**Guide to contract template for Research Council projects**

**(Consortium Agreement with appendixes)**

The contract template can be adapted and used in projects where the Research Council has allocated funds for the implementation of a project.

|  |
| --- |
| **The template shall be used when:*** NMBU is the project owner
* The project receives funding from the Research Council
* The project is defined as a collaborative project

**The template must not be used in connection with:*** A commissioned research project. A commissioned research project is projects where NMBU receives support (payment) by an external commissioning party with requirements for counter-performance.

**This contract template is based on:*** The Act relating to Universities and University Colleges [Lov om universiteter og høyskoler] (laid down by the Ministry of Education and Research, last updated on 12 December 2008 with effect from 1 January 2009)
* Circular F-20-07 from the Ministry of Education and Research "Reglement om statlige universiteter og høgskolers forpliktende samarbeid og erverv av aksjer" ("Regulations regarding binding collaboration and acquisition of shares by State universities and university colleges")
* The Research Council's "Prinsipper for Norges forskningsråds rettighetspolitikk" (2008) ("Principles for the Research Council of Norway’s Policy on Intellectual Property Rights")
* The DESCA-template used in EU projects
* The Research Council's templates
* Instructions for financial administration at NMBU
* NMBUs "Guidelines for administration of intellectual property rights and physical material in third party relationships"

**Legal assistance from NMBU:*** Please feel free to contact the legal advisers at the Research Support Office. They provide legal assistance in connection with the preparation of contracts, contract negotiations and other legal issues related to research projects.

**Information:*** Remember to attach the project description and contract with the Research Council when sending out the Consortium Agreement to the other Consortium Participants. It is a part of this Consortium Agreement.
 |

**CONSORTIUM AGREEMENT**

for participants in R&D projects funded through
The Research Council of Norway

«[Name of project]»

«[Project number]»

hereinafter referred to as “**Project**”

A contract to this effect has been signed between:

Norwegian University of Life Sciences

by/[faculty and department]

[Adress]

hereinafter referred to as “**Project Owner**”

and

[Insert identification of the Parties]

[Etc.]

hereinafter, jointly or individually, referred to as “**Consortium Participant**” or “**Consortium Participants**”

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 Participant.

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 Appendix 4: List of third parties for transfer according to Section 7.4

**1 Definitions**

Key terms are defined in the General Terms and Conditions for R&D Projects that is a part of the Contract between the Research Council of Norway and the Project Owner. In addition, the following clarifications and definitions apply:

|  |  |
| --- | --- |
| **Access rights** | Rights to use Project results or Background under the terms and conditions laid down in this Consortium Agreement.  |
| **Background**  | The knowledge, including Intellectual property rights and material, that a Consortium Participant brings into the Project and that is necessary for the implementation of the Project and/or for the utilization of its own Project results. The Background provided by the individual Consortium Participant shall be specified in Appendix 2. |
| **The Consortium** | Association of the Project Manager and the Consortium Participants. |
| **The Contract** | The Contract between the Research Council and the Project Owner, cf. Appendix 1. |
| **Defaulting participant** | A Consortium Participant which the Steering Committee has identified to be in breach of this Consortium Agreement. |
| **Fair and Reasonable Conditions** | Appropriate conditions, including possible financial terms or royalty-free conditions, taking into account the specific circumstances of the request for Access, for example the actual or potential value of the Project results or Background to which Access is requested and/or the scope, duration or other characteristics of the exploitation envisaged.  |
| **In-kind** | Research activity, research infrastructure, material or the like that a Consortium Participant makes available to the Project as specified in the Working Plan, instead of or in addition to financial contributions. |
| **Needed** | *For the implementation of the Project:*Access rights are Needed if, without the grant of such Access rights, carrying out the tasks assigned to the recipient Party would be technically or legally impossible, significantly delayed, or require significant additional financial or human resources.*For exploitation of own Project results:*Access rights are Needed if, without the grant of such Access rights, the exploitation of own Project results would be technically or legally impossible. |
| **The Research Council**  | The Research Council of Norway. |
| **Steering Committee** | The decision-making body of the Project. |
| **Working Plan** | An annual plan for the research-related and financial implementation of the project that also specifies the obligations of the Consortium Participants, see Section 6.1. |

**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.

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 Background brought to the Project by the individual Consortium Participant.

