



Guidelines Users' Committee

NWO Domain AES – 2017

The original Dutch text is the leading document

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Inhoud

Introduction	1
Article 1 Definitions	1
Part 1 – Carrying out the Project, the report	3
Article 2 General obligations	3
Article 3 Reporting of Project Results	3
Part 2 – Users’ Committee, confidentiality and publication	4
Article 4 Users’ Committee	4
Article 5 Confidentiality	4
Article 6 Publication	5
Part 3 – Intellectual property	6
Article 7 Ownership rights and protection of Results	6
Article 8 Granting rights to Results	6
Article 9 Freedom to act	8
Article 10 Publication	8
Article 11 Income from Utilisation	8
Part 4 – Project costs and co-funding	9
Article 12 Project costs	9
Article 13 Co-funding	9
Part 5 – Other provisions	10
Article 14 Duration and termination	10
Article 15 Indemnification and liability	10
Article 16 Complaints, applicable law and disputes	10
Contact details	11

Introduction

These Guidelines apply to the members of a Users' Committee established by the NWO Domain Applied and Engineering Sciences ("NWO Domain AES"). Under the NWO Grant Rules 2017, the beneficiary/beneficiaries provide(s) the infrastructure, facilities and guidance that are required for a project. If more than one beneficiary is involved in the project, then under the Grant Rules the main beneficiary is also the coordinator. The project leader implements the plan from the commencement date and completes the project within the period set by the grant award decision. A project may commence if the requirements for awarding the grant have been met and, where applicable, the NWO Domain AES has received the funding agreement signed by the beneficiary.

Article 1

Definitions

1. **Award Letter** The letter notifying the applicant of the Grant Award Decision, which states the amount of the grant and the Co-Funding.
2. **Background Knowledge** All inventions, outcomes, materials, methods, processes, products, programs, software, findings or discoveries that are or have been generated before or independently of a Project and which are needed for the Project or for the use of Results.
3. **Brochure** Sets out the specific requirements of a grant instrument, also referred to as call for proposals.
4. **Beneficiary** The Knowledge Institute to which the grant amount and the co-funding will be paid; alternatively, it will be paid in part via the main Beneficiary who is also the coordinator.
5. **Commencement Date / Starting Date** The date on which the Project Leader makes the first expenditure of funds that have been awarded for the Project, or the date on which the first personnel are appointed for the Project.
6. **Grant Award Decision** A decision by NWO, as referred to in Article 2.3.1 of the Grant Rules, awarding a grant to the Beneficiary/Beneficiaries to carry out a Project.
7. **Grant Rules** The Dutch Research Council Grant Rules 2017.
8. **Guidelines** This document, which sets out conditions that NWO Domain AES imposes on the Beneficiaries and Users in the context of the public-private cooperation between them.
9. **Invention Disclosure Form** A standard form issued by NWO containing all the relevant information about an invention on the basis of which its patentability and Utilisation can be determined.
10. **Know-how** An entirety of non-patented practical knowledge that is generated by experience and research and which is (i) secret (meaning not generally known or easily available), (ii) material (meaning not generally known or easily available) and (iii) specified (meaning fully described, enabling it to be ascertained whether this knowledge meets the criteria of secrecy and materiality).
11. **Market Rate** A rate of payment that cannot be classified as aid within the meaning of Article 107 TFEU (Treaty on the Functioning of the European Union).
12. **NWO** The Dutch Research Council, including its domains.
13. **Option** The right to acquire ownership of or obtain a licence to a Result at Market Rates and on market terms within three months after notification of that Result in writing.
14. **Private Co-Funder** A party who contributes to a Project in cash and/or in kind without being the main applicant or co-applicant. Bodies governed by public law may also act as Private Co-Funders.
15. **Project** Research for which NWO awards a grant.
16. **Project Funding** The total amount of grant and Co-Funding awarded to a Project in order to cover the direct Project costs.
17. **Project Leader** The person employed by the Knowledge Institute who is the main Beneficiary and who bears ultimate substantive and financial responsibility for the Project.
18. **Publication** Disclosure of Project Results, in any manner or by any method whatsoever, excluding any disclosure resulting from an application for a patent on Results.
19. **Results** All inventions, outcomes, materials, methods, processes, products, programs, software, findings or discoveries that are generated within a Project, including Know-how.
20. **Third Party** Natural persons or legal entities other than a User, Beneficiary or NWO.

