

WOTRO's Regulations

Supplementary WOTRO Funding Conditions

Introduction

These regulations are additional to the *General Terms and Conditions of NWO Grants 2015*, and have been formulated by WOTRO to guide the relationship between public (including WOTRO itself) and private partners in research and innovation Programmes, Calls and Projects that are funded by WOTRO and co-funded by Private partners (Public Private Partnerships, PPPs).

The Regulations apply to all WOTRO funded research. However, specific Programme and/or Call brochures may formulate additional or adjusted conditions.

Goal of the Regulations

The goal of the WOTRO Regulations is to regulate ownership of and access to Results in such a way as to encourage PPP consortium partners to strive for knowledge transfer to Partners and/or third parties from Developing Countries and/or to translate the knowledge and discoveries that emerge from the research as quickly as possible into products or services that are accessible, applicable and affordable for Developing Countries, and without counteracting the research and innovation system of developing countries.

Main fields of attention

NWO Regulations:

The following NWO Regulations form the point of departure:

- *Ownership of Results*

Results generated within a Project are jointly owned by the Projects Partners. The Results may be used for free by all Project Partners for the purpose of non-commercial research and training. Contributions to the research in cash or in kind by the Private Partners at Project level give no rights to a claim to use and/or apply the Results, unless matters have been arranged otherwise by means of a written Project Consortium Agreement prior to the research.

- *Publications and data*

All publications should be made accessible by Open Access publication.

Supplementary WOTRO Regulations:

Supplementary to the NWO Regulations on Ownership and on Publication, WOTRO has formulated additional regulations in order to meet development objectives and look after the interests of Parties in Developing Countries:

- *Ownership of Results*

Project partners are required to conclude a Consortium Agreement that takes into account the interests of Developing Countries.

- Consortium Agreement

The Project Partners together are required to conclude a Consortium Agreement. Payment of an awarded grant will only be made after the agreement, signed by all Project Partners has been received and approved by WOTRO. The Consortium Agreement must take into account the Regulations (and additional specific Programme/Call conditions), including a description on how, where relevant, Developing Countries will be able to benefit from the

(patented) Results under market conditions that safeguard local affordability including but not restricted to sublicenses for humanitarian purposes.

- Co-funding

Private and public partners can co-fund WOTRO research Programmes at Programme level, at Call level or at Project level. This will affect decision making and/or ownership of Results. Substantial contributions to the research in cash by Private Partners at Call level gives either the right to become a Partner in a Consortium of an awarded Project of choice generated from that Call¹, or the right to a partial seat in the decision making body, i.e. the Private Partner can co-decide on aspects with regard to the specific Call only.

Contributions to the research in cash by Private Partners at Programme level gives right the to a seat in the decision making body².

Substantial contributions of Public Partners to the research at Programme level gives the right to a seat in the decision making body. Substantial contributions of a public partner at Call level gives right to a partial seat in the decision making body: i.e. the Public Partner can co-decide on aspects with regard to the specific Call only.

Co-funding Public Partners do not have a right to become a Partner in a Consortium of an awarded Project of choice generated by that Call.

- Realization of claims

To become owner of the patent, a remuneration at the market rate has to be paid („anti-state support“ provision) to WOTRO for the realization of claims. WOTRO will use the revenues for further research and/or use of research Results in Developing Countries.

- *Publications and data*

Publications based on the Results generated within the Project must have the consent of all Project Partners. In addition, data generated during the Project must be offered to an internationally recognized Open Access repository within three years after termination of the Project, thus allowing for a period of additional time to Project Partners, including those from Developing Countries, to exclusively analyze and use the Results for further research/publications.

¹ In case more Private Partners together contribute substantially, each of the Partners has a right to choose.

² Together these Private Partners are entitled to only one seat in the decision making body.

WOTRO Regulations

The following definitions apply throughout this document:

Affiliates:

In relation to a Private Party, "Affiliate" shall mean any other company which is controlled by, under common control with or controlling such a Private Party. For these purposes a company shall be deemed to have control of another company if it (directly or indirectly) owns more than 50% of the voting shares of that other company, or is entitled to (directly or indirectly) appoint a majority of the directors of the other company.

Background Knowledge:

Any and all information and materials which are not publicly available when disclosed under a Consortium Agreement, as well as Intellectual Property Rights pertaining to such information and materials that are developed or obtained by a Project partner prior to the commencement of the Project, or developed or obtained by a Project Partner subsequent to the commencement of the Project but independently of the Project, or acquired by the Project Partner from a third party subsequent to the commencement of the Project.

Co-funders:

All organizations that substantially contribute financially at Programme, Call and/or Project level. WOTRO decides per Programme or Call what is considered to be a *substantial* contribution.