Appendix 3: Supplementary description of the obligations of the individual Consortium Participants to perform research activity and/or provide financial resources in accordance with the Project description, the annual Working Plan approved by the Steering Committee and the Funding plan for the Project.[[1]](#footnote-1)

Appendix 4: List of third parties for transfer according to Section 7.4

**3 Entry into force, duration and withdrawal**

***3.1 Entry into force***

3.1.1 The Consortium Agreement will enter into force from the date on which it has been signed by all the Consortium Participants, with effect from the start-up of the Project Period.

3.1.2 The Steering Committee, cf. Section 5 below, takes decisions on the inclusion of new Consortium Participants, which, subsequent to acceptance, will have the right to be represented in the Steering Committee. Such decisions call for the unanimous approval of all Consortium Participants.

3.1.3 A new Consortium Participant must become part to the Consortium Agreement and sign 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, 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.

3.1.4 New Consortium Participants shall be approved by the Research Council pursuant section 3 of the General Terms and Conditions for R&D Projects.

***3.2 Duration***

3.2.1 This Consortium Agreement shall continue in full force and effect until complete fulfilment of all obligations undertaken by the Consortium Participants under the Contract and under this Consortium Agreement.

3.2.2 The provisions in Section 7 Project results, Section 8 publication of Project results, Section 9 Access rights, Section 10 confidentiality, Section 12 Liability towards each other and Section 13 Choice of law and legal venue will remain in effect after the termination of the Consortium Agreement.

***3.3 The withdrawal of a Consortium Participant***

3.3.1 A Consortium Participant may request to withdraw from the Consortium. The request must be submitted with a minimum of six months’ notification to the Steering Committee and must be approved by the Steering Committee and by the Research Council.

3.3.2 If the withdrawal of the Consortium Participant will significantly affect the further implementation of the Project, said Consortium Participant is under obligation to ensure by negotiation and other relevant forms of agreement that conditions are in place for the other Consortium Participants to continue the Project.

3.3.3 The remaining Consortium Participants shall make reasonable endeavours to redistribute the withdrawing Consortium Participant’s tasks and obligations amongst themselves, and to any third party that the Consortium Participants and the Research Council approve as a new Consortium Participant. This presupposes that the relevant third party agrees to be bound by the terms and conditions of this Consortium Agreement.

3.3.4 A Participant that withdraws from the Project pursuant to Section 3.3. is required to honour such financial contributions as committed up to the date of withdrawal. The Participant shall be exonerated from all its rights and obligations under the Collaboration Agreement from the date of withdrawal, except for those obligations set out under Section 3.2.2, which shall remain in force after the dissolution of the Consortium Agreement.

**4 Responsibilities of the Consortium Participants**

4.1 Each of the Consortium Participants is required to contribute to the implementation of the Project and the fulfilment of the Contract pursuant to the obligations specified in this Consortium Agreement. The contributions of the individual Consortium Participants are set out in the Project description and the Funding Plan, as well as in any supplementary descriptions provided in Appendix 3.

4.2 The Consortium Participant are obligated to perform their tasks in an efficient and professional manner and to comply with all applicable laws and regulations.

4.3 The Consortium Participants shall forthwith notify the Project Manager with regard to any circumstances that may affect the implementation of the Project.

4.4 The Consortium Participants shall provide all information and other material needed to enable a Consortium Participant or the Steering Committee to perform their tasks in accordance with the Consortium Agreement, and shall at the same time ensure that this is as accurate and updated as possible.

