

Guidelines

Collaboration Agreement

(Grand Solutions)

1. Background

- 1.1. As stated in the “Guidelines for Grand Solutions – 2018”, cf. Clause 5.1, the project participants have an obligation to enter into a collaboration agreement for the project. A signed collaboration agreement is a condition for concluding the Investment Agreement.
- 1.2. The collaboration agreement is annexed to the Investment Agreement as Exhibit 5, but does not constitute an integral part of the Investment Agreement. These guidelines describe the relationship between the Investment Agreement and the collaboration agreement.
- 1.3. Furthermore, the guidelines outline the conditions to be regulated by the collaboration agreement. Finally, they describe a number of conditions that it might be relevant to regulate via the collaboration agreement.
- 1.4. The guidelines do not provide a complete list of conditions that must or should be regulated by a collaboration agreement, and nor do they contain legal guidance or advice. Each project participant is recommended to seek separate legal advice in connection with the conclusion of the collaboration agreement.

2. An agreement between project participants – the responsibility of the project participants

- 2.1. All project participants must sign the collaboration agreement.
- 2.2. The project participants are responsible for drawing up a collaboration agreement. In principle, the project participants are free to decide the form and content of the collaboration agreement. As stated in Clause 4 below, there are, however, certain conditions that must be regulated by the collaboration agreement. Furthermore, the project participants must ensure that the collaboration agreement supports and promotes the implementation of the specific project.
- 2.3. Innovation Fund Denmark assumes no responsibility in relation to the drawing-up and content of the collaboration agreement.
- 2.4. The project participants are fully responsible for ensuring that the collaboration agreement complies with the legislation in force at any time, including Danish legislation, rules, legal practice, etc. and international legislation, rules, legal practice, etc., to the extent that this may apply to the specific project and/or to one or more project participants. This obligation includes the obligation to ensure compliance with Danish and European competition law in force at any time.
- 2.5. Public-sector institutions participating as project participants must ensure that they observe the statutes and rules regulating the individual institution and its activities, including its obligations relating to research, publication, etc.
- 2.6. Innovation Fund Denmark is not a party to the collaboration agreement and hence has neither obligations nor rights under the collaboration agreement. However, as stated in the Investment Agreement, the collaboration agreement may not be amended without the prior written approval of Innovation Fund Denmark, which must also be stated in the collaboration agreement.

3. Interaction with the Investment Agreement

- 3.1. The Investment Agreement is signed by Innovation Fund Denmark and all project participants. The Investment Agreement regulates Innovation Fund Denmark's investment in the project and support for the project participants.
- 3.2. The Investment Agreement specifies the minimum documentation to be prepared for the project. The following documents must be prepared and annexed to the Investment Agreement as exhibits:

Exhibit 1:	Project Plan
Exhibit 2:	Organisation and Management
Exhibit 3:	Budget
Exhibit 4:	Rules of Procedure for the Steering Committee
Exhibit 5:	Collaboration Agreement
- 3.3. The Investment Agreement states that in the event of discrepancy between the Investment Agreement and the collaboration agreement, the Investment Agreement shall prevail.
- 3.4. However, it is important that the project participants, when drawing up the collaboration agreement, ensure that there is no such discrepancy between the provisions of the Investment Agreement and of the collaboration agreement.
- 3.5. The project participants should keep in mind that there may be a number of standard agreement provisions that regulate the same issues in both agreements. The Investment Agreement includes provisions on, inter alia
 - Background and purpose (Clause 3)
 - Duration and expiry (Clause 13)
 - Termination (Clause 15)
 - Breach and termination (Clause 14)
 - Notices and assignment (Clause 15)
 - Governing law and legal venue (Clause 16)
- 3.6. In most cases, the project participants will also have to decide on the above in relation to the collaboration agreement. The project participants may incorporate corresponding provisions in the collaboration agreement by reference to the relevant provisions of the Investment Agreement with the necessary adjustments. If the project participants prefer to include separate provisions concerning these issues in the collaboration agreement, they must ensure that these provisions are not contrary to the corresponding provisions of the Investment Agreement.

4. Structure and content

- 4.1. The project participants should seek to ensure that the collaboration agreement has a logical structure and that the language is as easy as possible to understand.
- 4.2. It should be sought to use definitions in the collaboration agreement where this makes sense. Furthermore, whenever possible, it should be sought to apply the same definitions as in the Investment Agreement.

- 4.3. It is a prerequisite for the successful completion of the project that project participants make relevant background knowledge available to the project, including to other project participants for performance of project tasks.
- 4.4. Hence, the project participants should ensure that the collaboration agreement includes a sufficiently precise description of the background knowledge which each project participant must make available in connection with the project and its implementation. The agreement must describe the terms and conditions on which such background knowledge is made available.
- 4.5. It is a requirement that the collaboration agreement includes provisions regulating the individual rights of project participants in relation to the results and derived intellectual property rights arising out of the project (foreground knowledge). Consequently, the collaboration agreement should include a sufficiently precise description of the foreground knowledge arising out of the implementation of the project.
- 4.6. Furthermore, the project participants must decide how the rights to foreground knowledge are to be distributed among the project participants, i.e. who obtains ownership of the results and derived intellectual property rights. Where rights are held by two or more project participants jointly, the collaboration agreement must take into account how such joint ownership is exercised, including in relation to ensuring protection of the rights and in relation to the individual project participant's access to exploit the rights, including through commercialisation.
- 4.7. The project participants must decide upon and describe the extent to which and how each project participant can obtain access to exploit foreground knowledge owned by another project participant, both in respect of the implementation of the project and in relation to commercialisation of the rights and their use in further research.
- 4.8. In this context it should be noted that block exemption for certain categories of research and development agreements (Commission regulation (EU) no. 1217/2010 of 14 December 2010) requires that the agreement includes provisions on certain access rights to pre-existing knowhow and foreground knowledge if the research and development agreement is to obtain block exemption.
- 4.9. Among other things, the investment made by Innovation Fund Denmark is aimed at developing knowledge and technology to boost research and facilitate innovative solutions for the benefit of growth and employment in Denmark. The purpose of the investments made by Innovation Fund Denmark is, inter alia, to support the development of promising research results and discoveries with a view to speeding up dissemination, application and commercialisation of knowledge. It is important that the collaboration agreement does not stand in the way of these objectives and considerations and other objectives and considerations underlying the investment by Innovation Fund Denmark in the project.
- 4.10. The project participants must also decide on the provisions listed in Clause 3.5 above. Furthermore, the project participants must decide on the need to regulate the following aspects of the collaboration agreement (the list is not complete).
 - a) Description of the project participants' obligations in relation to implementation of the project. That is, in addition to those described in the Investment Agreement and its exhibits, including the Project Plan.
 - b) Project participants acceding to or leaving the project.

- c) Obligation to help to protect results, etc., including patent applications.
- d) Communication, publication and announcement of results, including Clause 2.5 above.
Obligations in relation to material received.
- e) Relevant warranties and statements made by each project participant.
- f) Mutual obligations aimed at ensuring observance of the project participants' reporting duties vis-à-vis Innovation Fund Denmark, cf. the Investment Agreement.
- g) Duties in connection with other issues of relevance to the specific project.
- h) Liability, including liability in damages and any duty of indemnification.
- i) Consequences of the termination of the collaboration agreement/the Investment Agreement.