

1st November 2019

General Terms and Conditions for Joint Research Projects (JRPs)

- ¹ These general terms and conditions ("GTC") apply to Joint Research Projects ("JRPs") of acib GmbH, Krenngasse 37, 8010 Graz, Austria (acib) if not defined otherwise in a Joint Research Agreement. acib performs such JRPs together with one or more Partners ("CP") to develop solutions for industrial or scientific problems, address questions of scientific interest or develop new applications. acib and CPs each are referred to as "Partner" or together as "Partners".
- ² JRPs to which these GTCs shall apply are based on a binding Offer made by acib to the CP ("Offer") and having been accepted by the CP. By acceptance of acib's Offer by the CP (designated as "Recipient" in the Offer) until the date indicated in the Offer the Partners agree on a valid Joint Research Project ("JRP") whereby these GTCs and the Offer form such JRP agreement.
- ³ The Offer may depend on the fulfillment of certain conditions ("*Conditions*") in particular with regard to the granting of funds acib has applied for. Therefore, the Offer may only come into force if acib receives such funds. Such Conditions will be outlined in detail in the respective Offer.

SCOPE AND EXECUTION OF THE JRP

- ⁴ The respective JRP shall start on the start date appointed in the Offer ("*project start*") or in case no date is given on the first or fifteenth day of a calendar month following the acceptance of the Offer. The JRP shall automatically end at the end of the term ("*term*") specified in the Offer. Each Partner is entitled to terminate the JRP for cause with immediate effect at any time. Such causes may be deferral of payment by the CP for more than three (3) months, inability of acib to execute the JRP or breach of the JRP agreement.
- ⁵ **acib shall be entitled to terminate the JRP without stating any further reason within the first 60 calendar days after project start with immediate effect**; in this case, acib shall not be due any payment.
- ⁶ Each Partner may terminate the JRP at the end of each month subject to the notice period ("*notice p.*") specified in the Offer. **If the Offer includes the term "n/a" in the notice period, the Partners shall not be entitled to terminate the JRP prematurely.**
- ⁷ The JRP shall be guided by the research program outlined in the Offer and/or a more detailed research program agreed between the Partners in writing. The JRP is led by the project leader ("*acib PL*") designated in the Offer. acib may propose to change the project leader without having to state any specific reason. acib will use reasonable efforts to execute the research program in a professional and timely manner following the principles of good scientific practice and proper project management. **Milestones and deliverables shall only be indicative. acib does not guarantee or assume any liability for the achievement of specific results, planned milestones or deliverables. Information on personnel resources ("*Personnel*") given in the Offer is indicative and does not represent a guarantee or shall constitute an obligation for the actual deployment of personnel during the JRP.**
- ⁸ Each Partner will provide the other Partner with all information necessary for the execution of the JRP. Each Partner shall take reasonable measures to ensure the accuracy of any information or materials it supplies to the other Partner. The Partners will share the results with each other at all times during the JRP. Project meetings may be held as either face-to-face or web/telephone conference depending on project progress upon request of either Partner. acib shall furnish the CP reports in such frequency and elaborateness as mutually agreed in writing within the research program.
- ⁹ acib may subcontract certain services to scientific partners nominated in the Offer ("*acib Subcontr.*") at any time. Furthermore, acib may subcontract certain parts of the services to other third parties in agreement with the CP. acib shall remain responsible for carrying out its relevant part of the JRP and for such third parties' compliance with the provisions of these GTCs. acib has to ensure that the involvement of third parties does not affect the rights and obligations of the CP.