4.5 With the approval of the Steering Committee, 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.

**5 Governance structure[[2]](#footnote-2)**

***5.1 Representation and tasks***

5.1.1 The Consortium is to have a Steering Committee and a Project Manager.

5.1.2 The Project Manager will be appointed by the Project Owner. The Project Manager heads the Steering Committee and is responsible for the day-to-day activities of the Project.

5.1.3 Each Consortium Participant is entitled to appoint one member to the Steering Committee.

5.1.4 The Steering Committee 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 Steering Committee will further ensure that the interaction between the Project Owner and the other Consortium Participants functions smoothly.

***5.2 Notice and convening of Meetings***

5.2.1 The Steering Committee shall convene ordinary meetings at least once a year or according to an adopted meeting plan. An extraordinary meeting shall be convened upon the request of at least one of the Consortium Participants.

5.2.2 The Project Manager will summon the Steering Committee to meetings with reasonable notice, usually no less than 14 calendar days prior to the meeting date. The convening letter shall be accompanied by an agenda and the documentation needed to deal with the items on the agenda.

***5.3 Voting rules and quorum***

5.3.1 The Steering Committee has a quorum when more than half the members of the Steering Committee are present or participate in the Steering Committee's deliberations, either personally or represented by proxy.

5.3.2 Each member of the Steering Committee present or represented in the meeting shall have one vote. Consortium Participants are free to replace Steering Committee members but are required to keep the Project Manager apprised of who is representing the Consortium Participant.

5.3.3 A Consortium Participant is not entitled to vote on a matter regarding its own breach of the Consortium Agreement and the consequences thereof.

5.3.4 A decision is adopted by a two-thirds (2/3) majority.

5.3.5 In matters which substantially alter the individual Consortium Participants rights under the Consortium Agreement or the Contract, the decision must be adopted unanimously. Such decisions require all members of the Steering Committee to take part in the vote.

***5.4 Minutes of meeting and formalisation of decisions***

5.4.1 The Project Manager prepares the draft minutes of the meetings and sends these electronically to the other members of the Steering Committee within 10 calendar days of the meeting. If no objections or comments have been received within 10 calendar days from sending, the minutes shall be considered approved.

5.4.2 Any decisions adopted by the Steering Committee in meetings must be clearly stated in the minutes. A decision becomes valid and binding for the Consortium Participants only after the minutes have been approved.

**6 Working Plan, reporting and payment**

***6.1 Working plan***

 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. The Working Plan are adopted by the Steering Committee. The annual Working Plan also forms the basis for reports to be submitted to the Research Council.

***6.2 Reporting***

 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.

***6.3 In-kind***

Consortium Participants who contribute with In-kind in the Project shall report their actual and justified costs associated with this contribution to the Project Manager. Such reporting shall be in accordance with what is agreed in the Work Plan, the Project Description or the Funding Plan.

***6.3 Distribution of funding***

 The Project Owner is responsible for ensuring that funds disbursed by the Research Council are managed in compliance with the Contract and Appendix 3. The same applies to the disbursement of funds to be paid to the Consortium Participants.

**7 Project results**

***7.1 Ownership of Project results***

7.1.1 Each Consortium Participant will have ownership rights to the Project results generated by that participant, its employees or suppliers.

7.1.2 When Project results have been produced by several Consortium Participants in a collaborative effort, and if their respective share of the Project results cannot be ascertained, they shall have joint ownership of such Project results.

7.1.3 In case of joint ownership, the joint owners shall establish an agreement within 6 months from the Project result coming into existence. If necessary, the joint owners can agree in writing to extend such 6 month period.

The joint ownership agreement shall as a minimum include:

* A definition of the relevant Project results having joint ownership, including the individual Consortium Participant share.
* A description of which of the joint owners shall have the operative responsibility for protecting and managing the jointly owned Project results (hereinafter named IP Manager), including a clear description of the IP Managers Power of Attorney;
* A detailed description of how the jointly owned Project result shall be protected, defended, managed and used.

