



ÉCOLE POLYTECHNIQUE  
FÉDÉRALE DE LAUSANNE

# **EPFL Directive on Grants, Research Contracts and Technology Transfer (DSCRTT) LEX 3.4.1**

Additional information & contact: <http://tto.epfl.ch> and <http://research-office.epfl.ch/>

Version 2.4 of 23<sup>rd</sup> April 2019

## CONTENTS

<b>CHAPTER 1</b>	<b>INTRODUCTION.....</b>	<b>4</b>
Article 1	Goals.....	4
Article 2	Principles .....	4
<b>CHAPTER 2</b>	<b>TYPES OF CONTRACTS .....</b>	<b>5</b>
SECTION 1	RESEARCH CONTRACTS.....	5
Article 3	Definition.....	5
Article 4	Budget .....	5
Article 5	Intellectual property in research contracts with companies.....	5
Article 6	Intellectual property in research contracts with public bodies or other non-profit entities .....	6
Article 7	Personnel.....	6
SECTION 2	SCIENTIFIC SERVICE CONTRACTS .....	6
Article 8	Definition .....	6
Article 9	Budget .....	6
Article 10	Intellectual property .....	7
Article 11	Personnel.....	7
SECTION 3	INDUSTRIAL GRANTS .....	7
Article 12	Definition .....	7
SECTION 4	GRANT CONTRACTS .....	8
Article 13	Definition .....	8
SECTION 5	GIFTS FOR RESEARCH .....	8
Article 14	Definition .....	8
<b>CHAPTER 3</b>	<b>RESPONSIBILITIES &amp; SIGNATURE RIGHTS.....</b>	<b>8</b>
SECTION 1	RESPONSIBILITIES .....	8
Article 15	Areas of responsibility of the TTO, REO and GEC.....	8
Article 16	Grant applications and proposals.....	9
Article 17	Contract negotiation and drafting.....	9
Article 18	Abrogated.....	<i>Erreur ! Signet non défini.</i>
SECTION 2	CONTRACT SIGNATURE .....	10
Article 19	Power of representation.....	10
Article 20	Contracts with companies .....	10
Article 21	Contracts with funding bodies or other non-profit entities .....	11
Article 22	Contract compatibility .....	11
Article 23	Personnel.....	11
Article 24	Acquisition of third party rights.....	11
Article 25	Execution of contracts .....	11
<b>CHAPTER 4</b>	<b>FINANCIAL MANAGEMENT.....</b>	<b>11</b>
Article 26	Funds .....	11
Article 27	Overheads.....	12
Article 28	Advances.....	12
Article 29	Excess revenue or spending .....	12
Article 30	Other provisions .....	12
<b>CHAPTER 5</b>	<b>MANAGEMENT OF INTELLECTUAL PROPERTY.....</b>	<b>12</b>
Article 31	Ownership of inventions and other intellectual property assets .....	12
Article 32	Invention disclosures – Patent applications – Publications .....	13
Article 33	Software and other intellectual property assets .....	13

Article 34	Assistance provided by inventors/authors.....	13
<b>CHAPTER 6</b>	<b>TECHNOLOGY TRANSFER CONTRACTS .....</b>	<b>14</b>
Article 35	General .....	14
Article 36	Negotiation, conclusion and management of technology transfer contracts .....	14
Article 37	Potential surrender of intellectual property .....	14
<b>CHAPTER 7</b>	<b>DISTRIBUTION OF REVENUE .....</b>	<b>15</b>
Article 38	Revenue from the marketing of intellectual property assets .....	15
<b>CHAPTER 8</b>	<b>SHAREHOLDING (START-UPS).....</b>	<b>16</b>
Article 39	Principles .....	16
Article 40	Responsibilities in decision making.....	15
Article 41	Management of shareholding with Start-Ups.....	16
Article 42	Reporting and transfer of information to the ETH Board .....	<b>Erreur ! Signet non défini.</b>
Article 43	Functions within a start-up on behalf of EPFL .....	17
<b>CHAPTER 9</b>	<b>LEGISLATION ON EXPORT CONTROL.....</b>	<b>17</b>
Article 44	Dual-purpose assets and technology – weapons-related assets and technology (Swiss law).....	17
Article 45	Foreign legislation on export control.....	18
<b>CHAPTER 10</b>	<b>FINAL PROVISIONS .....</b>	<b>18</b>
Article 46	Entry into force .....	18

