

# Common Policy for Cooperation with the Application Sphere

November 2019



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# 1. INTRODUCTION

CEITEC (Central European Institute of Technology) is focused on the establishment of a European centre of excellence in the area of life sciences, advanced materials and technologies. Scientific research is the core of our activities, as is the pursuit of knowledge through the activities of education, training, experimental design and publication. Moreover, the outputs of research activities should envision the utilization of these discoveries for the betterment of society, both through commercial and non-commercial innovations. These tasks can only be performed at their optimal level in an environment where a commonality is understood and scientific norms are upheld. Within this document, The CEITEC Common Policy for Cooperation with the Application Sphere, outlines institutional policies to shape a supportive and responsible research environment.

The document describes the overall policies regarding engagement with the application sphere at CEITEC.

## 1.1. Purpose

In 2011, the CEITEC Common Rules for Cooperation with Application Sphere was established. The present Common Policy for Cooperation with the Application Sphere will serve as a replacement of the original 2011 document. This CEITEC Common Policy shall be a reference for the partners within the CEITEC consortium, with respect to all employees of CEITEC where matters of cooperation with the application sphere are concerned. The purpose of this document is to set internal guidelines and state the principles to ensure a productive research environment inside CEITEC.

## 2. BASIC PRINCIPLES

CEITEC's continued success in teaching, research and technology transfer is based on high standards of ethics and professionalism in research and commercial relationships. Transparent, clearly defined principles regarding the culture of cooperative ventures help ensure that outstanding scientists persevere the interests of their institution(s), and build confidence with external cooperating parties. These basic principles were adapted from the Technical University of Munich Code (TUM Research and Commercial Cooperations)<sup>1</sup>.

The following Basic Principles apply to the drawing up of agreements regarding cooperative research and commercial ventures with third parties:

- CEITEC is a consortium consisting of six partnering organisations which represent the legal entities to which contractual agreements are assigned. To this effect, CEITEC defers legal responsibility from third party agreements to the CEITEC organisational units to which their employees are assigned. As a consequence, the basic principles contained within this document are guideline recommendations for contractual agreements with third parties relate to the CEITEC consortium as a whole. Individual members or employees of the CEITEC consortium should not draw up agreements with third parties unless signing authority has been transferred.
- The contact points for coordination with third parties are assigned by the individual CEITEC organisational units.
- As is customary in an international context, contractual negotiations are always conducted on the basis of standard agreement forms, which are oriented to CEITEC best practices.
- Project results: Agreements should not be structured such that they conflict with the unremunerated use of research outcomes (ie. publications) and the associated intellectual property rights (IPRs) for CEITEC.
- Intangible assets (including intellectual property rights): CEITEC's intangible assets (IAs) include:

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<sup>1</sup> TUM Research and Commercial Cooperations

[https://portal.mytum.de/kompass/forschung\\_public/TUM\\_Forsch-Wirt\\_Brosch-en.pdf](https://portal.mytum.de/kompass/forschung_public/TUM_Forsch-Wirt_Brosch-en.pdf), accessed 3.11.2019

- human capital (eg. know-how and relationship networks) of the scientists involved, known and unknown copyrights, and CEITEC's experience in knowledge management, and

- legally protectable work outcomes or developments, (eg. IPRs) relating to inventions, intellectual property rights amendment certificates and/or utility model applications, copyright-protected computer programs, aesthetic designs (registered, unregistered and copyright-protected designs), trademarks, semiconductor protection, and plant variety rights. Heads of associated partners of CEITEC by their legal host institution's IP rules.

- Project-related full costs based on market conditions: Market rates and appropriate conditions apply to all contractual goods and services which could equally be provided by the private sector. This applies in particular to negotiations regarding the transfer of ownership rights or rights of use relating to intangible assets. In matters related to project pricing and use of CEITEC common laboratories or core facilities, CEITEC Common Rules for Management and Use of Core Facilities should be referenced.
- Financial project management: Revenues and expenses relating to a project involving a third party are always managed via the assigned CEITEC organisational unit.
- Legal and ethical principles: In order to comply with CEITEC's guidelines, the contents of agreements must be in accordance with statutory requirements of the CEITEC organisational units and CEITEC's Code of Scientific Conduct and Research Integrity. When drawing up agreements, conflicts of interest must be avoided and must be rendered transparent at the start of contractual negotiations.