CHANGES OF RESEARCH PROGRAM

- ¹⁰ CP acknowledges that due to the uncertain and unpredictable nature of research, acib may make recommendations for change of the research program before or after the start of the JRP to ensure that the original goals of the JRP or alternative goals mutually agreed between the Partners can be reached ("Change Request"). Also CP may demand changes of the research program ("Change Request"). The Partners shall discuss in good faith any such changes required to implement their recommendations and requirements.
- ¹¹ Each Change Request shall be submitted by the project leader of the requesting Partner to the project leader of the other Partner. The Change Request shall be specified to the utmost extent possible and shall provide sufficient background information in order to enable the Partners to evaluate the Change Request in detail.
- ¹² The project leaders together shall evaluate the Change Request. They may accept the Change Request and modify the research program accordingly. In case that the project leaders cannot come to a mutual agreement, the Change Request shall be decided upon by the CEO of each Partner. In case that no decision may be reached by the CEOs, CP shall be entitled to terminate the JRP with two months' notice.

LIABILITIES, LIMITATIONS OF LIABILITIES, FORCE MAJEURE

- ¹³ **acib does not assume any warranty that the JRP will be successful in any way or that any specific results will be obtained.** Any and all such results, if any, are of experimental nature and will be provided on an as-is, with all faults basis. The characteristics of these results may not be fully known. acib does not warrant or guarantee any specific characteristics and does not guarantee correctness of appropriateness of these results, in particular not under any relevant regulations or standards. Furthermore, **no warranty or representation of any kind is assumed, given or implied as to the commercial or non-commercial usability of the results, the sufficiency or fitness for a specific purpose** nor that such research results will not infringe any proprietary rights of third parties.
- ¹⁴ CP shall be entirely and solely liable for the use of the results or information and/or materials delivered by acib and shall indemnify and hold harmless acib for all damages resulting from receipt, handling, storage, transfer, disposal or other activities related to such results or information and materials, as long as such damages are not caused by gross negligent or willful conduct of acib. No Partner shall be liable in case of infringement of proprietary rights of a third party solely caused by the other Partner. Each Partner shall be solely liable for any loss, damage or injury of third parties caused by the respective Partner and indemnify and hold harmless the other Partner.
- ¹⁵ No Partner shall be responsible to the other Partner for any indirect or consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue or loss of contracts, provided such damage was not caused by a willful act or by a breach of confidentiality. For any remaining contractual liability, a Partner's aggregate liability towards the other Partner collectively shall be **limited to the total financial contribution made by the CP for the respective JRP** provided such damage was not caused by a willful act or gross negligence. Nothing in these GTCs shall be construed to amend or limit any Partner's statutory liability or any liability for death or personal injury.
- ¹⁶ Nothing in these GTCs shall limit the freedom of either Partner from engaging in similar research made under other grants, contracts, or research agreements, provided that each Partner abides by its obligations of confidentiality hereunder.

FINANCIAL CONTRIBUTIONS, PAYMENTS

- ¹⁷ CP provides a **fixed financial contribution to acib according to the Offer**. Financial contributions are due according to the payment plan ("*payment plan*") in the Offer. The payment plan may provide due dates or conditions for payments to be due. Payments are due without any deductions. If, due to applicable legal provisions, CP has to withhold parts of due payments (e.g. taxes), CP will indemnify and hold harmless acib from such deductions and shall ensure that the full agreed amount is transferred to acib. Payments shall only be effective upon receipt at acib's bank account.
- ¹⁸ **In the event of a premature termination, the financial contribution shall be recalculated on a monthly basis based on the actual term and the respective monthly contributions indicated in the payment plan and CP shall pay the recalculated contributions up to and until the end of the month in which the termination is effective.**
- ¹⁹ Financial contributions will be charged to the CP plus VAT (if applicable). In case of late payment acib will demand payments due and send reminders for payment. Overdue amounts may be charged default interest

according to § 456 of the Austrian Commercial Code (*Unternehmensgesetzbuch, UGB*). Interests shall preferably be calculated using www.basiszins.at.

²⁰ The Partners agree on the application for tax advantages for research expenses under Austrian legislation (“Forschungsprämie”, “Austrian Research Premium”). **The Offer shall define the Partner entitled to apply for the Austrian Research Premium according to § 108c EStG (Austrian income tax legislation) whereas this implies that the other Partner must abstain from such application.** Alternatively, the Offer may provide for a ratio between the entitlement to the research premium of acib and CP (e.g. 50:50). In this case each Partner may apply for the Research Premium for the respective share of total costs in percent.