*The Direction of the Ecole polytechnique fédérale de Lausanne hereby adopts the following:*

## **Chapter 1 Introduction**

### **Article 1 Goals**

This directive pursues the following goals:

1. to promote research, cooperation with academic or industrial partners and the transfer of EPFL research findings to benefit the economy, industry and the community;
2. to determine internal powers and responsibilities in terms of:
  - a conclusion and management of grant and research contracts, scientific service contracts, technology transfer contracts and similar contracts,
  - b management of intellectual property,
  - c acquisition and management of company stocks or options related to technology transfer;
3. to determine the allocation of revenue from these activities.

### **Article 2 Principles**

<sup>1</sup> The content of research, grant or scientific service contracts and other contracts mentioned in Chapter 2 must not be in conflict with the public interest. This content must, in particular, be compatible with EPFL's missions of teaching, research and technology transfer.

<sup>2</sup> The conclusion of these contracts must not result in unfair competition with private companies.

<sup>3</sup> By virtue of the applicable legislation<sup>1</sup>, professors may undertake, in certain cases, consulting activities such as providing expertise, in their own name and for their private gain. This directive does not apply to these kinds of private consulting contracts, which fall under LEX 4.1.1 concerning the management of conflicts of interest within the context of activities or public duties engaged in outside the working sphere<sup>2</sup>.

---

<sup>1</sup> Article 6 of the faculty ordinance: [http://www.admin.ch/ch/f/rs/c172\\_220\\_113\\_40.html](http://www.admin.ch/ch/f/rs/c172_220_113_40.html)

<sup>2</sup> See documents attached to LEX 4.1.1 regarding the management of conflicts of interest within the context of activities or public duties engaged in outside the working sphere available on the Polylex website: <http://polylex.epfl.ch/page-26065-fr.html>

## Chapter 2      Types of contracts

### Section 1      *Research contracts*

#### Article 3      Definition

A research contract exists when EPFL and a third party agree to carry out a project or research program characterized by a common scientific interest, with the objective of combining efforts to augment and transmit knowledge, in line with EPFL's teaching and research strategies.

#### Article 4      Budget

The research contract framework specifies that third-party funding must cover at least the following elements, subject to applicable regulations from public funding sources:

1. expenditures associated with personnel involved in carrying out the project (including social charges borne by the employer);
2. expenditures for equipment, materials and other supplementary fees (including travel) necessary for the completion of the project (coverage of additional costs);
3. costs generated by the use of particularly expensive EPFL equipment or technology platforms (common research facilities);
4. overhead according to Art. 26
5. VAT if applicable<sup>3</sup>.

#### Article 5      Intellectual property in research contracts with companies

<sup>1</sup> In general, research contracts anticipate that the company will obtain, without having to pay future royalties or other fees, the priority right to file a patent application(s) on the results of the project or research program in its name and at its cost, as well as the right to market these results, on the condition that EPFL benefits from a license, with the right to grant sublicenses, outside the domain reserved by the partner as precisely defined in the contract.

<sup>2</sup> For software produced in a project or research program, EPFL generally retains ownership rights but grants the third party a nonexclusive and free license in a reserved domain, precisely defined in the contract. This license may be exclusive when the software in question is specifically created for the project or research program without being derived from preexisting software.

<sup>3</sup> The above does not apply to situations in which there are existing agreements that restrict EPFL's liberty to handle the results of a project or research program.

<sup>4</sup> In all cases, research contracts will allow EPFL the right to publish scientific results from the project or research program, generally after a reasonable time period that allows the partner to file a patent application.

---

<sup>3</sup> See with the Accounting Service according to Article 61 of the Financial Regulations ([https://polylex.epfl.ch/wp-content/uploads/2019/01/5.1.1\\_r\\_financier\\_an.pdf](https://polylex.epfl.ch/wp-content/uploads/2019/01/5.1.1_r_financier_an.pdf)).