## 3. TYPES OF AGREEMENTS

Further to extend on the above Basic Principles, an overview of various types of cooperative research and commercial ventures are described below. These agreements outlines are intended as guidance for the CEITEC organisational units or partnering institutions. The types of agreements were adapted from the Technical University of Munich Code (TUM Research and Commercial Cooperations)<sup>2</sup>.

### 3.1. Contracts for Work and Services

A Contract for Work and Services covers the provision of scientific or technical services, which CEITEC performs for a third party using its own knowledge and infrastructure. Examples: measurement, testing, construction of crafts, software programming, gathering and data analysis, and in some cases provision of expertise.

A Contract for Work and Services -

- defines an unambiguous, known goal (= the work to be performed), and often describes the implementation method. As a general rule, the scientist does not have to interpret the outcome or resulting data;
- reflects the client's interest in achieving the concretely agreed outcome and/or performance of the agreed work. CEITEC must deliver the goods and/or services on due time and in accordance with relevant specifications and intellectual property law;
- as a general rule does not contain any provisions regarding protectable outcomes of work performed by CEITEC. CEITEC retains all intellectual property rights and know-how relating to the applied methods and any further development thereof;
- is based on a Contract for Work and Services agreement form derived from the CEITEC organisational units.

### 3.2. Research & Development Agreements

Research & Development Agreements cover research projects (including subcontracts) between CEITEC scientists and third parties (eg. commercial companies), in which the contracting party finances the project on a full cost basis (including value-added tax). The contracting party sets limits on CEITEC's publication rights and/or general rights to the outcome.

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<sup>2</sup> TUM Research and Commercial Cooperations

[https://portal.mytum.de/kompass/forschung\\_public/TUM\\_Forsch-Wirt\\_Brosch-en.pdf](https://portal.mytum.de/kompass/forschung_public/TUM_Forsch-Wirt_Brosch-en.pdf), accessed 3.11.2019

A Research & Development Agreement:

- contains a formulated research program which is target-oriented but open in terms of outcomes. As a general rule, the scientist must interpret the outcomes and/or data. CEITEC is not obligated to deliver concrete project success, does not assume liability for the commercial applicability of the outcome, and does not assume liability for freedom from (third-party) intellectual property rights.
- reflect not only the scientist's and CEITEC's interest in publication, but also the contracting party's interest in achieving outcomes in-line with planning and scheduling.
- covers financial compensation for non-IPR-related intangible assets (IA) and handling of existing and new IPRs. Alongside the use of CEITEC know-how, there are two possible scenarios for IPRs:
  - (a) existing and/or created intangible assets remain the property of CEITEC; conditions and procedures determined within the respective CEITEC organisational units; or
  - (b) CEITEC transfers its entitled and/or created IPR rights of use and ownership rights to the contracting party in return for advance payment; conditions and procedures determined within the respective CEITEC organisational units.

### 3.3. Collaboration Agreements, Type 1 (no public funding)

Collaboration Agreements, Type 1 cover joint research projects involving partners who make an equal contribution to project goals. The collaborators make equal contributions to the project, but as a general rule not in the form of payment.

A Collaboration Agreement, Type 1:

- defines the parties' medium- to long-term objectives, which are open in terms of outcomes. Neither party is obligated to deliver a successful result;
- covers the parties' primary publication interests, including joint publication, and the unencumbered right to publish one's own research results;
- covers how to handle intangible assets (IPRs) created. Project results belong to the party whose employees created them on their own. Joint project results belong jointly to the parties involved; if commercial parties are involved and there is a joint invention, the various contributions of the invention must be carefully assessed. If necessary, rights of use to inventions may be granted at the end of the project in return for appropriate market-oriented license fees. These must be negotiated and contractually agreed upon, and financial compensation in CEITEC's favor must be paid if the parties have made unequal contributions;
- ensures that after the end of the project, CEITEC can make further use of non-protectable project outcomes (know-how) for its own or for the project participants' scientific purposes in research and teaching. Justifiable interests in confidentiality must be defined.