INTELLECTUAL PROPERTY RIGHTS

²¹ For the purpose of implementation of the JRP, the Partners may contribute any Background useful for the performance of the JRP (“Background IP”). Such Background IP shall be defined as protected or unprotected, public or secret know-how, information or material generated before or outside of the JRP. Any usage rights to this Background IP provided shall be restricted to the implementation of the JRP. Background IP provided by a Partner remains the sole property of the respective owner, if not explicitly agreed otherwise.

²² If protected Background IP provided by acib is needed in order to use any results generated in the course of the JRP the Partners shall agree on conditions for use of such Background IP in advance. acib shall grant to the CP to such extent as it is legally possible, a limited, non-exclusive, perpetual, worldwide, non-transferable, non-sublicensable license to this Background IP, limited to the use in connection with results from the JRP. The Partners shall agree upon fair, reasonable and non-discriminating conditions for this license.

²³ acib may use materials, methods or other protected background owned or licensed by third parties (e.g. Kits, etc.) („third party Background“). If acib assumes to its knowledge that the use of this Background restricts the usability of results by the CP, acib is obliged to inform the Partner about such restrictions in advance. If CP needs access to such Background beyond the scope of the license obtained for usage within the JRP, CP has to obtain this license in CP’s own name and on CP’s own costs. Each Partner shall bear sole responsibility for ensuring that its own acts do not knowingly infringe third party intellectual property rights.

²⁴ The CP is entitled to make use of all results from the JRP without limitation and free of charge for itself or its affiliates’ businesses based on a limited, non-exclusive, perpetual, worldwide, non-transferable, non-sublicensable license without the right to apply for protection rights. Affiliate in this context means a) companies in which a Partner indirectly or directly owns more than half of the capital or the assets of the company or can appoint more than half of the members of the managing or administrative body or the bodies appointed for legal representation or is entitled to conduct the business of the company and b) companies which indirectly or directly have the rights and means of influence mentioned under a) related to a Partner and c) companies in whose case the Partners jointly have the rights and means of influence mentioned under a). Such jointly controlled companies are considered as affiliates of the Partners involved. The right to use results shall not be transferable to third parties with exception of affiliated businesses. CP may grant sublicenses to its customers but only to the extent necessary for CPs customer to make use of the products of CP (e.g. in case of contract manufacturing).

²⁵ Concerning the right to apply for protection rights, the Offer may provide the term **“All rights included”** for IP conditions. Only in such case, the CP shall have the right to apply for protection of results including the right to file, prosecute, maintain or abandon intellectual property rights, domestic or foreign, at any time and with any scope (“Protection Rights”). If acib in the course and within the scope of the JRP has made an invention, acib will inform CP and transfer all rights in the invention upon request of the CP free of additional charges to the CP.

²⁶ If the Offer provides the term **“Free use of results”** for IP conditions, **solely acib shall have the right to apply for Protection Rights.** In such case, CP may request exclusive access rights to or transfer of such results. In these cases acib and the CP will negotiate on fair and reasonable conditions (FRAND) in good faith.

NON-DISCLOSURE OF INFORMATION, CONFIDENTIALITY, PUBLICATIONS

²⁷ All information including but not limited to trade secrets, Background IP, ideas, concepts and other know-how as well as protected and unprotected results provided by a Partner shall remain the sole property of the respective owner, if not agreed otherwise explicitly. Nothing in these GTCs shall constitute a transfer of ownership or any rights in the information. The information may only be used for the purpose of the JRP.

²⁸ All information in whatever form or mode of communication, which is disclosed by a Partner (the “Disclosing Partner”) to any other Partner (the “Recipient”) in connection with the JRP development is “Confidential Information” unless the information has explicitly been marked as non-confidential by the Disclosing Partner.