The joint owners may agree to transfer the ownership to one of the owner if the other joint owner is entitled e.g. an agreed specified amount for payment and/or an agreed license.

Where no agreement has yet been concluded within 6 months or it is not agreed to extend this deadline:

* each of the joint owners shall be entitled to use their jointly owned Project results for non-commercial research activities on a royalty-free basis, and without requiring the prior consent of the other joint owner(s), and
* each of the joint owners shall be entitled to otherwise exploit the jointly owned Project results and to grant non-exclusive licenses to third parties (without any right to sub-license), if the other joint owners are given:
1. at least 45 calendar days advance notice; and
2. fair and reasonable compensation.

***7.2 Protection of Project results***

7.2.1 Consortium Participants shall notify the Steering Committee of all Project results.

7.2.2If ownership rights to Project results are shared between two or more Consortium Participants, the joint owners shall make all reasonable efforts to ensure that the appropriate protection measures are put in place. If it is not agreed how the expenses for the protection process are going to be covered, the expenses shall be covered in the same proportion as the agreed share of ownership of the Project result that is sought to be protected. This Section does not give a right to oblige another Consortium Participant financially without a separate agreement. Should one of the joint owners not wish to protect a Project result, then that joint owner must allow the other joint owners to establish protection at their own expense, according to agreed upon terms.

***7.3 Requirements relating to exploitation of Project results***

Project results must be exploited within a reasonable period of time. If the rightsholder(s) of the Project results do not wish to exploit the Project results, then that Consortium Participant(s) shall give the other Consortium Participants the right to negotiate on exploitation at the latest within 150 days after the Project has been generated, see also section 8.2 of the General Terms and Conditions for R&D Projects.

***7.4 Transfer of rights to third parties***

Rights that accrue to a Consortium Participant pursuant to Section 7 shall be transferable to a Consortium Participant’s third party as listed in Appendix 4.

**8 Publication of Project results**

***8.1 General principles***

8.1.1 The Project results shall be published as rapidly as possible. The dissemination measures and communication plans specified in the Contract between the Research Council and the Project Owner shall be implemented.

8.1.2 If master's degree, PhD and/or post.doc.-work are included in the Project, is the purpose that this work shall be published. None of the provisions in this Consortium Agreement shall be interpreted or applied in such way that the achievement of master's degree and/or PhD degree is prevented.

8.1.3 For the avoidance of doubt, nothing in this Section 8 has impact on the confidentiality obligations set out in Section 10.

***8.2 Publication jointly***

 Project results will be jointly published where there have been direct collaborations between the Consortium Participants. In such case joint authorship will be based on the amount of individual intellectual contributions, according to the Vancouver protocol (<http://www.icmje.org/>).

***8.3 Notification of plans and postponement of publication***

8.3.1 Plans for publication shall be submitted via the Project Manager to the other Consortium Participants by the Consortium Participant that has produced the Project result at least 30 calendar days before the publication. Any objection to the planned publication shall be made in writing to the Project Manager and to the Consortium Participant or Consortium Participants proposing the dissemination within 20 calendar days after receipt of the notice. If no objection is made within the time limit stated above, the publication is permitted.

8.3.2 A request for postponement of publication shall be justified if:

1. the protection of the objecting Consortium Participant's Project results or Background would be adversely affected

and/or

1. the objecting Consortium Participant's legitimate interests in relation to the Project results or Background would be significantly harmed.

The request for postponement of publication has to include a precise request for necessary modifications.

8.3.3 If a request for postponement of publication has been raised the involved Consortium Participants shall discuss how to overcome the justified grounds for the objection on a timely basis (for example by amendment to the planned publication and/or by protecting information before publication) and the objecting Consortium Participant shall not unreasonably continue the opposition if appropriate measures are taken following the discussion.

8.3.4 The objecting Consortium Participant can request a publication delay of not more than 90 calendar days from the time it raises such an objection. After 90 calendar days the publication is permitted.

