**Template for activity with sponsored funding, bilateral agreement**

Last update: 10 May 2019

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| **The template is to be used when:*** + NTNU is the Project Owner
	+ The project receives no contribution from the Research Council of Norway or the EU
	+ The Project is defined as a collaborative research project

**The template shall not be used in connection with:*** Commissions. These are projects that NTNU undertakes in exchange for consideration (payment) from an external commissioning party, with a claim for deliveries (with consideration) through entry into an agreement/a contract. When an activity is funded on a commission basis, the commissioning party shall cover all the direct and indirect costs that the commission entails as well as a reasonable profit. NTNU shall be able to document this.
* Projects with contributions from the Research Council of Norway or the EU

**This agreement 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-07-13 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")
* Instructions for financial administration at the Norwegian University of Science and Technology (NTNU) (stipulated by the Rector of NTNU with effect from 1 March 2006)
* NTNU Board resolution from 27 March 2008 to endorse the Research Council's "Common IPR policy for Norwegian universities"
* NTNU Board resolution of 8 October 2009 regarding delayed publication of research results
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**Instructions for use of this template**

* If the document gives OPTIONS, select one and omit or strike out other option(s)
* Anything written in *Italic* is information meant as help in the preparation process. This information should be deleted before the document is finalised
* This page should not be printed or included in the signed contract

**Contract template for activity with sponsored funding**

**Special terms of contract**

between

………………………………..………………………………………………………….

………………………………..………………………………………………………….
(company's/institution's name/organization number)

hereinafter called the **Sponsor**

and **Norwegian University of Science and Technology (NTNU)**

c/o ………………………………..………………………………………………………….

(name of the administrative unit for the Project)

concerning collaborative research on a Project entitled:

…………………………………………………………………………………………………

…………………………………………………………………………………………………

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…………………………………………………………………………………………………

* NB! Words/terms with capital initial letter are defined in NTNU's "General Terms of Contract for Activity with Sponsored Funding» (**Appendix I**)

## § 1 Type and scope of the Project

NTNU shall execute the Project in accordance with the specifications in the Project Description (**Appendix III**).

With the exception of Force Majeure situations – see General Terms of Contract § 10 – NTNU agrees to use all reasonable endeavours to perform and fulfil its obligations in accordance with the Contract.

## § 2. Duration

The following duration of the Contract is agreed (based on the assumptions made at the time the Contract was entered into):

**Start date: ………………….**

**Completion date: .…………………**

The Contract enters into force when it is signed by both Parties.

The following clauses in the General Terms of Contract shall remain in force after the stated completion date: …………………………..

……………………………………………………………………………………………………

*(Consider requirements/need for this -- in particular, see General Terms of Contract §§ 5, 8 and 9.)*

**§ 3. Contact persons**

1. NTNU's contact person: ………………………………………………..
2. The Sponsor's contact person: ……………………………………………………...

## § 4 Reporting

*(Include project-specific provisions for reporting -- see General Terms of Contract § 2.1)*

………………………………………………………………………………………………

………………………………………………………………………………………………

## § 5 Contribution

The total estimated cost of the Project is NOK (Norwegian kroner) .......... (*insert amount*).

In accordance with this Contract, the Sponsor agrees to make the following contribution to the Project:

NOK ………………… (*insert amount. Any contributions in addition to cash contributions are to be described under § 6 below*)

The amount contributed shall be paid to the Project as specified in the Project Description to NTNU's bank account no 7964.05.00288 in DNB *(if payments will be made from abroad contact NTNU accounting department to get information about other relevant bank information - IBAN/BIC etc)*

## § 6 Additions to /deviations from NTNU's "General Terms of Contract for Activity with Sponsored Funding at NTNU»

…………………………………………………………………………………………………..

…………………………………………………………………………………………………..

…………………………………………………………………………………………………..

## § 7 Contract documents

##  The contract comprises the following four (five) parts:

1. This document -- called Special Terms of Contract

2. “General Terms of Contract for Activity with Sponsored Funding at

 NTNU” **(Appendix I**)

3. Description of the Background **(Appendix II**)

4. Project Description **(Appendix III**)

5. Record of amendments (**Appendix IV**)

In the case of ambiguity between the terms of the Special Terms of Contract and the General Terms of Contract, the former are to take precedence.