Co-funding:

A contribution in cash or in kind to a Programme, Call, or Project, committed in writing by a public or private party and accepted by WOTRO as such.

Consortium Agreement:

A legally binding contract between the Project Partners that together participate in a Project.

Call for proposals:

Announcement and description of a specific granting round for Project proposals within a Programme. A Call may provide specific rules complementary to these Regulations.

Developing Countries:

Low and Middle Income Countries (LMIC) that qualify for receiving Official Development Assistance (ODA), as defined by the OECD (see the DAC list on the OECD website) for WOTRO excluding the European countries. May be subject to further restrictions within a research Programme and/or Call for Proposals.

Humanitarian Use Licensing (HUL):

The contract clauses and licensing forms that secure the possibility to share Intellectual Property with potential users in Developing Countries, on a royalty-free basis or at reduced costs.

Intellectual Property:

Creations of the mind for which exclusive rights are recognized.

Private Party/Partner:

Any legal entity, irrespective of its establishment by civil or public law, that does not have a public task or that has both public and private tasks but only exploits its private task in the Public-Private Partnership

Programme:

Granting modality through which WOTRO awards Project grants. The general objectives, granting possibilities, award criteria and processes are described in a Programme brochure. A Programme

can consist of one or several Calls for Project proposals. In case a Programme consist of only one Call, the Call brochure functions as Programme brochure.

Public Party/Partner:

Any legal entity that acts in the execution of its public task. For Dutch knowledge organizations the NWO Regulations apply.

Project:

The (research-) activities that meet the requirements of the Programme and to which funding is awarded. The Project must be coordinated by a Project leader (usually the main applicant).

Project leader:

The individual who is the point of contact and bears overall responsibility for the Project.

Project Partner(s):

Public or private organizations that employ the individuals working together in a specific Project.

Public Private Partnership Programme (PPP Programme):

A Programme that is co-funded (either in cash and/or in kind) and/or executed by a collaboration between public and private partners at Programme level, Call level or Project level.

Results:

All output, including but not limited to data, information, know how, materials, methods, conclusions, processes, publications, products, software, and findings generated within a Project. However, excluding Intellectual Property Rights.

I. General provisions

All WOTRO subsidy awards are subject to the general terms and conditions of the NWO, as stated in the document *NWO Regulations on Granting (2015)*, which may be downloaded from the NWO website. The current document is supplementary to these NWO terms and conditions. In the event of any disparity between this document and the *NWO Regulations*, the provisions of the WOTRO Regulations shall prevail.³

WOTRO reserves the right to attach further specific conditions that may be defined in the Programme and/or Call brochures. In case of disparity, these latter specific conditions will prevail over the provisions of this document.

Acceptance of the subsidy award implies acceptance of above mentioned Regulations and conditions by the subsidy recipient, who thereby undertakes to observe all applicable provisions.

The Project leader is to ensure that all participants involved in a Project are aware of all applicable provisions.

II. WOTRO decision making body

II.1 For WOTRO-Programmes that are co-funded by others, the WOTRO Board will mandate a decision making body (Programme Committee or Steering Committee) to take decisions described in II.3.

II.2 The members of a decision making body are installed for the duration of the Programme.

II.3 The decision making body has the following tasks:

- (i) To approve of the Programme brochure and Call(s);
- (ii) To install an Advisory Committee for each Call, for an advice on the ranking of the submitted proposals;
- (iii) To decide on the awarding of grants, based on the advice of the Advisory Committee and the goals of the Programme for the granting round concerned;
- (iv) To solve disputes or disagreements between Project Partners concerning the implementation of the awarded Project and/or its Results by taking binding decisions on the dispute or disagreement;
- (v) To monitor and evaluate the awarded Projects;
- (vi) To monitor the Programme and the financial distribution of grants in line with the goals of the Programme;
- (vii) To timely inform the WOTRO-Board on (i)-(vi).

III. Co-funding Partners

III.1 Participating Private or Public Partners may contribute to the Programme; in cash at Programme or Call level, and in cash and/or in kind at Project level.

III.2 Public and Private Partners that contribute substantially have the right to become actively involved in the joint management of a Programme, Call or granted Project, depending on the level of their participation:

- (i) at Programme level: Public and Private Parties have the right to a seat in the decision making body

³ These supplementary WOTRO Regulations apply only for those articles of the NWO Regulations where deviations are allowed.