21. **User** Natural persons or legal entities that are able to use the results of the Project.
22. **Users' Committee** A committee established by NWO, the chief responsibility of which is to advise the Project Leader on setting up the Project with the aim of maximising its Utilisation possibilities.
23. **Utilisation** The entirety of activities aimed at maximising the probability of applying the Results.

Part 1 – Carrying out the Project, the report

Article 2

General obligations

1. The Beneficiary will ensure that the Project Leader complies with all his/her obligations under these Guidelines.
2. All members of the Users' Committee will comply with all laws and regulations that apply to the Project and they will conduct themselves ethically in the manner that may be expected in academic and/or technological research.
3. Members of the Users' Committee will inform each other immediately if there is any new information that is relevant to the carrying out of the Project or for the Utilisation of the Results, both during the Project and after it ends.

Article 3

Reporting of Project Results

1. The Project Leader will issue a written report on the progress of the Project at least two weeks before the Users' Committee meets. The Project Leader will send the report to NWO Domain AES. The Project Leader's report will in any case include the aim of the Research, a work plan, milestone schedule, Results, Utilisation, cooperation and contact with Users, a brief financial statement, and lists of conferences and Publications. The Project Leader's report will also specify any co-funding in cash or in kind that has been provided so far.
2. The Project Leader will ensure that the Results are presented during the Users' Committee meeting.

Part 2 – Users’ Committee, confidentiality and publication

Article 4

Users’ Committee

Establishment of the Users’ Committee

1. If indicated in the Brochure, NWO Domain AES will establish a Users’ Committee in consultation with the Project Leader and on the basis of the Users referred to in the project plan. The Project Leader will chair the Users’ Committee and a representative of NWO will be the secretary of the Users’ Committee.
2. The Users’ Committee meets at least once a year in a venue to be determined by NWO Domain AES. With NWO’s permission, the Users’ Committee may meet less frequently.
3. Members of the Users’ Committee are made up of Users, the Project Leader(s)/sub-Project Leader(s), the researchers of the Beneficiary/Beneficiaries who have been appointed for the Project, and NWO.

Task of the Users’ Committee

4. The task of the Users on the Users’ Committee is to advise the Project Leader about the course the Project is to take in order to maximise the probability that the Users or Third Parties will be able to use the Results.
5. The Users will address any comments, remarks, questions and advice they may have, solicited or otherwise, to the Project Leader and/or NWO.
6. The Users will provide information to the secretary if he/she has so requested, and also if a User:
 - wishes to address his/her comments, remarks, questions and advice to the other Users and would like their opinion on them;
 - considers that a discussion with the entire Users’ Committee would be desirable;
 - wishes to initiate advice on behalf of the entire Users’ Committee;
 - feels there may be opportunities for patent applications, licence agreements and research contracts.

Joining and resigning from the Users’ Committee

7. After the Users’ Committee is established, new Users may be admitted to it while a Project is being carried out. NWO will ask the current Users for their reasoned advice (in writing or during a Users’ Committee meeting) on the request for admission to the Users’ Committee. NWO will decide on the request for the admission on the basis of that request, the advice given by the current Users and their role in the research and the level of their contribution to that research. The guiding principle in this regard is that the composition of the Users’ Committee must maximise the probability of being able to use the Results and must enable the continued exchange of ideas, including confidential information.
8. The NWO may impose additional requirements on joining Users, for example with regard to the provision of Co-Funding, with due observance of the advice issued on the Project.
9. Users may resign from the Users’ Committee after they have notified NWO of this in writing.