**9 Access rights**

***9.1 Background included***

9.1.1 In Appendix 2, the Consortium Participants have identified and agreed on the Background for the Project and have also, where relevant, informed each other that Access to specific Background is subject to legal restrictions or limits.

 Anything not identified in Appendix 2 shall not be the object of legal restrictions or limits regarding Background.

9.1.2 If a Consortium Participant wishes to add further own Background with legal restrictions or limits to Appendix 2 during the Project this shall be presented in writing to the Steering Committee. The Steering Committee will decide whether this will be a relevant contribution to the Project and whether it will be used in the Project.

9.1.3 Aapproval of the Steering Committee is needed should a Consortium Participant wish to modify or withdraw its Background in Appendix 2.

***9.2 General principles***

9.2.1 Each Consortium Participant shall implement its taks in accorance with the Project description and shall bear sole responsibility for ensuring that its acts within the Project do not knowingly infringe a third party’s Intellectual property rights

9.2.2 Any Access rights granted expressly exclude any rights to sublicense unless expressly stated otherwise.

9.2.3 Access rights shall be free of any administrative transfer costs.

9.2.4 Access rights are granted on a non-exclusive basis.

9.2.5 Project results and Background shall be used only for the purposes for which Access rights to it have been granted.

9.2.6 All requests for Access rights shall be made in writing.

9.2.7 The requesting Consortium Participant must show that the Access rights are Needed.

***9.3 Access rights for implementation***

Access rights to Project results and Background Needed for the implementation of own work of a Consortium Participant under the Project shall be granted on a royalty-free basis, unless otherwise agreed in Appendix 2.

***9.4 Access rights for exploitation***

*9.4.1 Access rights to Project results*

Access Rights to Project results if Needed for exploitation of a Consortium Participant’s own Project results shall be granted on Fair and Reasonable Conditions.

Access rights to Project results for internal research activities shall be granted on a royalty-free basis.

*9.4.2 Access rights to Background*

Access rights to Background if Needed for exploitation of a Consortium Participant’s own Project results, including for research on behalf of a third party, shall be granted on Fair and Responsible Conditions.

***9.5 Access Rights for Parties entering or leaving the consortium***

*9.5.1 Access rights for new Consortium Participants*

As regards Project results developed before the accession of the new Consortium Participant, will be considered Background in relation to the new Consortium Participant.

*9.5.2 Access rights for* Consortium Participants leaving the consortium

9.5.2.1 A non-defaulting Consortium Participant leaving the Consortium voluntarily and with the other Consortium Participants' consent shall have Access rights to the Project results developed until the date of the termination of its participation. The Consortium Participants shall endeavor to specify the Project results to which this applies.

9.5.2.2 Access rights granted to a Defaulting participant and such Consortium Participant's right to request Access rights shall cease immediately upon receipt by the Defaulting participant of the formal notice of the decision of the Steering Committee to terminate its participation in the Consortium.

9.5.2.3 Any Consortium Participant leaving the Consortium shall continue to grant Access rights pursuant to the Contract and this Consortium Agreement as if it had remained a Consortium Participant for the whole duration of the Project.

**10 Confidentiality**

10.1 This Section does not preclude the sharing of confidential information with the Research Council in connection with reporting requirements under the Contract, cf. Appendix 1. Nor should this Section preclude publication of Project results in accordance with the provisions in Section 8 or the exercise of Access rights as provided in Section 9 of this Consortium Agreement.

10.2 All information in whatever form or mode of communication, which is disclosed by a Consortium Participant (the “Disclosing Party”) to any other Consortium Participant (the “Recipient”) in connection with the Project during its implementation and which has been explicitly marked as “confidential” at the time of disclosure, or when disclosed orally has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within 15 calendar days from oral disclosure at the latest as confidential information by the Disclosing Party, is “Confidential Information”.