In the case of ambiguity between the terms of the Project Description and other parts of the Contract, the latter is to take precedence.

§ 8 Contract issue and signatures

This Contract is signed in two copies, where each of the Parties has received one.

Trondheim, / 20… …………..(place) / 20…

For NTNU: For the Sponsor:

signature…………………………………….. signature……………………………………….

name : ……………………………………. name: ………………………………

title: ……………………………............ title: ………………………………
(*Head of Department/Dean/Rector)*

**APPENDIX I:**

**GENERAL TERMS OF CONTRACT FOR ACTIVITY WITH SPONSORED FUNDING**

**AT NORWEGIAN UNIVERSITY OF SCIENCE AND TECHNOLOGY (NTNU)**

1 Definitions

**Activity with Sponsored Funding:** Activities where NTNU receives support with no claim for consideration (that is, deliveries of products and services against payment) on entry into the contract, cf. Directive F-07-13 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").

**Background:** The knowledge, including Intellectual Property Rights, that the Parties bring into the Project.

**Commercial Utilization:** Direct or indirect use of Project results in the development and marketing of products/services or processes based on the Project results, or the transfer and/or licensing of use of Project results to third parties, with the exception of publication through publishing houses.

**Fair and reasonable conditions:** Appropriate conditions, including possible financial terms, taking into account the specific circumstances of the request for access, for example the actual or potential value of the foreground or background to which access is requested and/or the scope, duration or other characteristics of the use envisaged

**Force Majeure:** Unforeseeable and exceptional circumstances beyond the Parties' control.

**Funding plan:** Plan for transfer of the Contribution over the Project Period.

**General Terms of Contract:** This document, included as Appendix I to the Contract.

**Intellectual Property Rights:** All rights to technical solutions, methods, processes and procedures, regardless of whether or not these are or may be patented, as well as all copyrights and rights to trademarks, design, plant species, databases, integrated circuit layout designs, drawings, specifications, prototypes, trade secrets and the like.

**Parties**: NTNU and the Sponsor.

**Project:** The overall activities covered by the Contract once it has been signed.

**Project Accounts:** Accounts kept by NTNU to record the Project’s actual income and expenses.

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

**Project Manager:** The individual who is authorized to represent and assume obligations on behalf of NTNU with regard to the scientific progression and the implementation of the Project.

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

**Project Results:** All results that are created or are achieved in connection with the Project, including Intellectual Property Rights, irrespective of whether these are protected by law or not.

**Project Team Member:** Person who is to work with or on the Project.

**Special Terms of Contract:** Terms and conditions that are agreed specially for the individual project and that are part of the Contract.

**Sponsor:** External source of funding that provides total or partial funding of an activity at NTNU, not requiring any consideration such as goods or services, beyond reports from the Project.

**Working Days:** Every day except Saturdays, Sundays, and Norwegian public holidays.

2 Execution of the Project

The Project is to be executed as specified in the Special terms of Contract and the Project Description..

**2.1 Reporting**

NTNU shall produce progress reports and a final report as agreed in the Special terms of Contract § 4.

On request from the Sponsor, NTNU shall at any time provide information about work progress.

**2.2 Changes**

Either of the Parties to this Contract has the right to propose modifications or changes in the Contract including the Project objectives, scope and guidelines following the results achieved or other conditions that change the assumptions in the Project. These changes are to be agreed by both Parties and are to be available in writing through a record of amendments (Appendix IV in the Contract).

3 The contribution

The contribution is not subject to value-added tax.

NTNU shall claim payment of the contribution in accordance with the Project Description or any separate Funding Plan. The Sponsor is to pay all invoices within 30 days.

Unless otherwise agreed, NTNU has the right to adjust its rates and other financial conditions at 1 January each year.

4 Responsibility

**4.1 Project execution**

NTNU is responsible for the execution of the Project in accordance with the Project Description and declares that it has the expertise and capacity to do this in a professional manner and in accordance with recognized standards and norms for such work.

If the Sponsor makes contributions beyond financial contributions to the Project, ref. Special Terms of Contract § 6, these are to be delivered at the agreed times and with the agreed quality so that NTNU is able to carry out the work in accordance with the agreed Project Description and Project Period.

