**Template for activity funded on a commission basis, bilateral agreement**

Last update: 10 May 2019

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| **The template shall be used when:*** The Project is defined as a commissioned research project in terms of the guidelines established by the Ministry of Education and Research
	+ All NTNU's costs, direct and indirect, as well as a reasonable profit, must be fully covered by the external Commissioning Party

**The template must not be used in connection with:*** Collaborative Research Projects (activities where NTNU receives support without requirements for counter-performance)
* Donations
* Projects that receive funding from the Research Council of Norway or the EU

**This agreement template is based on:** * the Research Council of Norway's general contract principles
* 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 of Norway's "Common IPR policy for Norway's 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 funded on a commission basis**

**Special terms of contract**

between

………………………………..………………………………………………………….

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

hereafter called the **Commissioning Party**

and

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

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

(name of the administrative unit for the Project)

concerning contract work on a Project entitled:

…………………………………………………………………………………………………

* Words/terms with initial capital letters are defined in NTNU’s "General Terms of Contract For Activity Funded on a Commission Basis" **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, 7, 8 and 9.)*

**3. Contact persons**

**a)** NTNU's contact person:………………………………………………..

 **b)** Commissioning party's contact person:……………………………………………………...

## 4 Reporting

*(Include project-specific provisions for reporting – see General Terms of Contract § 2.4)*

………………………………………………………………………………………………

………………………………………………………………………………………………

## 5 The Commission

The cost of the Commission is NOK......................excluding VAT. (*insert amount*).

The amount contributed shall be paid to the Project as specified in the Project Description to NTNU's bank account no 7694.05.00288 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 commissioned research projects at NTNU"

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

## 7 Contract documents

##  The contract comprises the following four parts:

1. This document – called Special Terms of Contract

2. "General Terms of Contract for activity funded on a commission basis 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 conditions 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 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 Commissioning Party:

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

Name:……………………………………. Name: ………………………………

title ………............ title:………………………………

(Head of Department/Dean/Rector)

**APPENDIX I**

**GENERAL TERMS OF CONTRACT FOR ACTIVITY FUNDED ON A COMMISSION BASIS AT**

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



1 Definitions

**Activity funded on a commission basis:** Projects that NTNU undertakes in exchange for consideration (payment) from one or more external commissioning parties, with a claim for deliveries (with counter-performance) through entry into an agreement/a contract. For activity funded on a commission basis, the commissioning party shall cover all the direct and indirect costs that the commission entails, and NTNU shall be able to document this.

**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, or the transfer and/or licensing of use of Project Results to third parties, with the exception of publication through publishing houses.

**Commissioning Party:** An entity that engages NTNU to perform a project considered as an Activity funded on a commission basis.

**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.

**General Terms of Contract:** The terms of contract stated in this document.

**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 Commissioning Party

**Project:** The total activity covered by the Contract after entry into the agreement.

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

**Project Description:** Scientific and administrative plan for the performance 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 Special Terms of Contract.

**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.

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

2. Execution of the Project

## 2.1 Execution

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

The Project is to be executed according to the standards of good research practice.

NTNU declares to have the expertise and capacity to execute the Project in a professional manner and in accordance with recognized standards and norms for such work. NTNU further declares that collection and filing of data will be done in accordance with recognized standards and norms.

NTNU cannot guarantee that a specific result will be achieved and cannot be held responsible for the Commissioning Party’s utilization of the Project Results.

If the Project is required to notify Norwegian Centre for Research Data (Norsk samfunnsvitenskapelig datatjeneste (NSD)) or requires an advance approval from Regional Committees for Medical and Health Research Ethics (Regional komité for medisinsk og helsefaglig forskningsetikk (REK)) NTNU is responsible to notify/apply such body pursuant to the current regulations.

If the Commissioning Party makes contributions beyond financial contributions to the Project, including any Background 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.

## 2.2 Changes

## The Parties may agree on changes in the Project Plan. Changes shall be agreed in writing and recorded in a Record of Amendments (Appendix IV).

## 2.3 Cancellation of the Special Terms of Contract

## The Commissioning Party may cancel the Special Terms of Contract with 90 – ninety – days’ written notice, which will cause the Project to be terminated at the end of the notice period. In case of cancellation the Commissioning Party shall pay NTNUs all fees and costs until end of the notice period, plus any costs that incurs as a consequence of the termination.

## In case the Project Period exceeds 1 – one – year, the notice period is 180 days.

A Special Terms of Contract regarding financing of a PhD candidate cannot be terminated in the Project Period, which is minimum 3 – three – years.

In case of cancellation the General Terms of Contract § 7 about Rights to Project Results will apply to the results available at termination.

## 2.4 Reporting

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

The final report shall give a comprehensive scientific description of the work conducted and the Project Results.

The final report shall be sent to the Commissioning Party as soon as possible after the Project Period. General Terms of Contracts § 8 apply. All reports shall include a reference to project number and being dated and signed by NTNU.

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

Unless the Parties agree otherwise progress reports and the final report will be in English.

3 Payment terms

Unless otherwise agreed, the Commissioning Party shall pay the agreed amount for the Commission in advance on receipt of the invoice from NTNU. The Commissioning Party shall pay the received invoice within 30 days. In the event of late payment, interest will accrue pursuant to the provisions of the Act relating to interest on overdue payments.

In the Project Description, the project amount is specified exclusive of value-added tax. Value-added tax will be incurred in addition where applicable pursuant to the Act relating to Value-Added Tax, unless these services are granted exemption from this law. Exemption from VAT calculation applies apply inter alia to sales of health and educational services.

NTNU has the right to adjust its rates and other financial conditions as of 1 January each year.

**4 Responsibility**

**4.1 Use of Project Results. Consequential loss**

The use of Project Results shall be the responsibility and at the risk of each Party, and neither NTNU nor the Commissioning Party is under any circumstances to be held responsible to the other for any consequential loss.

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

Each Party shall indemnify the other against any loss or damage/injury to their own and 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 Infringement of patented rights**

Should any of the Parties have information or suspicion that patented rights might be infringed, the other Party should be notified immediately. Should the Commissioning Party, even after such notification, continue activities that might infringe patented rights, NTNU should be indemnified for any liabilities arising as a consequence of an infringement. NTNU can refuse to execute any tasks where the work, or the use of the Project Results, in NTNUs opinion, will represent an infringement of patented rights.

5 Equipment

NTNU is to be the owner of equipment bought with Project funds and charged to the Project Accounts, unless otherwise is specifically agreed in the Special Terms of Contract.

6 Background

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

7 Rights to Project Results

Unless otherwise agreed in writing, the Project Results in the Commission are the property of the Commissioning Party. However, NTNU has the right to use these results in further research and teaching free of charge.

In all cases, the Project Results shall remain NTNU's property until the Commission is paid in full.

8 Publication of Project Results

Pursuant to the Act relating to Universities and University Colleges of 1 April 2005, it is not possible to arrange 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 Commissioning Party in the Project.

In terms of an NTNU Board resolution (S-sak 10/09), any request for postponement of publication, in which 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 Commissioning Party shall be notified of plans for publication at least 20 Working Days before the planned date of submission.

The Commissioning Party 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 Commissioning Party 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 Commissioning Party's commercial interests. The notification must also specify which elements in the planned publication the Commissioning Party wishes to change.

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

Other changes are dependent 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 one – 1 - month after negotiations have been requested, the dispute shall be resolved through the ordinary courts of law with the Sor-Trondelag 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:** Background that is regarded as necessary for project implementation

**NTNU:**

**Commissioning Party:**

**APPENDIX III:** Project Description

**APPENDIX IV:** Record of amendments