10.3 The Recipients hereby undertake for a period of 3 years after the end of the Project:

* Not to use Confidential Information otherwise than for the purpose for which it was disclosed;
* not to disclose Confidential Information without the prior written consent by the Disclosing party;
* to ensure that internal distribution of Confidential Information by a Recipient shall take place on a strict need-to-know basis; and
* to return to the Disclosing party, or destroy, on request all Confidential Information that has been disclosed to the Recipients including all copies thereof and to delete all information stored in a machine readable form to the extent practically possible. The Recipients may keep a copy to the extent it is required to keep, archive or store such Confidential Information because of compliance with applicable laws and regulations or for the proof of on-going obligations provided that the Recipient comply with the confidentiality obligations herein contained with respect to such copy for as long as the copy is retained.

10.4 The Recipients shall be responsible for the fulfilment of the above obligations on the part of their employees or third parties involved in the Project and shall ensure that they remain so obliged, as far as legally possible, during and after the end of the Project and/or after the termination of the contractual relationship with the employee or third party.

10.5 The above shall not apply for disclosure or use of Confidential Information, if and in so far as the Recipient can show that:

* the Confidential Information has become or becomes publicly available by means other than a breach of the Recipient’s confidentiality obligations;
* the Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential;
* the Confidential Information is communicated to the Recipient without any obligation of confidentiality by a third party who is to the best knowledge of the Recipient in lawful possession thereof and under no obligation of confidentiality to the Disclosing Party;
* the Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Party;
* the Confidential Information was already known to the Recipient prior to disclosure, or
* the Recipient is required to disclose the Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, subject to the provision Section 10.8 hereunder.

10.6 The Recipient shall apply the same degree of care with regard to the Confidential Information disclosed within the scope of the Project as with its own confidential and/or proprietary information, but in no case less than reasonable care.

10.7 Each Consortium Participant shall promptly advise the other Consortium Participants in writing of any unauthorised disclosure, misappropriation or misuse of Confidential Information after it becomes aware of such unauthorised disclosure, misappropriation or misuse.

10.8 If any Consortium Participant becomes aware that it will be required, or is likely to be required, to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, it shall, to the extent it is lawfully able to do so, prior to any such disclosure

* notify the Disclosing Party, and
* comply with the Disclosing Party’s reasonable instructions to protect the confidentiality of the information.

**11 Breach**

***11.1 Warning***

 In the event that a Consortium Participant breach its obligations under this Consortium Agreement, the Project Owner or, if the Project Owner is in breach of its obligations, the Steering Committee, will give formal notice to such Consortium Participant requiring that such breach will be remedied within 30 calendar days from the date of receipt of the written notice by the Consortium Participant.

***11.2 Consequences***

*11.2.1 Decision of consequences*

 If the breach is not remedied within the deadline or is not capable of remedy, the Steering Committee may decide to declare the Consortium Participant to be a Defaulting participant and, in consultation with the Research Council, decide on the consequences thereof.

*11.2.2 Transfer of tasks*

 The decision of the Steering Committee may imply transferring the designated tasks of the Defaulting participant in whole or in part to another Consortium Participant, according to agreed upon terms. Such transfer does not exempt the Defaulting participant from its other obligations as provided Appendix 3. It is a requirement that the Consortium Participants agree on a reasonable compensation for the tasks for which the Defaulting participant is exempt.

*11.2.3 Termination of participation*

 The Steering Committee may decide to terminate the participation in the Consortium Agreement with the Defaulting participant. Defaulting participant which must withdraw as a result of termination of the Consortium Agreement are obligated to ensure that conditions are in place for the other Consortium Participants to continue the Project, without any right to compensation.

 A Defaulting participant’s rights and obligations under the Consortium Agreement cease to exist from the date the Steering Committee takes the decision to cancel vis-à-vis said Defaulting participant, with the exception of provisions set out in Section 3.2.2 of the Consortium Agreement, which shall continue to remain in effect also after the Consortium Agreement is terminated.