²⁹ During the term of the JRP and for five years after its termination, the Recipient will (a) not use the Confidential Information otherwise than for the purpose for which it was disclosed, (b) not disclose the Confidential Information without the prior consent of the Disclosing Partner and (c) ensure that any internal distribution of the Confidential Information takes place on a strict need-to-know basis. The Recipient shall be responsible for the fulfilment of these obligations by its employees or third parties related to the Recipient. Furthermore, the Recipient shall ensure that such employees or third parties are bound to confidentiality provisions as least as strict as provided in these GTCs. The Recipient shall apply the same degree of care with regard to the Confidential Information disclosed as to its own confidential and/or proprietary information, but in no case less than reasonable care.

³⁰ The above shall not apply for disclosure or use of Confidential Information, if and in so far as the Recipient can show that (a) the Confidential Information has become or becomes publicly available by means other than a breach of the Recipient’s confidentiality obligations, (b) the Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Partner, (c) the Confidential Information was already known to the Recipient prior to disclosure, (d) the Recipient is required to disclose the Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, (e) the Recipient discloses the Confidential Information to a public authority (as funding authorities, court of audit, etc.) bound to official secrecy (f) the Recipient discloses the Confidential Information to subcontracting parties or other third parties bound to a confidentiality agreement providing terms at least as stringent as set forth in this agreement and for the purpose of the JRP development.

³¹ acib shall not publish any results without the prior consent of the CP during the JRP or within 6 calendar months after its termination (“secrecy period”). **After this time, acib may publish results freely without consent of the CP.** During the secrecy period, acib will notify the CP within reasonable time of at least fourteen (14) calendar days before an intended submission or presentation. If CP does not object to the submission or presentation within reasonable time or at the latest within seven (7) calendar days, acib may proceed with the publication. The CP shall not unreasonably withhold its consent to such intended publications. Furthermore, acib shall be entitled to freely publish already published results in other publications, e.g. blogs, press statements and such like.

³² acib shall be entitled to list the CP’s name and logo on its website and in its communications together with the general topic of cooperation. Also subcontracting parties of acib shall be entitled to list CP as cooperating partner.

MISCELLANEOUS

³³ Should any provision of these GTCs become invalid, illegal or unenforceable, it shall not affect the validity of the remaining provisions. In such a case, the Partners shall be entitled to request that a valid and practicable provision be negotiated that fulfills the purpose of the original provision.

³⁴ Except as in case of subcontracting no rights or obligations of the Partners may be assigned or transferred, in whole or in part, to any third party without the other Partners’ prior written approval. In case any Partner subcontracts certain or all of its duties under the JRP, such Partner shall remain fully liable for the fulfillment of such duties as agreed upon under the JRP.

³⁵ These GTCs are drawn up in English, which language shall govern all documents, notices, meetings, proceedings and processes relating thereto. The contract between the Partners shall be construed in accordance with and governed by the laws of Austria excluding its conflict of law provisions. The application of the Austrian Private International Law (IPRG) or other rules on conflict of laws shall be excluded. The applicability of the UN Convention on the International Sale of Goods (“CISG”, “Vienna Convention”) is expressly excluded.

³⁶ The Partners shall endeavor to settle disputes amicably. Any dispute, controversy or claim arising under, out of or relating to the JRP agreement and any subsequent amendments of the JRP agreement, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the WIPO Mediation Rules.

³⁷ The place of mediation shall be Vienna, Austria. The language to be used in the mediation shall be English.

³⁸ If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within 60 calendar days of the commencement of the mediation, it shall be referred to and finally submitted to the exclusive jurisdiction of the competent court for 8010 Graz, Austria. acib reserves the right to bring any claim against the CP before any other competent court having jurisdiction over the dispute. Alternatively, if, before the expiration of the said period of 60 calendar days, either Partner fails to participate or to continue to participate in the mediation, the dispute, controversy or claim shall be immediately referred to the competent court as set out above.

³⁹ This GTCs are valid as of November 1st, 2019.