**4.2 Damage to or loss of property, injury to personnel**

Each Party is to indemnify the other against any loss or damage/injury to their own or any possible subcontractor's property or personnel, unless the damage or loss is due to deliberate action or gross negligence by the other Party.

**4.3 Use of Results. Consequential loss**

Any information or materials that any Party make available to the Project is provided without guarantees or commitments of any kind, also for any encumbrances that may exist.

The use of Project Results shall be the responsibility and at the risk of each Party.

Neither Party is under any circumstances to be held responsible to the other for any consequential loss.

5 Equipment

NTNU is to be the owner of equipment bought with Project funds and charged to the Project accounts. NTNU is self-insured and is obliged to keep the equipment in good condition.

6 Background

The project Background shall be described in a separate appendix to the Agreement ( Appendix II). The ownership of the Background will be maintained by the Party that brought it into the Project.

Any Party wishing to contribute further project Background during the Project Period shall notify the other Party of this. Any request put forward for Background to the Project shall be approved by the other Party, and relevant appendices II/III shall be updated continuously.

For the duration of the Project Period, the Parties shall have access at no charge to the other Party's project Background that is necessary for the implementation of the Project.

If the Sponsor desires commercial access to relevant project Background from NTNU, this can be negotiated between the Parties[[1]](#footnote-1). In principle, any licence agreement shall be non-exclusive, with defined areas of use, and shall also be signed on Fair and reasonable conditions.

7 Rights to Project Results

**7.1 Ownership rights**

NTNU has ownership rights to all Project Results that solely have been generated by its own employees, independent contractors/consultants and/or sub-contractors.

If the Parties have generated Project Results together, they shall own such results jointly. The Parties’ ideal shares shall

correspond to the respective Party’s relative intellectual contribution to the Project Result in question. Co-financing is not sufficient for joint ownership of Project Results.

The joint owners shall, at the latest three (3) months after the joint Project Results have been generated, enter into a

separate contract (“sameieavtale”) regulating the exploitation of the jointly owned results, including but not limited to possible protection measures. This contract shall, as a minimum, contain:

* an adequate description of the Project Result, including each Party’s ideal share
* provisions describing which Party that shall be responsible for the protection and maintenance of the result, including a Power of Attorney
* a detailed plan describing how the Project Result shall be protected, defended, maintained and used, included a plan for Commercial Utilization.

**7.2 User rights**

For the duration of the Project Period, the Parties shall have access at no charge to Project Results that are necessary for implementation of the project.

A Project Result shall be communicated in writing to the Parties within 1 month after it has been identified. The Sponsor is granted a preferential right to negotiate the signing of a licence agreement for Commercial Utilization of a communicated Project Result within defined areas of use. Preferential rights must be exercised by means of a written enquiry to NTNU within 3 months after the Project Results have been reported to the Parties. Negotiations for a licence agreement must be concluded within 6 months from the date on which the Sponsor gives written notice of the desire to exercise the preferential right. The licence agreement shall be signed on commercial terms, having regard to both the commercial potential that may exist and the respective contributions of the Consortium Participants in question to the Project Results and contribution to the Project.

The Sponsor's preferential rights are in effect for up to 3 months after the end of the project.

NTNU can in no circumstances renounce its right to exploit the Project Results for teaching and research purposes.

8 Publication of Project Results

Pursuant to the Act relating to Universities and University Colleges of 1 April 2005, it is not possible to agree permanent postponement of publication.

NTNU shall publish the Project Results, normally through publication in scientific journals, professional meetings and conferences, non-academic articles and the like.

NTNU is to ensure that such external dissemination relating to the Project will indicate the role of the Sponsor in the Project.

In terms of an NTNU Board resolution (S-sak 10/09), any request for postponement of publication, where NTNU employees have contributed fully or partially, shall be considered by the Rector of NTNU. The Rector of NTNU may consent to postponement of publication for up to 6 months, with an option for a further 6 months when there are legitimate grounds for this. The maximum limit of 12 months is not to be used as a standard procedure. In any event, publication shall take place as soon as possible.

The Sponsor shall be notified of plans for publication at least 20 Working Days before the planned date of submission.

