalty free access rights to project results that are necessary for the implementation of their own work in the project in accordance with the Working Plan.

9.2.2 Access rights to project results that are necessary in order to utilise their own results of the project commercially, shall be granted on the basis of Fair and Reasonable Conditions.

9.2.3 The consortium participants shall also have access rights to the project results of other participants for commercial utilisation. These access rights shall be granted on the basis of Fair and Reasonable Conditions.

9.2.4 Research institutions in the consortium shall have access at no charge to use of project results for educational or purposes and independent research. Such use must not in any way impair the ability of the other consortium participants to protect or utilise their own results.

9.2.5 All requests for access rights to project results must be submitted in writing.[[9]](#footnote-9)

***9.3 Requirements relating to utilisation of project results***

Project results that can be applied commercially must be utilised within a reasonable period of time. If the rightsholder(s) of the project results do not wish to utilise the results commercially, then the other consortium participants shall have the right to negotiate on commercial utilisation.[[10]](#footnote-10)

***9.4 Affiliated participants***

Rights that accrue to a consortium participant pursuant to Section 9 shall be transferable to companies belonging to the same concern or other existing or future affiliated companies as specified in Appendix 5.

***9.5 Provisions related to access to software***

The provisions set out in Section 9 also apply to software.

The right of access to software pertains only to the right to receive the software in the form made available by the consortium participant. Otherwise, access to the object/source code and/or documentation requires a separate agreement between the parties.

**10 Access rights for participants that join or withdraw from the consortium**

***10.1 New parties to the consortium agreement***

All project results produced prior to the time at which a new participant has become party to the consortium agreement will be considered background in relation to the new consortium participant.

***10.2 Parties that withdraw from the consortium agreement***

10.2.1 *Access rights of parties following breach of contract*

The access rights of a party in breach of contract, as well as that party’s entitlement to submit a request for such Access rights, shall cease immediately from the time that party receives the formal notification from the board that its participation in the consortium has been terminated.

10.2.2 *Access rights of parties withdrawing freely from the consortium agreement*

A party that freely withdraws from the consortium and has the consent of the other consortium participants to do so may keep the access rights to project results pursuant to Sections 9.1.1, 9.1.2 and 9.2.3 that have been produced up to the date of termination of contract.[[11]](#footnote-11)

10.2.3 *Rights of remaining consortium participants*

All parties that withdraw from the consortium agreement shall continue to surrender access rights in accordance with the contract and the consortium agreement as if that participant had remained a party to the consortium agreement for the duration of the project.

**11 Publication of project results**

11.1 Project results shall be published as rapidly as possible. Among other things, the dissemination measures and communication plans specified in the contract between the Research Council and the host institution shall be implemented.[[12]](#footnote-12)

11.2 Given that the conditions stipulated in Sections 11.3 and 11.4 have been met, consortium participants are entitled to publish their own results when such publication does not in any way impair the ability of the other consortium participants to protect or utilise their own results.

 If one of the parties is a university or university college:

11.3 In the event that project results are produced by an employee in an academic position at a university or university college, the Act relating to universities and university colleges places restrictions on the postponement of publication. The board of the institution (or its authorised representative) may consent to a postponement of publication when there is a legitimate reason to do so. Permanent restrictions on the right to publish results over and above those laid down in legislation or pursuant to legislation may not be agreed upon or stipulated. Results may not be published if doing so will disclose business secrets.

11.4 Plans for the publication of project results shall be submitted via the centre’s director to the consortium board by the party that has produced the result. Consortium participants have a deadline of 30 days from the date on which the publication notification was issued to request postponement of publication in order to implement the necessary measures to protect the project results. The deadline for registering patents will normally be another 90 (alternatively 120/180) days after a consortium participant has submitted a request for postponement.[[13]](#footnote-13)

**12 Confidentiality**

Consortium participants are under obligation to refrain from disclosure of any confidential information which they have received from other consortium participants.[[14]](#footnote-14) Confidential information shall not be revealed to others or published without prior written consent from the board or the rightsholders, if any. This provision does not preclude the sharing of confidential information with the Research Council in connection with reporting requirements under the contract, or with the authorities and/or the courts, pursuant to current legislation.

**13 Liability of the consortium participants in relation to each other**

**13.1 No guarantees**

13.1.1 No guarantee will be given that the information or materials (including background and project results) that a consortium participant gives to another consortium participant in the project will be suitable for a particular purpose or sufficient for the recipient’s needs. Nor will any guarantee be given that such information or materials will not constitute an infringement of the intellectual property rights or other rights of a third party.

13.1.2 A consortium participant that receives information or materials is wholly responsible for the use of these, and no consortium participant that gives access rights to another participant shall bear responsibility for any infringement of a third party’s intellectual property rights or other rights resulting from the other consortium participant’s exercise of its access rights.

