

# General Terms and Conditions for R&D Projects

**The General Terms and Conditions for R&D Projects constitute an integral part of all R&D project contracts with the Research Council of Norway and apply unless otherwise agreed in writing.**

**The following general terms and conditions apply as from 1 July 2018<sup>1</sup>.**

## ► 1 Key terms

**Project administrator:** The individual who is authorised to represent and assume obligations on behalf of the Project Owner in respect of the Research Council. If the Project Owner has designated a specific contract administrator, then this individual will assume the role of the project administrator with regard to authorisation to accept and/or amend the agreement documents for all R&D projects which the Project Owner has established with the Research Council of Norway.

**Agreement document:** The document that is signed by the parties and that contains the agreed-upon specifications and stipulations for the project.

**Allocation:** The Research Council's approved contribution to the funding of a project, which is binding for one budget year at a time.

**Direct costs:** Costs that are directly attributable to the implementation of the project.

**Funding plan:** A plan indicating how the project costs will be financed throughout the project period.

**Force majeure:** Unforeseeable or exceptional circumstances beyond a party's control.

**Research-generated data:** Registered records, notes and reported information in the form of numbers, text, visual and audio files that are generated by or emerge in the course of the research project.

**Research infrastructure:** Facilities, resources and related services that are used by the scientific community to conduct research in their respective fields and covers scientific equipment or sets of instruments, knowledge-based resources such as collections, archives or structured scientific information, enabling information and communication technology-based infrastructures such as grids, computing, software and communication, or any other entity of a unique nature essential to conduct research. Such infrastructures may be "single-sited" or "distributed" (an organised network of resources).

**Progress plan:** Plan for the performance of the project's activities, including secondary objectives and milestones.

**Intellectual property rights:** Patents and all other rights to technical solutions methods, processes, procedures, drawings, prototypes, specifications, design, circuit layout drawings and trade secrets, regardless of whether or not these are or may be patented or registered as well as all copyrights, database rights and other similar rights, rights to trademarks, domains, and other distinguishing business identification marks, and rights protected under the Act relating to the control of marketing and contract terms and conditions, etc (Marketing Control Act), regardless of whether these are or may be registered.

**Indirect costs:** Costs that are associated with the project's proportional use of resources that are not directly attributable to the project.

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<sup>1</sup> Applies to projects with closing date for applications after 1 July 2018.

**Commercial utilisation:** Direct or indirect use of project results in the development and/or marketing of products, services or processes, or the transfer and/or licensing of use of project results to third parties. Publication through publishing houses is not defined as commercial utilisation.

**Contract:** The R&D Project Agreement Document, the project description and the General Terms and Conditions for R&D Projects, as well as any specified supplementary documents.

**Contract administrator:** A designated individual who is authorised to accept and/or amend the agreement document for all R&D projects which the Project Owner has established with the Research Council.

**Cost plan:** A list of the overall budgeted project costs for the project period distributed by cost category.

**Party/Parties:** The Project Owner and the Research Council, individually or together.

**Project:** The overall activities covered by the contract.

**Project Owner:** The entity that is responsible vis-à-vis the Research Council for ensuring that the project is carried out in accordance with the contract, receives the Research Council's allocation and is otherwise obligated under the contract.

**Background:** The knowledge, including intellectual property rights, that the Project Owner and partners bring into the project.

**Project description:** Scientific and administrative description of and plan for the implementation of the project.

**Project funding:** Resources that are made available in order to implement the project and cover the project costs, including financial resources and contributions in the form of offices/laboratories, research infrastructure, personnel, etc.

**Project costs:** Direct and indirect costs associated with the implementation of a project.

**Project manager:** The individual who is in charge of the progress and performance of the project on behalf of the Project Owner.

**Project period:** The time span during which the project is to be performed, as specified in the agreement document.

**Project accounts:** Accounts kept by the Project Owner over the project costs and project funding.

**Project results:** All results produced or achieved in connection with the project, including intellectual property rights, regardless of whether or not the results are protected by law.

**Project summary:** Short scientific description of the project that may be made available to the public.

**Collaboration agreement:** Agreement regulating among other things the approach, distribution of tasks and rights and obligations between the Project Owner and the partners.