Article 5

Confidentiality

1. Members of the Users’ Committee will keep the Results of the Project confidential and not disclose them to Third Parties for five years after the Project ends. This confidentiality obligation does not apply to:
 - Results that are disclosed in a publication in accordance with Article 6;
 - Results that are disclosed on the basis of the formalities that exist to protect Results;
 - the reporting of the Results to the Users’ Committee;
 - Results that must be disclosed pursuant to a decision by a court or a public law body, on condition that the recipient issues written notification of this disclosure to the provider.

2. The Beneficiary will ensure that sufficient confidentiality is maintained when appointing persons to work on a Project.
3. During a Project and for five (5) years after a Project ends, members of the Users' Committee will treat each others' confidential information, to which they have had access while carrying out the Project and in relation to which it has been expressly stated that confidentiality is essential, confidentially and not disclose it to Third Parties. This confidentiality obligation does not apply to information which the recipient of it can demonstrate that:
 - a. it was already in the lawful possession of the recipient before the recipient received it;
 - b. it was developed independently by one of the other parties;
 - c. it became generally known after it was received other than as a result of an unlawful act or omission by the recipient;
 - d. the recipient obtained it lawfully from a Third Party; or
 - e. it must be surrendered pursuant to a court judgment.

Article 6

Publication

1. As soon as they are published, Results of a Project that have received NWO funding must be immediately available for Open Access, irrespective of other publication possibilities.
2. The Project Leader will submit an intended Publication to NWO at least thirty days before its intended disclosure.
3. NWO will then submit the Publication to the Users on the Users' Committee and ask them to let NWO know within 10 working days whether they consider that the Publication contains a patentable invention and/or it has Utilisation possibilities.
4. NWO will let the Project Leader know within 30 days after the Publication has been submitted to NWO whether there is any objection to its Publication. If no objection has been made within this period, the Project Leader may disclose the Publication. If there is an objection, NWO may decide to suspend the Publication for up to 9 months. NWO will decide on this after consulting the Project Leader.

Part 3 – Intellectual property

This part 3 of the Guidelines applies when NWO Domain AES is responsible for making arrangements on intellectual property rights.

Article 7

Ownership rights and protection of Results

1. Background knowledge will remain the property of the Party that contributes it.
2. The ownership of Results which are subject to intellectual property rights is vested jointly in NWO and the Beneficiary. Article 8.8 applies if an employee of a User is the co-inventor.
If Results are generated jointly by two or more Beneficiaries and these Beneficiaries' contributions to these Results cannot be differentiated, then the ownership of those Results will be vested jointly in NWO and the Beneficiaries concerned.
The ownership of Results that are generated solely by one User (or an employee of one User) is vested in the User concerned.
3. If a Project is being carried out (wholly or partly) by persons who are not employees of the knowledge institute, the Project Leader or the Beneficiary/main Beneficiary will ensure that any IP rights of those persons will not obstruct the Utilisation of the Project Results.
4. The Project Leader will notify NWO immediately if Results are generated that qualify for patent protection and he/she will complete an Invention Disclosure Form. Based on the Invention Disclosure Form, NWO and the Beneficiary will jointly decide, preferably after consulting the Users, whether to patent the Results, and they will set out more detailed written arrangements in this regard.
5. The Beneficiary and the Project Leader will provide all the requisite support that may reasonably be requested for applications for patents on Results, both during and after a Project.
6. If a User considers that there are patentable Results, that User, the Beneficiary and NWO will make more detailed arrangements about any application for a patent on those Results and about the associated costs before submitting the patent application.
7. If a User considers that there are Results that he wishes to treat as confidential Know-how (or have them treated as such), that User, the Beneficiary and NWO will make more detailed arrangements about possible confidentiality of that Know-how, on such conditions as will be determined. This arrangement may only be made if the Results concerned do not qualify for Publication.

Use of background knowledge

8. A member of the Users' Committee who owns the rights to background knowledge will grant the right to use that background knowledge for the Project and for the duration of the Project, free of charge, provided that the owner in question is entitled to grant this right.
9. If this background knowledge is needed for the commercial use of Results, that Party will grant the Parties the right to use that background knowledge commercially, on such reasonable or Market Rate conditions as will be agreed, provided that the owner in question is entitled to grant this right and this does not harm the reasonable commercial interests of that owner.
10. If a User owns Results in accordance with Article 7.2, Article 7.9 applies mutatis mutandis to those Results.