The Sponsor may, within 15 Working Days after receiving notification of the plans for publication, give notice in writing to NTNU that postponement of publication is requested. This notification must describe how the Sponsor believes that the planned publication will destroy or reduce possible commercial development of the Project Results, or why a postponement as requested is necessary for the protection of Intellectual Property Rights, or why publication is in direct conflict with the Sponsor's commercial interests. The notification must also specify which elements in the planned publication the Sponsor wishes to change.

Together with the Sponsor and relevant authors, the Project Manager shall, within 15 Working Days, attempt to find acceptable adjustments to the planned publication, or alternatively request NTNU for postponement of up to 6 months from the date on which notification from the Sponsor was received.

NTNU shall consider each request for postponement of publication as soon as possible.

In the cases in which NTNU approves postponement of publication, the Sponsor may within 30 Working Days before NTNU's approved date for delayed publication give written notice to NTNU requesting a further 6 months' postponement. NTNU shall consider such an enquiry within 10 Working Days.

**9 Non-disclosure of information**All information in whatever form or mode of communication, which is disclosed by a Party (the “Disclosing Party”) to any other Party (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”.

* 1. The Recipient hereby undertake, in addition and without prejudice to any commitment on non-disclosure according to the contract, for a period of 3 (three) years after the end of the Project:
1. not to use Confidential Information otherwise than for the purpose for which it was disclosed;
2. not to disclose Confidential Information without the prior written consent by the Disclosing Party;
3. to ensure that internal distribution of Confidential Information by a Recipient shall take place on a strict need-to-know basis
4. 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.
	1. The Recipient shall be responsible for the fulfilment of the above obligations on the part of their employees 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.

* 1. The above shall not apply for disclosure or use of Confidential Information, if and in so far as the Recipient can show that:
1. the Confidential Information has become or becomes publicly available by means other than a breach of the Recipient’s confidentiality obligations;
2. the Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential;
3. 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;
4. the disclosure or communication of the Confidential Information is foreseen by provisions of this contract;
5. the Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Party;
6. the Confidential Information was already known to the Recipient prior to disclosure
	1. 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
	2. Each Party shall promptly advise the other Party in writing of any unauthorised disclosure, misappropriation or misuse of Confidential Information after the Party becomes aware of such unauthorised disclosure, misappropriation or misuse.
	3. If a Party 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
7. notify the Disclosing Party, and
8. comply with the Disclosing Party’s reasonable instructions to protect the confidentiality of the information.

10 Force Majeure

Neither Party has failed to meet their obligations in accordance with the Contract if the carrying out of these obligations is delayed or prevented by Force Majeure. It is considered Force Majeure if meeting the terms of the Contract is delayed or prevented by conditions that the Parties could not have expected when the Contract was entered into, or could not have avoided by reasonable means such as but not limited to, illness, dismissal or industrial action. The Party that is affected by Force Majeure shall notify the other Party in writing of any delay that might result from this, and is entitled to such extension of the Contract as may be considered reasonable in the circumstances.

# 11 Changes

The Sponsor shall always have the right to make a written claim for modifications or changes in the contribution as long as these changes are within the framework of the project as defined in Special Terms of Contract § 1. NTNU shall change the work programme and the budget correspondingly, and the Sponsor shall give written approval of such changes.

Other changes are conditional on written approval from NTNU.

All changes that are agreed between the Parties after the start of the Project shall be specified in a record of amendments; cf. Special Terms of Contract § 7 and Appendix IV in the Contract.

12 Disputes

If there is a dispute about the understanding of the Contract or circumstances that relate to it, there shall be an attempt within a reasonable period to resolve the dispute by negotiations.

If such attempts do not succeed within 1 – one – month after negotiations have been requested, the dispute shall be resolved through the ordinary courts of law with Sør-Trøndelag District Court ( tingrett ) as the legal venue.

**13 Choice of law**

The contract is governed by and shall be construed in accordance with Norwegian law.

**APPENDIX II**: Description of Background

**NTNU:**

**Consortium Participant(s):**

**APPENDIX III:** Project Plan

**APPENDIX IV:** Record of Amendments

1. A condition for such access is that NTNU is willing and able to provide such commercial access to Background. [↑](#footnote-ref-1)