*11.2.4 Entitled to withhold and recover any payments of the Project funding*

 The Project Owner is entitled to withhold, and recover, any payments of the Project funding vis-á-vis a Defaulting Consortium Participant.

##### 12 Liability towards each other

***12.1 No warranties***

12.1.1 In respect of any information or materials (including Project results and Background) supplied by one Consortium Participant to another under the Project, no warranty or representation of any kind is made, given or implied as to the sufficiency or fitness for purpose nor as to the absence of any infringement of any Intellectual proprietary rights of third parties.

Therefore,

- the recipient Consortium Participant shall in all cases be entirely and solely liable for the use to which it puts such information and materials, and

- no Consortium Participant granting Access rights shall be liable in case of infringement of Intellectual proprietary rights of a third party resulting from any other Consortium Participant exercising its access rights.

12.1.2 The Consortium Participants agree to notify the other Consortium Participants immediately if they become aware of, or have reason to believe, that an infringement of the Intellectual proprietary rights of a third party has taken or will come to take place.

***12.2 Limitations of contractual liability***

12.2.1 No Consortium Participant shall be responsible to any other Consortium Participant 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 wilful act or gross negligence.

12.2.2 For any remaining contractual liability, a Consortium Participant’s aggregate liability towards the other Consortium Participants collectivily shall be limited to once the Consortium Participant’s share of the total costs of the Project as identified in Appendix 1 not to exceed the maximum amount of EUR 50 000 – fifty thousand euros - provided such damage was not caused by a wilful act or gross negligence.

12.2.3 The terms of this Consortium Agreement shall not be construed to amend or limit a Consortium Participant’s statutory liability.

***12.3 Damage caused to third parties***

Each Consortium Participant shall be solely liable for any loss, damage or injury to third parties resulting from the performance of the said Consortium Participant’s obligations by it or on its behalf under this Consortium Agreement or from its use of Project results or Background.

***12.4 Force Majeure***

12.4.1 No Consortium Participant shall be considered to be in breach of this Consortium Agreement if it is prevented from fulfilling its obligations under the Consortium Agreement by Force Majeure.

12.4.2 Each Consortium Participant will notify the the Steering Committee and the Project Owner of any Force Majeure without undue delay. If the consequences of Force Majeure for the Project are not overcome within 6 weeks after such notification, the transfer of tasks - if any - shall be decided by the Steering Committee.

**13 Choice of law and legal venue**

13.1 This Consortium Agreement shall be construed in accordance with and governed by the laws of Norway.

13.2 Nothing in this Consortium Agreement shall be deemed to require a Consortium Participant to breach any mandatory statutory law under which the Consortium Participant is operating.

13.3 Attempts shall be made to resolve any disputes that may arise in connection with, or as a result of, this Consortium Agreement amicably through negotiation between the Participants. In the event such attempts do not succeed within one month after negotiations have been requested, the dispute may be brought before the Oslo district court.

##### 14 Signature

The Consortium Participants have caused this Consortium Agreement to be duly signed by the undersigned authorized representatives in separate signature pages. The Project Owner will gather all signature pages electronically and then deliver the whole package consisting of the core text and a copy of all signatures to all Consortium Participants.

Norwegian University of Life Sciences

Date:

Name(s):

Title(s):

Signature(s): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Insert a new page for each signature]

[INSERT NAME OF PARTY]

Date:

Name(s):

Title(s):

Signature(s): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[INSERT NAME OF PARTY]

Date:

Name(s):

Title(s):

Signature(s): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Etc.]

**Appendix 1**

The Contract between the Research Council and the Project Owner.

[Insert the Contract]

**Appendix 2**

The Background brought to the Project by the individual Consortium Participant.

**Norwegian University of Life Sciences**

As to NMBU, it is agreed between the Consortium Participants that, to the best of their knowledge [please choose between option 1 or 2],

Option 1: The following Background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

|  |  |  |
| --- | --- | --- |
| Describe Background | Specific limitations and/or conditions for implementation  | Specific limitations and/or conditions for exploitation  |
|  |  |  |
|  |  |  |

Option 2: No data, know-how or information of [Insert name of Consortium Participant] shall be Needed by the other party for implementation of the Project or exploitation of the other party’s Project results.