Article 8

Granting rights to Results

Use of Results during a Project

1. For the duration of a Project, Project Results will be freely available to all Project participants for the purpose of carrying out (or continuing) the Project.

Utilisation of Results - general

2. During and after a Project, the Beneficiary/Beneficiaries, the Project Leader(s)/sub-Project Leader(s) and NWO will endeavour to Utilise the Results adequately and effectively. The Beneficiary/Beneficiaries, the Project Leader(s)/sub-Project Leader(s) and NWO will consult with each other regularly with regard to both the processes involved and the substance of the Project. This cooperation between the Beneficiary/Beneficiaries and NWO will be based on making optimal use of each others' expertise and capabilities, from a perspective of mutual trust and with respect for each others' policy.

Rights with regard to co-funding

3. A User who contributes more than 10% of the Project funding will have an option for the duration of the Project and until three months after it ends.
4. If two or more Users who have not principally received government funding together contribute more than 10% of the Project funding, the Users may jointly exercise such an option on the following conditions:
 - the Users let NWO know, within six months after the Grant Award Decision, that they wish to exercise that option jointly; and
 - the Users authorise (or grant power of attorney to) a coordinator who will contact and negotiate with NWO on their behalf and notify NWO Domain AES accordingly.

5. If two or more Users each contribute more than 10% of the Project funding, they may choose whether:
 - to exercise an option for a maximum of one semi-exclusive licence; or
 - to each acquire the option in a different area of application.

Within six months after the date of the letter granting them options, the Users will jointly notify NWO Domain AES in writing of the areas of application to which their options should apply. If these Users do not furnish this information, they will each have right to an option for a maximum of one semi-exclusive licence.

6. A User must exercise an option in writing. Exclusive and non-exclusive User rights and ownership rights to Results are granted to a User on the following conditions:
 - if a User has contributed 30% or less of the Project funding, he/she will pay a Market Rate for the use or the ownership of the Results;
 - if a User has contributed more than 30% of the Project funding, he/she will acquire a royalty-free, non-exclusive licence to the Results and will pay a Market Rate for the exclusive use or the ownership of the Results.

This procedure will also apply if an option is jointly exercised by the coordinator, as referred to in Article 8.8.

Non-exclusive licence for staff contributions of more than 10%, and co-inventorship

7. If a User has contributed co-funding in kind where the staff contribution was 10% or more of the total Project Funding and an employee of the User is a co-inventor of a patent on a Result, the User in question will acquire an option for a non-exclusive, royalty-free, non-transferable right to use that patent for up to 30 months.

General provisions with regard to licences:

8. The following conditions apply to licences:
 - the licensee undertakes to endeavour to commercialise or apply the Results and to report on these efforts;
 - the Beneficiary may use the Results for non-commercial research and education;
 - the licensee indemnifies NWO and the Beneficiary against claims by the licensee and Third Parties for any damage resulting from the use of the Results;
 - if the arrangements do not comply with the EU regulations on state aid that applied when those arrangements were made, the Parties will, in good faith, negotiate arrangements that do comply with them and which approximate as closely as possible the original arrangements;
 - patent costs must be paid by the licensee(s); and
 - the rules set out in this Article 8.8 apply mutatis mutandis if a licence is issued to a Third Party.

Article 9

Freedom to act

1. The Beneficiary/Project Leader and NWO will not make any arrangement with a User or a Third Party about Results without obtaining each others' consent. These include, for example, arrangements:
 - whereby a Third Party acquires ownership rights or user rights to the Results;
 - about the confidentiality of Results; and
 - about conditions that are to apply to a Publication.
2. For the Project, the Project Leaders may not, without first obtaining NWO's written consent:
 - use materials or confidential information belonging to a Third Party; or
 - have work done by a Third Party who does not have an employment contract with the Beneficiary.
3. The member of the Users' Committee will inform each other immediately if, during the course of a Project, there are any known indications that the Results form part of a patent (or patent application) of a Beneficiary, a User or a Third Party.
4. The Project Leader and the Beneficiary will ensure that, to the best of their knowledge, the information in the project plan about contracts with Third Parties and about patents is correct.