**Partners:** The entities that, in accordance with the agreement document, are to perform the project in collaboration with the Project Owner.

**Sign/Signing:** Electronic acceptance of the contract on "My RCN Web" in the Research Council's online application administration system and/or the physical signature on the agreement document.

**Pledge:** A conditional promise of funding from the Research Council.

**Sub-contractor:** An actor who is commissioned by the Project Owner to supply goods or services or contribute to the implementation of individual tasks in connection with the project, and who is not a partner.

## ► 2 The project

### 2.1 Project implementation

The project shall be carried out in accordance with the contract.

In cases where the Research Council has approved the grant application without requiring any special agreement document, the project shall be implemented in accordance with the grant application and the General Terms and Conditions for R&D Projects issued by the Research Council.

The Project Owner is required to comply with the applicable statutory framework and other public regulations, ethical guidelines as well as recognised quality standards and norms for good research practice.

### 2.2 Sub-contractors

The Project Owner is permitted to enter into agreements with sub-contractors in accordance with the parameters set out in the contract.

The use of sub-contractors does not release the Project Owner from the obligations and responsibilities stipulated in the contract.

Sub-contractors may not be granted any rights to project results.

The Project Owner is required to ensure that sub-contractors respect the rights and obligations laid down in the contract.

## ► 3 Projects in collaboration with partners

In projects carried out in collaboration with partners, the Project Owner shall represent the partners vis-à-vis the Research Council.

The Project Owner is required to sign a collaboration agreement with the partners. Unless otherwise agreed in writing, the collaboration agreement is to be completed within three months after the Research Council has sent the contract to the Project Owner, and must have been received before the Research Council will disburse any funds.

The collaboration agreement is to govern the reciprocal rights and obligations of the Project Owner and respective partners, including distribution of project costs, ownership of research infrastructure and rights, etc., pertaining to research results, cf. Section 8.3.

The Project Owner is required to ensure that the collaboration agreement reflects the terms and conditions of the contract, including that the partners are bound by the same obligations as the Project Owner in so far as this is relevant for the partner's role in the project, and that the partners at all times are informed about relevant elements of the contract. The Project Owner must, among other things, ensure that the allocation is used in conformance with the provisions of the contract, and that the partners keep and report cost accounts as a basis for the preparation of project accounts that meet the requirements set out in the contract, cf. Section 5.

The Research Council may stipulate special requirements pertaining to collaboration between partners. The signing of the collaboration agreement in no way changes the Project Owner's responsibility pursuant to the contract.

The collaboration agreement shall establish the right of the Research Council to exercise the rights of the Project Owner set out in the collaboration agreement in so far as this is necessary for the exercise of the Research Council's rights as specified in the contract (including provisions relating to duty of secrecy, verification and auditing, etc.).

Any changes in the composition of the partners as outlined in the agreement document will require the prior written approval of the Research Council.

## ► 4 Disbursement, transfers and reservations

### 4.1 Disbursement

Funding will not be disbursed until the contract has been signed by both parties and received by the Research Council along with copies of any collaboration agreements, and information about the Project Owner's bank account number has been conveyed to the Research Council in the manner specified. Funding will be paid into the bank account number that has been provided.

Unless otherwise agreed in writing, funds will be disbursed automatically at four-month intervals based on the agreed funding plan and the Research Council's allocation, as set out in the agreement document.

If the Research Council has paid out an amount that is higher than the allocation, the Project Owner must immediately repay the amount in excess. Unless the overpayment is due to factors on the part of the Research Council, interest will accrue in accordance with the Act relating to interest on overdue payments, etc. (LOV-1976-12-17-100) from the date the Project Owner received the disbursement.

The Research Council may terminate the automatic disbursement of funds if it finds that the performance of the project deviates significantly from the contract or that such termination is necessary for other reasons, see under Section 4.5. The Research Council will not disburse the final four-monthly payment until the final report and/or annual accounting report has been submitted and approved, cf. Section 6.3.

### 4.2 Transfer of unused funds from a fiscal year

On the basis of a request from the Project Owner citing reasons why it is justified, the Research Council may consent to the carrying forward of unused funding from one fiscal year to the next. The Project Owner must submit its request to the Research Council at the latest by the end of calendar year to which the grant applies. In the event consent is not given for the unused funding to be carried forward, this amount will be deducted from the total allocated sum. If the funding has already been disbursed, the Research Council may reduce the following year's disbursement by a corresponding amount or require reimbursement of the unused funds.

