*Research Council of Norway*

**Template for Consortium Agreements**

**9 March 2009**

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|  The “Template for **Consortium Agreements**” represents input from the Research Council to illustrate how rights and obligations can be regulated between participants in a **collaborative project** which is defined as a project in which the **Project Owner** cooperates with one or more **active partners.**The Project Owner is required to draw up agreements with the active partners to govern the reciprocal rights and obligations of the consortium participants (consortium agreement). Active partners are specified in the agreement signed between the Research Council and the Project Owner.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.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:
* **The General Terms of Contract issued by the Research Council**
* **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 Project Owner.

In addition, the following definitions 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. |
| The Research Council | The Research Council of Norway |
| Consortium participant | Project Owner and active partner(s) who, under the provisions of the consortium agreement, provide resources for the project. |
| Background | Material contributions or intellectual property rights or know-how that a consortium participant brings to the project. The background provided by the individual consortium participant is specified in Appendix 4.The term used in the General Terms of Contract updated 1 January 2009 is *background knowledge*. |
| Affiliated participants | 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.**Alternatively:**Affiliated participants are listed in Appendix 5. |

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

2.1 This consortium agreement governs the relationship between the consortium participants in the project for which the Project Owner, on behalf of the consortium, has been awarded financial support from the Research Council. The consortium agreement governs the organisation and implementation of the project, as well as the rights and obligations of consortium participants. This project is entitled (*insert the project name and number here*).

2.2 The parameters of the project, 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 Project Owner.

 Appendix 1: The contract between the Research Council and the Project Owner

In the event of any contradiction between the contract and this consortium agreement, the contract shall have priority. The following attached documents shall also be part of the consortium agreement between the consortium participants:

Appendix 2: The consortium participants’ interest in and competence relative to the project.

Appendix 3: The individual consortium participant’s obligations to the consortium to perform research activity and/or provide financial resources in accordance with the project description and the funding plan for the project.[[1]](#footnote-1)

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

Appendix 5: List over affiliated participants.

Appendix 6: Guidelines regarding the distribution of rights to project results that are produced by several consortium participants in a collaborative effort.

2.3 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.

2.4 The consortium agreement includes this signed agreement document with ........ appendices, cf. Section 2.2.

### **3 The consortium participants, the consortium's board and the administration**

### ***3.1 Original consortium participants***

 **Project Owner**

Name of the institution/enterprise Enterprise number

**Other consortium participants**

 Name of the institution/enterprise Enterprise number

 Name of the institution/enterprise Enterprise number

***3.2 New consortium participants***

 A consortium's board, cf. Section 3.4 below, takes decisions on the inclusion of new consortium participants, which, subsequent to acceptance, will have the right to be represented on the board. Such decisions call for the unanimous approval of all consortium participants and require that the new consortium participant becomes party to the consortium agreement and signs a separate agreement under which the new consortium participant undertakes a commitment to:

 - perform its own R&D activity related to and relevant for the project, as defined in more detail in Appendix 2 to the consortium agreement, and/or,

 - contribute financial resources and/or its own R&D efforts, free of charge, to activities under the project, as defined in more detail in Appendix 3 to the consortium agreement.

 New consortium participants shall be approved by the Research Council pursuant Section 2.2 of the General Terms of Contract.

### ***3.3 The withdrawal of a consortium participant***

3.3.1 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 and must be approved by the board and by the Research Council.[[3]](#footnote-3)

## ***3.4 The board and the administration***

3.4.1 The consortium is to have a board and a project manager. [[4]](#footnote-4)

3.4.2 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 Project Owner and the other consortium participants functions smoothly. The board is responsible for electing its chair itself.[[5]](#footnote-5)

* + 1. 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 manager apprised of who is representing the consortium participant.[[6]](#footnote-6)

3.4.4 The project manager will be appointed by the Project Owner. The project manager is responsible for the day-to-day activities of the project and reports to the board.

3.4.5 The project manager will summon the board 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.

3.4.6 The board has a quorum when more than half the members are present or participate in the board's deliberations. 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 2/3 majority.

##### 4 Consortium participants’ R&D activity and/or financial support

4.1 The interests and competencies of the consortium participants constitute the basis for their participation in the project and the contract with the Research Council. These interests and competencies are described in more detail in Appendix 2.

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

4.3 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.

4.4 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. [[7]](#footnote-7)

**5 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 transfer of intellectual property rights.

**6 Working plan, reporting and payment**

6.1 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 4.2 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.

6.2 The Project Owner 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 Project Owner requires to fulfil its obligations to the Research Council.[[8]](#footnote-8)

6.3 The Project Owner 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. The same applies to the disbursement of funds to be paid to the consortium participants.

**7 Background**

7.1 The background that is considered relevant upon entry into the consortium agreement is specified in Appendix 4.[[9]](#footnote-9)

7.2 Any consortium participant wishing to make background available to the project over and above that described in Section 7.1 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.

7.3 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 7.2, will automatically be assigned the status of project results.

7.4 For the duration of the project period, the consortium participants shall have access at no charge[[10]](#footnote-10) to the background that is necessary for the implementation of their own work in the project.

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

**8. Project results**

***8.1 Ownership rights to project results***

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

8.1.2 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 6.

 **Alternate text**

When a project result has been produced by several parties in a collaborative effort, the ownership rights to that project result shall be regulated according to the following principles:

 The ownership of a project result accrues to the party that possesses intellectual property rights on which the utilisation of the project results is predicated.