Article 10

Publication

Contrary to the provisions of Article 6, the members of the Users' Committee may make written arrangements in which they agree periods of publication that differ from those referred to in Article 6, provided that the Project Leader weighs up the risks pertaining to academic integrity against the interests of the User(s) concerned and finds an appropriate solution for that together with that/those User(s).

Article 11

Income from Utilisation

1. NWO will invoice the payment that NWO has agreed with a User or a Third Party for the use or the ownership of Results.
2. The payment referred to in Article 11.1 will be distributed between NWO and the Beneficiary after it is received, as follows:
 - the external costs incurred by NWO and/or the Beneficiary for protecting the Results or otherwise will be deducted from the payment and refunded to them;
 - NWO will award 50% of the payment, up to a cumulative maximum of EUR 250,000 for each Project, to the Project Leader for the research. Before this award is made, the Project Leader must submit a spending and project plan and NWO will assess its reasonableness. Payment will be made to the Project Leader in one lump sum no later than three months after the NWO receives the income;
 - NWO will transfer the remaining 50% directly to a bank account, the number of which is to be provided by the Beneficiary, and it will be distributed in accordance with the Beneficiary's policy;
 - if the payment referred to in Article 11.2 exceeds EUR 250,000, NWO and the Beneficiary will discuss the distribution of the surplus.
3. If the Project Leader is no longer employed by the Beneficiary when this payment is made to NWO, but there is a successor who is continuing the Project Leader's research activities, the 50% referred to at the second indent of Article 11.2 will be awarded to the research group. If there is no longer a research group when this money is received, NWO will discuss with the Beneficiary how this 50% is to be spent on research.
4. If two or more Beneficiaries jointly own Results, they will discuss and agree arrangements on the distribution of the payment that is owed to them on the basis of the distribution referred to in Article 11.2 (NWO 50%, Beneficiary/Beneficiaries 50%) and they will notify NWO of these arrangements.

Part 4 – Project costs and co-funding

Article 12

Project costs

The Project budget approved by NWO consists of a grant and co-funding.

Article 13

Co-funding

1. NWO will send the User an invoice for co-funding. After NWO has received the co-funding, NWO will make it available to the Project as a contribution.
2. The User must be able to demonstrate that any promised contribution in kind has been provided. If requested, the Project Leader will submit a list to NWO of any contribution(s) provided in kind in the preceding year(s). NWO is entitled to verify that list (or have it verified).
3. The Brochure lists the tariffs for the contributions in kind, in the form of staff support, that apply.

Part 5 – Other provisions

Article 14

Duration and termination

1. The project will commence on the Commencement Date / Starting Date and end no later than six years after the Commencement Date / Starting Date or when the last researcher's salary is no longer being funded in the context of the Project, whichever date is earlier.
2. NWO may withdraw a grant or reduce the amount of it before a Project commences or while it is being carried out if any of the situations described in Article 3.4.5 of the Grant Rules occurs.
3. Users will not hold NWO liable for any damage whatsoever if NWO terminates a Project for the reasons referred to above.

Article 15

Indemnification and liability

1. NWO funds the Project and is not liable for any damage resulting from the carrying out of the Project or the Publication or use of Results, unless NWO is grossly negligent.
2. Any User who provides co-funding in the form of man hours indemnifies NWO against claims for any damage resulting from the provision of co-funding in this form.

Article 16

Complaints, applicable law and disputes

Dutch law applies to these Guidelines. Disputes between Parties that arise as a result of and/or in connection with a Project or otherwise will be submitted to the competent court in Utrecht.

Contact details

General information is available from:

Dutch Research Council (NWO)

NWO Domain Applied and Engineering Sciences (NWO Domain AES)

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