### 4.3 Reimbursement of unused funds due to lower project costs

If the project costs are lower than the amounts indicated in the cost plan, then any remaining undisbursed funds will not be paid out. Disbursed funding in excess of the Research Council's agreed proportion of the project costs shall be repaid to the Research Council in the manner that it specifies.

### 4.4 Recovery by offsetting

The Research Council may recover overpayment of funding by offsetting the amount against remaining payments or other claims that the Project Owner may have vis-à-vis the Research Council, including undisbursed funding in other projects. This applies regardless of the date on which the claim arose or fell due.

### 4.5 Reservations

Allocations are made for one fiscal year at a time. Any pledges for subsequent years are not binding on the Research Council unless specifically stated in the agreement document.

Disbursement of the grant for Year 1 and honouring of any pledges for subsequent years are contingent on there being no changes in public regulations (rules, standards, legislation, etc.), and that no other unforeseen circumstances have arisen that will have a major impact on the implementation of the project, or the Research Council's ability to contribute to it.

The Research Council will honour its pledge for subsequent years contingent on the following stipulations, among others:

- No significant deviations to the contract have occurred.
- The Research Council approves the progress report for the project and any requests to change the approved project framework, cf. Section 6.2.

In the event one or more of these conditions is not satisfied, the Research Council may stop or change any future allocations or pledges. Furthermore, the Research Council may require repayment of all or part of the disbursed allocation, or decide to cancel the contract pursuant to Section 16, if this is warranted under the circumstances.

## ► 5 Accounting

The Project Owner is to keep a separate project account specifying project funding and project costs. Project funding and project costs must appear in the Project Owner's formal accounts.

The accounts shall be kept current. Under all circumstances, information of significance to the preparation of compulsory reports stipulated in the contract must be recorded within the deadlines that apply to such reporting. Project accounts must satisfy the requirements set out by the Research Council in its relevant guidelines, and must be recorded according to good accounting practice and the general accounting principles employed by the Project Owner.

The project may only be debited with costs that are necessary to and directly associated with the implementation of the project, and that comply with what is set out in the cost plan.

## ► 6 Reports

### 6.1 In general

The Project Owner is required to prepare and submit reports within the stipulated deadlines, in the manner and format specified by the Research Council.

The Project Owner is to report all changes and deviations relative to the project to the Research Council on its own initiative and without undue delay

The Project Owner shall store the final report and project data in a safe and secure manner for at least 10 years after the conclusion of the contract period.

### 6.2 Progress reports and notifications of changes to the project framework

In the progress report, the Project Owner is to provide information regarding the project results achieved. The progress report and any notifications of changes to the project framework must be approved by the Research Council before the allocation can be disbursed and/or funding pledges will be honoured, cf. Section 4.5.

### 6.3 Final reports

Unless otherwise agreed in writing, the Project Owner is to submit the final report to the Research Council by at the latest one month after the conclusion of the project period.

The Project Owner is to provide the name of the archives or data infrastructure to be used for storing the research data/output data generated in connection with the project that may be relevant for reuse, and all the necessary documentation for reuse of the data (metadata).

Projects that have submitted a data management plan must append the latest version of this plan to the final report.

The final report must be approved by the Research Council.

### 6.4 Other reports

Within reason, the Research Council is entitled to request additional reports covering shorter periods of time or specific parts of a project.

For certain types of projects, the Research Council requires *the submission of* a project account report. This is specified in the agreement document.

Upon the request of the Research Council, and to the degree possible, the Project Owner is required to contribute at no charge to the Research Council's evaluation of the project and measurement of results. This evaluation includes an assessment of the scientific and economic significance of the project's results. Unless otherwise agreed in writing, the Project Owner will be under obligation to contribute in this way for a period of up to 10 years from submission of the final report.

The Project Owner is also required to submit account information and any other statistical data relating to the project to the national research statistics authorities.

## ► 7 Personnel management, reporting, etc.

The Project Owner bears the employer's liability for all its own staff members who are affiliated with the project.