**Article 6 Intellectual property in research contracts with public bodies or other non-profit entities**

<sup>1</sup> In research contracts with a public body or non-profit entity, EPFL generally retains at least the right, free of charge, to use and exploit project results and in all cases to publish them.

<sup>2</sup> If EPFL and the public body or non-profit entity agree to grant the latter more extensive rights, the rules governing research contracts with companies, or even service contracts, will apply, including as regards overheads.

**Article 7 Personnel**

The personnel involved in research activities undertaken at EPFL as part of a research contract are hired by EPFL. If, in an exceptional case, a person is hired by a third party and works on EPFL property, the person in charge (see Art. 17) will divulge this person's identity, workplace and the duration of his/her presence to Human Resources as well as to the Technology Transfer Office (hereafter TTO) beforehand to settle questions of intellectual property and confidentiality.

**Section 2 Scientific service contracts****Article 8 Definition**

A service contract exists when EPFL agrees to provide a scientific service for a third party by using or making available existing knowledge, expertise and/or infrastructures at EPFL. This service could, for example, consist of tests, measures, routine analyses, expert opinions, consulting, or provision of specific scientific equipment.

**Article 9 Budget**

<sup>1</sup> The service contract framework specifies that the third party funding must cover at least the following elements:

1. expenditures associated with personnel involved in carrying out the service (including social charges borne by the employer);
2. expenditures for equipment, materials and other supplementary fees (including travel) necessary for the completion of the service (coverage of additional costs);
3. costs generated by the use of particularly expensive EPFL equipment or technology platforms (common research facilities);
4. overhead according to Art. 26;
5. VAT if applicable<sup>4</sup>.

<sup>2</sup> Alternatively, the budget may be calculated using rates reflecting market prices. Thus the recommendations regarding engineers and architects' fees (« Recommandations

---

<sup>4</sup> See with the Accounting Service according to Article 61 of the Financial Regulations ([https://polylex.epfl.ch/wp-content/uploads/2019/01/5.1.1\\_r\\_financier\\_an.pdf](https://polylex.epfl.ch/wp-content/uploads/2019/01/5.1.1_r_financier_an.pdf)).

relatives aux honoraires des ingénieurs et architectes ») issued by KBOB<sup>5</sup> may be used for the share of the budget relating to salaries (in that case, no overhead is added to this part of the budget).

<sup>3</sup> This does not, however, apply to contracts for third party use of EPFL equipment. For these contracts, the third party funding must cover at least the following elements:

1. the cost of the equipment made available, calculated as follows: dividing the purchase price by the number of months of depreciation, multiplied by the number of months of use by the third party, multiplied by the rate of use made by the third party;
2. the expenditures associated with supplies used by the third party;
3. when the third party requires EPFL personnel support for using the equipment: the cost of the personnel (including social charges borne by the employer);
4. overhead according to Art. 26;
5. VAT if applicable<sup>6</sup>.

<sup>4</sup> In the case of technology platforms (common research facilities), for which a complete economic analysis is available, the total cost of usage (U.3) must be included in the budget (in this case, the overhead is not added to this part of the budget).

### **Article 10 Intellectual property**

<sup>1</sup> In service contracts, EPFL retains ownership of knowledge, methods, tools, software or intellectual property rights used or developed to provide the service requested.

<sup>2</sup> On the other hand, reports and specific data resulting from services provided (measurements, test results, simulations, expert reports, etc) are the property of the third party funding the service and may only be used or published by EPFL with prior authorization of the third party.

### **Article 11 Personnel**

The personnel needed to carry out the service contract will be hired by EPFL.

## **Section 3 Industrial grants**

### **Article 12 Definition**

For purposes of this directive, an industrial grant is a contract by which a company gives EPFL a certain sum to support a research project and obtains as sole return the right to examine the results of the project and the option, limited to a certain time period, to negotiate a fee-based license (or other rights) on these results.

---

<sup>5</sup> See <https://www.kbob.admin.ch/kbob/fr/home/publikationen/dienstleistungen-planer/empfehlungen-zur-honorierung-von-architekten-und-ingenieuren.html>

<sup>6</sup> See with the Accounting Service according to Article 61 of the Financial Regulations ([https://polylex.epfl.ch/wp-content/uploads/2019/01/5.1.1\\_r\\_financier\\_an.pdf](https://polylex.epfl.ch/wp-content/uploads/2019/01/5.1.1_r_financier_an.pdf)).