* + If utilisation is not predicated on the intellectual property rights of any of the consortium participants, or if such utilisation is predicated on intellectual property rights that accrue to two or more consortium participants, then the ownership rights will accrue to the consortium participant whose commercial interests encompass the utilisation of the project result.
	+ If the project result falls within the commercial interests of two or more of the consortium participants, the ownership rights will accrue to the consortium participant that has, either itself or by means of its employees or suppliers, made the greatest contribution to the project result.
	+ In the event that the ownership rights can not be determined in accordance with the rules listed above, the ownership will be shared by the consortium participants that have contributed to the project result. In this case, the parties must draw up an agreement concerning the exercise of this shared ownership.[[11]](#footnote-11)

8.1.3 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.

##### *8.2 User rights to project results*

8.2.1For the duration of the project period, the consortium participants shall have access at no charge to project results that are necessary for implementing their own work in the project.

* + 1. With regard to commercial utilisation, the consortium participants must have access to the project results according to terms agreed upon among the parties when this is necessary in order to utilise the project results to which they themselves have rights under the project.
		2. The consortium participants shall be entitled to negotiate for the right to commercial exploitation of the projects results which lie outside the commercial interests of the other consortium participants.[[12]](#footnote-12)

		The consortium participants shall have access at no charge to project results that are to be used for their own educational or research purposes.
		3. All requests for user rights to project results must be submitted in writing.[[13]](#footnote-13)

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

* + 1. 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 that participant shall give the other consortium participants the right to negotiate on commercial utilisation.[[14]](#footnote-14)

* 1. ***Affiliated partners***

Rights that accrue to a consortium participant pursuant to Section 8 shall be transferable to companies belonging to the same concern or other existing or future affiliated companies as specified in Appendix 5.

1. **User rights for participants that join or withdraw from the consortium**

### ***9.1 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.

### ***9.2 Parties that withdraw from the consortium agreement:***

*9.2.1 User rights of parties following breach of contract:*

The user rights of a party in breach of contract, as well as that party’s entitlement to submit a request for such user 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.

9.2.2 *User rights for 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 user rights to project results produced up to the date of termination of contract.[[15]](#footnote-15)

* + 1. *Rights of remaining consortium participants:*

All parties that withdraw from the consortium agreement shall continue to surrender user 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.

**10 Publication of project results**

10.1 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 Project Owner shall be implemented[[16]](#footnote-16)

10.2 Given that the conditions stipulated in Section 10.4 have been met, consortium participants are entitled to publish their own results from sub-projects when such publication does not in any way impair the ability of the other consortium participants to utilise their own results.

* 1. Necessary protection measures to safeguard the capacity for commercial utilisation prior to publication must be put into place if at least one consortium participant so requests.
	2. Plans for publication shall be submitted via the project manager 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 protection measures. The deadline for registering patents will normally be another 90 days after a consortium participant has submitted a request for postponement.[[17]](#footnote-17)
1. **Confidentiality**

Consortium participants are under obligation to refrain from disclosure of any confidential information which they have received from other consortium participants.[[18]](#footnote-18) 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.

##### 12 Liability of the party for losses and damages

12.1 Each consortium participant is itself liable for losses or damages ensuing from its own actions.

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

##### 13 The agreement’s validity, dissolution of a consortium, interpretation, etc.

13.1 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 6 - 12 will continue to apply between the parties.

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

13.3 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 ………. district court.

##### 14 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

1. This document shall specify the individual consortium participant’s obligations to perform research work for the consortium and/or to provide contributions in the form of funding, facilities, expertise and its own efforts pursuant to the project description and the funding plan. [↑](#footnote-ref-1)
2. The document shall describe the background knowledge the individual consortium participant brings to the project in the form of material contributions, intellectual property rights or know-how.

 [↑](#footnote-ref-2)
3. With the exception of parties that are solely subcontractors for short periods of time, the general rule is that partners join the consortium for the duration of the project. [↑](#footnote-ref-3)
4. Larger consortia may find it productive to have a general assembly with membership from all the participants and a board which consists of a smaller group of selected representatives. [↑](#footnote-ref-4)
5. The Project Owner's representative may serve as the chair of the board. [↑](#footnote-ref-5)
6. 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. [↑](#footnote-ref-6)
7. 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-7)
8. In addition to these provisions, the consortium agreement may contain more detailed rules for invoicing, project management, administration and the transfer of funds, etc. [↑](#footnote-ref-8)
9. The need for special procedures for dealing with background knowledge should be assessed. [↑](#footnote-ref-9)
10. In special cases it may be appropriate to agree on compensation for such use. This will not be in contravention of the contract with the Research Council. [↑](#footnote-ref-10)
11. Co-ownership of project results is not recommended. [↑](#footnote-ref-11)
12. Areas of commercial interest to the consortium participants are to be defined in a separate appendix to the consortium agreement.
 [↑](#footnote-ref-12)
13. 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-13)
14. If possible, the parties should specify what will be considered to be reasonable time for utilisation of the project results and the terms under which the other consortium participants shall be given the right to commercial utilisation.
 [↑](#footnote-ref-14)
15. The parties should specify the project results to which this applies.
 [↑](#footnote-ref-15)
16. 16 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 10.1 and 10.2, 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-16)
17. According to the Act relating to universities and university colleges, a formal decision from the board of the learning institution is required to impose temporary secrecy on results produced by employees at universities and university colleges.
 [↑](#footnote-ref-17)
18. If so desired, the parties may specify what should be covered by the terms “confidential information” and “secret and confidential information”. [↑](#footnote-ref-18)