## 3.4. Collaboration Agreements, Type 2 (public funding)

Collaboration Agreements, Type 2 cover (a) cooperative ventures involving industrial and academic partners, where the projects receive public funding, and (b) the rights to work outcomes and associated intangible assets, publication rights, and liability issues

A Collaboration Agreement, Type 2:

- covers research programmes which are open in terms of outcomes, and are based on the objectives defined in the support application/funding decision and individual parties' contributions; the parties are not obligated to deliver project success, but nonetheless must work to very high professional standards;
- covers fulfillment of obligations to the funding provider regarding utilization and publication;
- covers how to handle intangible assets (IPRs) created. Project results belong to the party whose employees created them on their own. Joint project results belong jointly to the parties involved; if commercial parties are involved and there is a joint invention, the various contributions of the invention must be carefully assessed. If necessary, rights of use to inventions may be granted at the end of the project in return for appropriate market-oriented license fees. These must be negotiated and contractually agreed upon, and financial compensation in CEITEC's favor must be paid if the parties have made unequal contributions; covers granting of any existing IPRs necessary for the project, for the duration of the project for project-related purposes;
- covers granting of any existing intellectual property rights necessary for the project, for the duration of the project for project-related purposes;
- ensures unremunerated use of project outcomes and associated IPRs for CEITEC's or project participants' own scientific purposes in research and instruction.

## 3.5. Material Transfer Agreements

As a general rule, Material Transfer Agreements cover unremunerated transfer of materials (eg. biological materials such as bacteria strains or plasmids, chemical compounds or other material samples) to academic or industrial partners for purposes of research and/or testing. CEITEC may be either the donor or the recipient. If CEITEC is the donor, the transferred material cannot be used for commercial purposes unless CEITEC has been consulted and agreement has been reached. Use for commercial purposes must be covered by a follow-up agreement (including an agreement regarding remuneration).

## 3.6. Non-Disclosure Agreements

Non-Disclosure Agreements cover the exchange of confidential information with third parties (e.g. confidential know-how, unpublished patent applications), typically in preparation for a planned collaboration or commercialization of research outcomes. Non-Disclosure Agreements are valid for a



specified period of time. If the owner of know-how publishes that know-how, there is no longer any obligation to maintain confidentiality. Transfer or licensing of intangible assets (IPRs) as part of a Non-Disclosure Agreement is not permitted.

### 3.7. Exploitation or License Agreements

These agreements are drawn up with a licensee or assignee, either by CEITEC as the owner of an intangible asset (reported invention, patent application, patent, software) or another specified agent representing CEITEC's organisational units. They enable the licensee/assignee to have either an exclusive or non-exclusive use of the intangible assets in return for appropriate market-rate license fees, or to acquire them in return for payment. Exclusive rights of use may be limited to specific geographic regions and/or areas of application. Utilization covers also modification, further development, usage, marketing and transfer of the licensed item. In the case of licensing, CEITEC retains its (co-)ownership and its rights to the licensed protected assets and the right to unremunerated use thereof for its own scientific purposes in research and teaching. Exploitation and License Agreements are subject to CEITEC's IP Policy and should include the following elements:

- the subject of the agreement, with information regarding accompanying IPRs (eg. patent applications, patents, and software) to be licensed; in particular, the general framework including the original challenge and the solutions which gave rise to the IPRs (free research, third-party project or cooperative project) and the individuals and/or contracting parties involved;
- the type of license agreement (exclusive, non-exclusive or cross-licensing);
- the contract territory involved (in the case of patents / patent applications);
- detailed information about the nature and amount of the license fee (eg. reference amount, initial sum, minimum license fee);
- information about payment of patent costs;
- limitation of liability;
- applicable law.

Beyond this, Exploitation and License Agreements should be structurally customized based on the subject matter (eg. device, method or pharmaceutical active ingredient).

## 4. PROCEDURES FOR CONTRACTUAL NEGOTIATION

Contractual negotiations with external research and commercial partners should be in line with CEITEC's strategic development goals. Contract negotiation should be systematized, which is to be determined within each legal unit of the CEITEC consortium.