## **Section 4 Grant contracts**

### **Article 13 Definition**

<sup>1</sup> A grant contract relates to funding aimed at encouraging research, granted further to a project put forward by a researcher. In general, intellectual property is governed by legal provisions or by the funding source's regulations.

<sup>2</sup> Grant contracts entered into by EPFL notably include:

1. contracts with Swiss federal bodies providing research grants (for example SNSF, Innosuisse, FOES, FOE, ETH Board). It should be noted that not all contracts with federal offices are grant contracts (in some cases these are service contracts);
2. contracts with the European Commission in the context of European research programs;
3. contracts with other public or private non-profit organizations for research grants.

## **Section 5 Gifts for research**

### **Article 14 Definition**

<sup>1</sup> For purposes of this directive, a gift is a contract or a commitment by which a public or private institution or company gives EPFL a certain sum earmarked for research support, for no consideration.

<sup>2</sup> The obligations to provide a report for the donor on the research carried out, to mention the gift in scientific publications concerning the research results, and/or to make the results of this research publicly available are not regarded as considerations in these situations.

<sup>3</sup> Contracts relating to gifts granted to a unit for research in its specific field are subject to this directive. Sponsoring contracts (through which the sponsor obtains rights to promote its image or products) and patronage contracts managed by the head of fundraising are subject to LEX 1.10.1 on sponsoring and patronage at EPFL<sup>7</sup>.

## **Chapter 3 Responsibilities & Signature Rights**

### **Section 1 Responsibilities**

#### **Article 15 Areas of responsibility of the TTO, REO and GEC<sup>8</sup>**

<sup>1</sup> TTO has authority in the field of research programs or projects conducted with companies, including related contracts.

<sup>2</sup> The Research Office (hereafter REO) has authority in the field of grants from public funding agencies (SNSF, Innosuisse, European Commission, foreign government agencies, private foundations, etc.), and for agreements with other universities or

---

<sup>7</sup> See <http://polylex.epfl.ch/page-112131-fr.html>



research institutions and with other non-profit entities (e.g. cantons, communes, federal offices, etc.). The REO has authority for contracts relating to such funding.

<sup>3</sup> The General Counsel (hereafter GEC) has authority in the field of strategic inter-institutional contracts.

<sup>4</sup> If contracts under the authority of the REO or GEC include intellectual property aspects, the REO, respectively the GEC, consults the TTO regarding these aspects.

<sup>5</sup> In specific cases, the Director of Research Affairs, the heads of TTO and REO and the GEC may decide together to depart from this allocation of authority. In case of disagreement, the GEC decides.

### **Article 16 Grant applications and proposals**

<sup>1</sup> Any proposal or application for a grant to public or private organizations supporting research shall be recorded by the relevant laboratory in the <http://grants-db.epfl.ch> (GrantsDB) server on the day of its submission to the funding source at the latest.

<sup>2</sup> At the moment of submission, all additional costs or resources required for the request but not covered by the planned subsidy shall be outlined and documented in an annex, including:

- Detailed costs,
- Additional resources,
- Steps taken to cover these and other additional requirements,
- Steps taken to guarantee the feasibility of the project.

<sup>3</sup> The REO assists applicants with any administrative and financial issues. In case the funding source requires an institutional signing of the grant proposal or application, the applicant should contact the REO ([research@epfl.ch](mailto:research@epfl.ch)).

### **Article 17 Contract negotiation and drafting**

Professors and researchers will call upon the assistance and advice of, respectively:

1. the GEC for strategic inter-institutional contracts and contracts for chair funding;
2. the TTO to negotiate and draw up contracts with companies;
3. the REO for contracts with public or private funding bodies, with other universities or research institutions and with other non-profit entities;
4. the ECO for contracts concerning the use and purchase of scientific equipment;
5. the DAR Legal Affairs for other contracts concerning the DAR (namely research contracts with academic partners, Consortium Agreements, framework agreements, scientific service contracts, NDA, donations, shareholder agreements, etc.)