- (ii) at Call level: Private Parties have the right to either become Partner in the Consortium of an awarded Project of choice, or to a partial seat in the decision making body, i.e. have a say with regard to issues concerning the specific Call. Public Parties have a right to a partial seat in the decision making body;
 - (iii) at Project level: Public and Private Parties together with the other Project Partners formulate specific rights and obligations in a Consortium Agreement.
- III.3 The WOTRO Board will decide what is considered to be a “substantial” contribution.
- III.4 Before transfer of funding by WOTRO, each participating Private Partner will make available, through its official representative, the following information to WOTRO:
 - (i) A statement explaining at what level (Programme, Call or Project) the Private Partner will contribute;
 - (ii) A statement that the Private Partner concerned is aware of the Regulations pertaining to the funding partnership;
 - (iii) A description of the interests and/or benefits expected by the Private Partner from the Programme, Call or Project;
 - (iv) A stipulation of the amount of financial and/or in-kind commitment of the Private Partner concerned.
- III.5 In kind commitment is only admitted at Project level. In kind commitment has to be quantified clearly following the guidelines of the Call: input of personnel in hours and the rate used to calculate the contribution, a brief description of the materials provided and their value etc.
- III.6 At the request of the Project leader, all Project Partner(s) must provide all relevant information to the Project leader in order for him/her to be able to assess and report progress of the Project.

IV. Confidentiality

- IV.1 The Project Partners reciprocally undertake to keep all information, know how, samples, drawings, data, disclosed by one of the Partners (the „Disclosing Party“) to one or more other Partners (the „Receiving Party“) in the context of the Project, and marked as “Confidential information”, confidential and solely use this Confidential information for the performance of their obligations under the Consortium Agreement. The Project Partners take the necessary measures for this purpose, and shall either return the disclosed Confidential information to the Disclosing Party or destroy this Confidential information upon request. The Receiving Parties may retain one copy for the sole purpose, in the event of a future dispute, of proving what information they did or did not receive in the context of the Project.

All other information with which the Project Partners could come in contact, shall also be earmarked as “Confidential information”, if one of the following terms are met:

- (i) oral information, expresses as confidential when presented, and confirmed as such in writing within 14 days to the recipient;
 - (ii) information of such a nature, that the recipient knows/should have known that the furnished information should be/should have been earmarked as “Confidential information”.
- IV.2 To all third parties recruited by the Project Partners for the Project, the same standard of confidentiality applies.

- IV.3 Confidential information will not be part of any publications by the Project Partners or third parties without written approval by the Partners.
- IV.4 The confidentiality obligation does not apply to any information which offers corroborative evidence that said information was or is made public (public domain) through the direct or indirect fault of the Disclosing Party during the term of the Project. Moreover, this confidentiality obligation does not relate to information that is obtained from independently conducted research and information that is/shall be obtained from a third party that was/is authorized to furnish this information.
- IV.5 Notwithstanding the provisions IV.1-IV.4, each Project Partner may disclose the Results to its Affiliates on terms of confidentiality no less stringent than those assumed by the Project Partners on the conditions that this Partner has informed the other Project Partners before the start of the Project which Affiliates of this Project Partner will be involved in the execution of the Project.
- IV.6 The provisions of Article IV apply for a period of five years to be counted from the time the relevant information was brought to the attention of the person bound by the confidentiality clause.

V. **Publications and Data**

- V.1 WOTRO shall be authorized to publish, in whatever form and by whatever medium, including the Internet, the following information:
- (i) the names of the Project Partners;
 - (ii) the title of the Project;
 - (iii) the name(s) of the person (Project leader) in charge of the Project;
 - (iv) the name(s) of the collaborators funded under the Project;
 - (v) the general purpose of the Project in the form of the popular summary provided by and approved by all Project Partners;
 - (vi) the amount granted (the Grant) and the total Project budget;
 - (viii) popular progress report(s) provided by and approved by all Project Partners;
 - (ix) overview(s) of outputs of the Project.
- V.2 Up to a period of three years after termination of the Project, all publications based on Results derived from the Project, must have the consent of all Consortium Partners in advance of publishing.
- V.3 Notwithstanding V.2., in case the Project Partners suspect a publication to contain a patentable discovery, the Publication can only take place according to the following procedure:
- (i) The Project leader submits a proposed publication from any of the Project Partners to WOTRO at least two (2) months before its intended disclosure. WOTRO then submits the publication to the decision making body, asking it to inform WOTRO within four (4) weeks whether, in her opinion, the publication contains a patentable discovery and/or whether there are other utilization purposes justifying an embargo period, as meant in Article V.3ii;
 - (ii) The embargo period will last at a maximum nine (9) months, counting from the date of the generation of the Results. In exceptional cases and upon a motivated request of the Project leader, the Decision making body may approve of an extension of the embargo period to a maximum of twenty four (24) months;