For fellowship-holders, the following will apply:

- The Project Owner is responsible for administrative follow-up of fellowship-holders in accordance with the institution's own guidelines and routines.
- The Project Owner shall report all information relating to fellowships to the Research Council in accordance with the Research Council's established routines.
- The Project Owner is to report any change in the start-up or termination dates for a fellowship-holder to the Research Council immediately.
- Leaves of absence or reductions in contractually agreed working hours for a fellowship-holder during the fellowship period shall be reported as dictated by the Research Council.
- The Project Owner is to process requests for leaves of absence that are pursuant to legislation or collective bargaining agreements, and which entail an extension of the fellowship period, in accordance with the institution's own guidelines.
- Should a fellowship-holder resign before the expiry of the fellowship period, the Project Owner must notify the Research Council without undue delay of the date of and reason for the fellowship-holder's departure.
- Should the Research Council find a fellowship-holder's progress to be less than satisfactory, the issue must be raised with the Project Owner, who is required to implement feasible, reasonable measures as dictated by the Research Council. In the event the Project Owner finds grounds indicating the fellowship should be discontinued or terminated, the Research Council shall be notified immediately. Discontinuation or termination of the fellowship may not take place without the prior written consent of the Research Council.

## ► 8 Right of ownership, utilisation rights and licensing

### 8.1 Research infrastructure

The Project Owner has ownership of research infrastructure purchased with project funds. In projects involving collaboration with partners, the ownership of the research infrastructure shall be regulated in the collaboration agreement, cf. Sections 3 and 8.3.

The Project Owner is required to ensure that the research infrastructure is adequately insured and kept operational and in good working order during the contract period.

### 8.2 Project results

#### **Rights**

The Project Owner must obtain the rights to commercial utilisation of the project results, and is required when necessary to sign agreements with owners, employees (including individuals with multiple employers), sub-contractors and others to achieve this.

The obtainment of such rights is not intended to limit the protection accorded the rightsholder's moral rights pursuant to the Norwegian Copyright Act, nor does it preclude agreements regarding remuneration schemes for rightsholders corresponding to those that apply to employees' patentable inventions pursuant to the Act respecting the right to employees' inventions.

#### **Protection**

The Project Owner must assess the need to protect project results that may have commercial value and, when so indicated, take suitable protective action. Where legislation requires that rights must be registered to obtain protection, the Project Owner shall ensure that such registration is carried out.

#### **Utilisation**

The project results must be utilised within a reasonable period of time, given the characteristics of the particular industry or market, the specific field of research, and the relevant product's development time-frame, useful economic life and utilisation opportunities. If the party holding the rights to the project results does not achieve such utilisation, the persons who have produced the project results may demand that the rights are transferred to them, unless a different agreement is in place between the Project Owner and those same persons, or between the various parties involved in projects in collaboration with partners, cf. Sections 3 and 8.3. This does not apply, however, in cases where:

- measures to achieve utilisation have been launched and are underway; or
- the rightsholder's lack of utilisation of a project result is of commercial significance for the utilisation of the rightsholder's other project results.

#### **Transfer of project results to a foreign legal entity**

The transfer of ownership and/or licensing of exclusive rights to project results to a third party who is not a partner, and who is in a country outside the European Economic Area, may not take place without the written approval of the Research Council. The Research Council may refuse to allow transfers/licensing agreements if they are in conflict with national economic interests, ethical principles or considerations relating to the safety of the realm. Alternatively, the Research Council may stipulate conditions for the proposed transfers/licensing agreements. A request may be considered approved if the Research Council has not responded within four weeks of receipt of written notification. This provision applies for the duration of the project period and for three years after the project has been concluded.

#### **Changes in ownership – foreign owners**

The Research Council shall be notified immediately and in writing if a person or an undertaking outside the European Economic Area assumes a controlling interest in the Project Owner through the acquisition of a stake in the enterprise (shares, etc.), by agreement or by other means. The Project Owner is also required to notify the Research Council immediately and in writing if a person or an undertaking outside the European Economic Area assumes a controlling interest over any of the partners after a contract has been signed.

If the changes in ownership entail that the project results may be used in conflict with national economic interests, ethical principles or considerations relating to the safety of the realm, the Research Council is entitled to impose conditions on the project and project results, including that the Project Owner shall wholly or partially transfer the project results exclusively to the Research Council. The Research Council may also cancel the agreement document require reimbursement of disbursed funding pursuant to Section 16. This provision applies for the duration of the project period and for three years after the project has been concluded.