13.1.3 The provision above does not apply to financial loss caused by wilful intent or gross negligence.

**13.2    Limitations on contractual liability**

13.2.1 No consortium participant shall be liable to another consortium participant for any form of indirect loss or consequential loss, including but not limited to a loss of income, sales or contract, provided that such loss did not arise as a result of wilful intent or a breach of confidentiality.

13.2.2 A consortium participant’s overall liability vis-à-vis the other consortium participants shall not exceed the consortium participant’s proportion of the total project costs as stated in the contract.

13.2.3 The above-mentioned limitations do not apply to financial loss caused by wilful intent or gross negligence.

13.2.4 The provisions in this consortium agreement do not modify or limit a consortium participant’s general liability to provide compensation in accordance with Norwegian law outside of the contract, such as liability for damage to another party’s property or injury to a person.

**13.3 Damages inflicted on a third party:**

 Each consortium participant is itself liable for all losses, material damages and personal injury inflicted on a third party resulting from the consortium participant’s exercise of its obligations under this consortium agreement or from the consortium participant’s use of the background or project results.

**13.4 Notification of losses and damages**

Each consortium participant shall report to the board and the host institution any claim for indemnification or the like related to the project or sub-projects that has been filed against the consortium participant.

**14 The agreement’s validity, dissolution of a consortium, interpretation, etc.**

14.1 The agreement will enter into force upon being signed and will continue to apply in its entirety until the consortium is dissolved. Subsequent to the dissolution of the consortium, the provisions in Sections 7-13 will continue to apply between the parties.

14.2 The consortium will be dissolved at the conclusion of the project period pursuant to the contract between the Research Council and the host institution, unless the consortium board decides otherwise.

14.3 This agreement is subject to Norwegian law. Attempts shall be made to resolve any disputes by negotiation or voluntary mediation. In the event such attempts do not succeed within one month after negotiations have been requested, the dispute may be brought before the [*fill in the relevant court district*] District Court.

**15 Signature**

The agreement has been signed in ….. copies. Each of the parties will keep one copy.

Institution/enterprise 1 Date of signature Signature

Institution/enterprise 2 Date of signature Signature

…

Institution/enterprise n Date of signature Signature

**Appendix 7**

**In this appendix the parties are to regulate the rights of ownership to the project results when the results have been produced by several parties in a collaborative effort.**

**Ownership rights are to be regulated to ensure that business enterprises that participate in the consortium do not receive indirect support from participating research institutions. The regulation of ownership rights must therefore be in accordance with the EFTA Surveillance Authority’s guidelines for state aid for research, development and innovation, Section 28 paragraph c.**

**This entails that ownership rights to IPR from the project are to be allocated to the various partners in a manner that fully reflects their work packages, contributions and respective interests.**

1. <http://www.eftasurv.int/media/state-aid-guidelines/Guidelines---State-aid-for-research-and-development-and-innovation.pdf> [↑](#footnote-ref-1)
2. The document shall describe the background the individual consortium participant brings to the project in the form of material contributions, intellectual property rights or know-how. [↑](#footnote-ref-2)
3. The SFI scheme is predicated on long-term research as a means of achieving the centres’ objectives. [↑](#footnote-ref-3)
4. For consortia with a large number of participants, the number of board members can be limited by allowing some members to represent several consortium participants. User partners must hold a majority on the board. [↑](#footnote-ref-4)
5. The centre should make an effort to identify a highly committed user representative to serve as chair of the board. [↑](#footnote-ref-5)
6. It is presumed that the parties can agree on reasonable compensation for the research contributions from which the consortium participant in question has been relieved. [↑](#footnote-ref-6)
7. In addition to these provisions, the consortium agreement may contain more detailed rules for invoicing, project management, administration, the transfer of funds, etc. [↑](#footnote-ref-7)
8. The need for special procedures for dealing with background should be assessed. [↑](#footnote-ref-8)
9. The parties should agree in detail on the deadlines that are to apply for submission of and allowed response time to such requests. [↑](#footnote-ref-9)
10. If possible, the parties should specify what will be considered to be reasonable time for utilisation of the project results. [↑](#footnote-ref-10)
11. The parties should specify the project results to which this applies. [↑](#footnote-ref-11)
12. One of the key principles underlying public funding of research is that the results must benefit society in a broad sense, both through the development and dissemination of knowledge and through commercial utilisation. An inherent part of this is that the project results should generally be made public. However, this does not prevent the consortium agreement from containing provisions to ensure that publication will not reduce or impede the parties’ ability to exploit the results commercially. In the event it is desirable to subject publication to a greater degree of control by the board pursuant to Sections 11.1 and 11.2, it may be appropriate to introduce a provision allowing the board, based on specified rules, to decide what is to be published and when. [↑](#footnote-ref-12)
13. According to the provision on results produced by employees at universities and university colleges in the Act relating to universities and university colleges, a formal decision from the board of the learning institution is required to impose temporary secrecy. [↑](#footnote-ref-13)
14. If so desired, the parties may specify what should be covered by the terms “confidential information” and “secret and confidential information”. [↑](#footnote-ref-14)