- (iii) Within two (2) months after the intended publication has been submitted to WOTRO, WOTRO informs the Project leader in writing whether there are any objections to the publication. If no objections have been raised before that deadline, the Project leader may disclose the publication. The Decision making body may approve on the condition that the Project partners adjusts the publication in view of the confidential information, however without jeopardizing the scientific integrity of its content, or to suspend the publication for the whole or part of the applicable embargo period.
- V.4 By default, all publications should be made accessible by Open Access publication.
- V.5 All data generated during the Project must be offered to an internationally recognized Open Access repository within three years after termination of the Project, notwithstanding V.2 and V.3.
- V.6 Analyzed data upon which publications are based, including meta-data, should be made accessible for further research by Open Access publication simultaneously with the publication.
- V.7 For Open Access publication of data that are relevant for re-use but not generated during the Project (background data), the consent of the Party that provided those data is needed.
- V.8 To Open Access of data, ethical rules, rules concerning privacy matters and WOTRO's confidentiality rules apply.

VI. Intellectual Property Rights (IPR)

- VI.1 Results generated within the Project by either of the Project Partners can be regarded as a shared effort and are jointly owned by the Project Partners.
- VI.2 None of the Partners can claim its individual share of these jointly possessed Results.
- VI.3 Project Partners are required to conclude a Consortium Agreement⁴ before the start of the Project. The first payment of an awarded grant will only be made after a Consortium Agreement, signed by all Project Partners has been received and approved by WOTRO
- VI.4 The Consortium Agreement must include:
 - i. A description of whether (and if so how) co-funding is expected to generate first and/or substantial claims to exploitable Results;
 - ii. A description on how i. will favour research & innovation systems in Developing Countries;
 - iii. A stipulation that IPR agreements enhance the accessibility, affordability and applicability of Results in Developing Countries and, where relevant, include support of humanitarian use licences, independent of any market value;
 - iv. A description on how Background Knowledge will be made available for all parties of the Consortium and for non-parties in Developing Countries in case this Knowledge is necessary for applicability, accessibility and affordability of the Results.
- VI.5 If a Private Party wants to acquire rights on the Results, it will pay WOTRO a compensation in conformity with the market value for any IPR on those Results. From the compensation

⁴ Annex 1 provides a checklist of issues that should be addressed in the Consortium Agreement.

will be deducted its contribution to the Programme, Call or Project and the value of IPRs this party allows to other Project Partners or third parties from Developing Countries.

From these revenues, WOTRO will pay 50% to the Knowledge Institute(s) that generated the Results. The remaining 50% will be used for further research, and/or for development and/or utilization on the subject matter in Developing Countries, as WOTRO deems fit, if still relevant, in view of the objectives of the Programme concerned.

- VI.6 The rights on the Results can only be transferred by its owner to a third party on the condition that all rights reserved to others as stipulated in the WOTRO regulations, including people in Developing Countries, are transferred simultaneously.
- VI.7 All Results of the Project for which it is decided not to apply for a patent or which have appeared to be not patentable, shall become public knowledge and be made available through Open Access.
- VI.8 In case follow-up research leads to exploitable Results by a not-for-profit institution from a Developing Country, independently from being a Partner, affordable licences should be provided by the owner of the IPR.

Annex 1: Checklist for a Project Consortium Agreement

A Project Consortium Agreement should be in alignment with the WOTRO Regulations and *in any case* consist of the following parts:

- Summary description of the consortium partners and their legal representative.
N.B. In case a Private Party (or Parties together) is financially contributing a substantial amount of cash money at Call level, this Party/Parties may have a right to become Partner of the Consortium.
- Preamble in which the considerations to realise a consortium agreement and information about the Project are stated. The objectives that the signatories of the agreements jointly intend to reach are also stated here.
- Articles:
 1. An article on the amendment of the consortium agreement, including an annex with a description of the Project to which the Consortium agreement applies.
 2. An article with definitions of terms used, including those that deviate from the ones stated in the WOTRO Regulations.
 3. An article that arranges the governance of the consortium:
 - the responsibilities and obligations of each of the consortium partners;
 - the decision making process;
 - the exchange of information and the reporting obligations, internally and externally;
 - the (premature) resignation of existing members and the admission of new members.
 4. An article that arranges the administrative and financial management and cash flows of the consortium (including a regulation on outsourcing of activities to other parties).
 5. An article that arranges consent of all partners on publications based on data generated.
 6. An article that arranges how intellectual property is dealt with. Arrangements should cover background knowledge, research results (foreground knowledge) and the granting of licences, supplemented with an annex in which the rights, obligations, and associated time limits of parties with respect to patent applications and patent commercialisation are given.
 7. An article about the exclusion of liability
 8. An article on risk management.
 9. An article on compliance and the settling of disputes, including what national law the agreement is subjected to and what is the competent court in the event of a dispute.
 10. An article about the date on which the consortium agreement becomes effective and the duration for which it is operative. Specify which articles remain in force once the agreement has expired.
- The signatures of responsible representatives of all parties.