This represents the status at the time of signature of this Consortium Agreement.

[**Insert name of Consortium Participant**]

As to [insert name of Consortium Participant], it is agreed between the Consortium Participants that, to the best of their knowledge [please choose between option 1 or 2],

Option 1: The following Background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

|  |  |  |
| --- | --- | --- |
| Describe Background | Specific limitations and/or conditions for implementation  | Specific limitations and/or conditions for exploitation  |
|  |  |  |
|  |  |  |

Option 2: No data, know-how or information of [Insert name of Consortium Participant] shall be Needed by the other party for implementation of the Project or exploitation of the other party’s Project results.

This represents the status at the time of signature of this Consortium Agreement.

[Etc.]

**Appendix 3[[3]](#footnote-3)**

Supplementary description of the obligations of the individual Consortium Participants to perform research activity and/or provide financial resources in accordance with the Project description, the annual Working Plan approved by the Steering Committee and the Funding plan for the Project.

**Financial support**

The Consortium Participants shall contribute resources and cash financing for the implementation of the Project as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| **Consortium Participant**  | **In-kind** | **Cash financing** | **Total** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
| **Total** |  |  |  |

The above commitments shall be honoured in accordance with the following schedule:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Consortium Participant**  | **[year]** | **[year]** | **[year]** | **Total** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
| **Total** |  |  |  |  |

**Costs**

The Consortium Participants agree on the following cost plan for the Project:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Consortium Participant**  | **[Cost category]** | **[Cost category]** | **[Cost category]** | **Total** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
| **Total** |  |  |  |  |

**Project implementation**

The Consortium Participants shall carry out their obligations under the Project in accordance with the following plan:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Work package** | **Main activity, objective and delivery**  | **Cost (in NOK)** | **Responsible Participant**  | **Contributors** |
| 1 |  |  |  |  |
| 2 |  |  |  |  |
| 3 |  |  |  |  |
| 4 |  |  |  |  |
| 5 |  |  |  |  |

Milestones for implementation of the various work packages:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Work package** | **Milestone** | **[year]** | **[year]** | **[year]** | **[year]** |
| 1 |  |  |  |  |  |
| 2 |  |  |  |  |  |
| 3 |  |  |  |  |  |
| 4 |  |  |  |  |  |
| 5 |  |  |  |  |  |

**Description of the Consortium Participants’ contributions to the Project**

[Any supplementary description of the Consortium Participants’ contributions to the Project]

**Appendix 4**

List of third parties for transfer according to Section 7.4

**As to NMBU:**

Ard Innovation AS, a company owned 50% by NMBU, with the mission to commercialize research results produced by NMBU. (NMBU’s Technolgy Transfer Office)

[Insert third parties of the Consortium Participants]

1. Appendix 3 can be taken out if the Project Description regulates this in detail. If Appendix 3 is taken out, the references to the appendix must be consistently corrected in the Consortium Agreement. However, it may be advantageous for the Project Manager to include Appendix 3. Appendix 3 shall clarify the individual Consortium Participant’s obligations to the Consortium to perform research activity and/or provide financial resources and In-kind in accordance with the Project description and the Funding plan for the Project. [↑](#footnote-ref-1)
2. Section 4 is a standard proposal on how the Consortium can be governed. This Section should be customized each individual Project. In particular, it should be taken into consideration, which Consortium Participants that will have voting rights and how many votes each Consortium Participant should have. If the Consortium Participants in the Project Descriptions have decided on how the project shall be governed, it should be considered followed up in the Consortium Agreement. [↑](#footnote-ref-2)
3. Appendix 3 can be adapted to what needs to be regulated. [↑](#footnote-ref-3)