### **8.3 Supplementary provisions for projects in collaboration with partners**

The collaboration agreement between the parties, cf. Section 3, is to regulate ownership of infrastructure, and the rights to, protection of and use of project results, as well as use of, and any compensation for, the background and any research infrastructure brought into the project

The following principles are to be adhered to:

- For the duration of the project period, the Project Owner and partners must have the right to use, at no charge, all project results that are necessary for implementing their own work in the project.
- The Project Owner and partners must have the right to use project results and background brought in according to the agreed-upon terms, when this is necessary for commercial utilisation of the project results to which they themselves have rights under the project.

## ► 9 Publication and archiving

### 9.1 Publication of project results

Unless otherwise stipulated below, the Project Owner is required to make the project results public as quickly as possible. This includes ensuring that the dissemination measures and plans specified in the contract are implemented.

If publication of project results will interfere with the protection or commercial utilisation of the project results, the publication may be temporarily postponed until such protection or commercial utilisation has been achieved.

In special cases, the Research Council may give its written consent to the imposition of permanent secrecy on the project results. This does not apply to projects with participants from the university and university college sector, as it is in contravention of the Act relating to universities and university colleges.

Research-generated data must be made publicly available after the conclusion of the project, unless special circumstances indicate otherwise, or unless this is prevented by the terms and conditions of the contract or other public rules.

### 9.2 Archiving of project results

The Project Owner shall ensure that all research-generated data, including all data that forms the basis for publications, is stored in a secure digital archive. Such archiving is to be carried out as soon as possible and at the latest two years following the conclusion of the project period. The Research Council may require that all such data, including the necessary documentation for reuse of data (metadata), is stored in designated, secure national or international archives.

The Project Owner is under obligation to ensure that a copy of peer-reviewed scientific articles based on research wholly or partially funded by the Research Council is stored in appropriate, open-access digital archives. The archived version must have the same content and form as the version published in the journal. This obligation does not apply if open access to the archived version in any way conflicts with the author's academic and legal rights.

### 9.3 Publication of project information

The Project Owner is required to make reference to the Research Council's support in any external information issued about the project.

The Research Council has the right to publish the name of the Project Owner and project manager, the project title, the duration of the project, the project summary, the popular science presentation and the amount of its allocation.

The Research Council may publish project results that are reported in connection with the progress and final reports unless the information has been designated as confidential.

Within reason, the Research Council is entitled to require that the Project Owner establishes a website for the project and takes part in relevant seminars, conferences and other dissemination and networking measures.

## ► 10 Confidentiality

The Research Council is required to comply with the Freedom of Information Act of 19 May 2006 No. 16 and the provisions relating to duty of secrecy under the Public Administration Act of 10 February 1967.

## ► 11 Transfer

The Project Owner may not transfer, mortgage or in any other way convey the use of the contract, or portions of the contract, including allocations and pledges from the Research Council, without the prior written consent of the Research Council.



## ► 12 Indemnification and discharge of liability

The Project Owner bears liability for ensuring that the performance of the project does not violate the rights of any third parties, including the third party's copyrights and other intellectual property rights, or can in any other way lead to claims from a third party.

The Project Owner shall indemnify the Research Council against any claims resulting from the Project Owner's performance of the project, including claims related to infringements of intellectual property rights.

The Research Council bears no legal or financial liability for injuries or losses ensuing from e.g. defects in or non-proficient use of equipment, methods or programmes associated with the project.

## ► 13 Force majeure

Either party shall notify the other party without undue delay should a situation of force majeure prevent that party from fulfilling its obligations under the contract.

None of the parties is to be held liable for a breach of contract if the inability to fulfil its obligations is due to force majeure.

Should force majeure entail a risk that the project can not be performed in accordance with the contract, the parties shall meet to negotiate any contract adjustments that might be required. Should the parties fail to agree on such adjustments, the Research Council is entitled to stop payment of the allocation until the situation of force majeure is resolved.

If the situation of force majeure is expected to last, or has lasted, for more than 90 days, each of the parties may terminate the contract with one month's notice.

## ► 14 Amendments

The Research Council may introduce amendments as set out in the contract.

Each of the parties may propose amendments to the contract. Amendments may apply to the project's objectives, scope, or other conditions.

Amendments to the contract require the consent of the Research Council.

## ► 15 Verification, auditing and disclosure requirement

The Research Council, the Office of the Auditor General or a third party appointed by the Research Council are entitled at any time to verify that the funds are being applied in accordance with the contract.

Upon a request from the Research Council or Office of the Auditor General, the Project Owner shall produce receipts, time sheets, calculations and any other relevant documentary evidence and information requested by the Research Council and/or the Office of the Auditor General in order to carry out such verification.

The Research Council and the Office of the Auditor General may require the Project Owner to disclose all information that is necessary to verify compliance with the rules pertaining to public support.

## ► 16 Cancellation and reimbursement claims

### 16.1 Cancellation

The Research Council may cancel the contract in the event of a material breach on the part of the Project Owner. Such a material breach includes among other things situations in which:

- there are significant deviations in relation to the progress plan or other factors regulated in the contract;

- the Project Owner has not fulfilled the obligations relating to reporting and archiving, cf. Sections 6 and 9, respectively;
- the disbursed funds have not been applied in accordance with the contract;
- research infrastructure has not been adequately insured and kept operational and in good working order during the contract period, cf. Section 8.1;
- the Project Owner is engaged in activities which are not compatible with the current legislation or with the Research Council's objectives and guidelines;
- the Project Owner is unwilling or unable to complete the project.

The Research Council may furthermore cancel the contract in the event that:

- a person or undertaking outside the EEA assumes control of the Project Owner, and the terms set out under Section 8.2, final clause are met;
- there is notification of a declaration of bankruptcy, or a petition for compulsory winding up or the opening of composition proceedings on the part of the Project Owner, or there is other compelling reason to believe that the Project Owner is insolvent;
- a decision has been taken to close down the Project Owner's activities or there is other compelling reason to believe that grounds exist for forced dissolution of the company;
- key prerequisites underlying the contractual relationship are not fulfilled, such as the Research Council receives less funding than expected, or there are changes in public regulations or other unforeseen circumstances arise that will have a major impact on the implementation of the project or the Research Council's ability to contribute to it, cf. Section 4.5.

The Project Owner is to be notified before the Research Council decides to cancel the contract.

The Project Owner may cancel the contract in the event of a material breach on the part of the Research Council.

Notification of cancellation shall be submitted in writing with specification of the reasons for cancellation.

## 16.2 Reimbursement claims

If the Research Council cancels the contract on grounds of a material breach on the part of the Project Owner pursuant to Section 16.1, the Research Council has the right to claim reimbursement for disbursed allocations, including interest on the amount from the date of the breach, in accordance with the Act relating to interest on overdue payments, etc. (LOV-1976-12-17-100). The Project Owner is to be notified before the Research Council decides to claim reimbursement of allocations.

In lieu of such reimbursement, the Research Council may demand transfer of the rights to project results. The claim for such transfer shall be submitted in writing, and the Project Owner shall surrender the rights without undue delay, and cover any costs in connection with the transfer. Upon surrender, the right of ownership will be passed from the Project Owner to the Research Council or to a relevant third party.

The Research Council may require reimbursement of funding that comprises illegal state aid.

## ► 17 Duration and discharge of the contract

### 17.1 In general

The contract will enter into force from the date on which it has been signed by both parties and one copy along with any signed collaboration agreements have been received by the Research Council. The contract will be discharged without notice upon conclusion of the project and submission and approval of the final report.

Discharge of the contract does not imply cessation of contract provisions that are not, by their nature, limited to the contract period. This applies, for example, to the provisions pertaining to accounts, reports, the transfer of project results, publication, etc.

## 17.2 Termination of the contract by agreement

The parties may agree in writing to terminate the contract before the conclusion of the project period.

## ► 18 Choice of law/venue

This agreement is governed by and shall be interpreted in accordance with Norwegian law.

Any disputes shall be settled in the ordinary courts. The Oslo District Court shall serve as the court of venue. In the event that the Project Owner is a public institution, disputes shall be submitted to the Ministry of Education and Research, which will decide how these shall be solved.