### **Article 18 Abrogated**

## **Section 2    Contract signature**

### **Article 19    Power of representation**

<sup>1</sup> The power of representation for EPFL in terms of research lies with the Vice-President for Research and the Director of Research Affairs, who may each provide the first signature. They may also sign jointly. The professor concerned by the contract has the power of representation for EPFL in terms of research for the second signature.

<sup>2</sup> The services of the Vice-Presidency for Research proceed to an ethical review of the research project and a legal review of the contract and may request additional information from the *Principal Investigator* if considered necessary.

<sup>3</sup> Paragraphs 1 and 2 are applicable subject to the special regulations of partners or funding sources and the articles below.

### **Article 20    Contracts with companies**

<sup>1</sup> Contracts with companies are signed jointly by the head of the unit concerned<sup>9</sup> and the head of TTO. These contracts are subject to the TTO's approval before signature.

<sup>2</sup> The head of the unit concerned may delegate signature rights to a full professor, a senior scientist or a group leader by filing a power of attorney with the TTO.

<sup>3</sup> Once the contract is signed, the TTO uploads a copy to the GrantsDB database and requests that the Accounting Service open a fund.

<sup>4</sup> However, when the amount of third-party funding is less than CHF 50,000, the head of the unit concerned may sign the contract alone. In that case, the contract must also abide by this directive. The head of unit may also request assistance from the TTO for any contract under CHF 50,000.

<sup>5</sup> Contracts agreed with companies concurrently with a grant provided by a public body (e.g. intellectual property agreement for Innosuisse projects) are considered as contracts with companies. Consortium agreements for European projects are reviewed by the DAR Legal Affairs and signed in accordance with Article 21.

<sup>6</sup> The head of unit is responsible for keeping originals of all contracts outlined in Art. 19. The head of unit will send the TTO a copy of all signed contracts, including those not subject to TTO approval or joint signature, and those that have not been dealt with by the TTO. Transmission of contracts that have not been approved does not imply approval.

<sup>7</sup> For confidentiality agreements (NDAs) and agreements for transfer of biological material (MTAs), the TTO provides model contracts which the units shall use as a priority. These are signed by the head of the unit concerned.

<sup>8</sup> In all cases, this article is subject to the signature rights set out in LEX 4.1.1<sup>10</sup> concerning conflicts of interest.

---

<sup>9</sup> I.e. the (full, associate, tenure track assistant) professor in charge of the unit concerned or any other person responsible for a cost centre and heading a unit.

<sup>10</sup> See the documents related to LEX 4.1.1 concerning the management of conflicts of interest within the context of activities or public duties engaged in outside the working sphere, available on the Polylex website: <http://polylex.epfl.ch/page-26065-en.html>

**Article 21 Contracts with funding bodies or other non-profit entities**

<sup>1</sup> All contracts with funding bodies or other non-profit entities are co-signed first by the head of the unit or the PI, then by the Head of the Research Office (REO).

<sup>2</sup> The unit concerned must receive validation from the REO for every draft contract before signing.

<sup>3</sup> Once the contract is signed, the head of the unit concerned is responsible for uploading a copy of the contract, duly signed by all parties, to GrantsDB, so that the REO may request that the Accounting Service open a fund.

<sup>4</sup> The head of the unit concerned is responsible for keeping originals of all contracts outlined in Art. 20 that involve his/her unit, and for the management of contracts with funding sources or partners in a collaboration. If need be, he/she shall also be responsible for the transferal of the original signed contract to the other project partners. The REO does not systematically keep originals and only retains a copy on GrantsDB.

**Article 22 Contract compatibility**

Before obtaining the signature for contracts outlined in Chapter 2, the head of the unit concerned must verify that the proposed project is compatible with existing contracts that involve his/her unit.

**Article 23 Personnel**

The head of the unit concerned is responsible for taking the necessary steps to hire personnel needed to carry out contracts outlined in Chapter 2. Human Resources verify that the terms and conditions for the work contract conform to applicable legislation and directives.

**Article 24 Acquisition of third party rights**

The head of the unit concerned will verify that EPFL holds all intellectual property rights necessary for carrying out the contract. In particular, when a person not employed by EPFL participates in the project (e.g. a student, a scholarship holder, a trainee or an invited researcher), the head of unit will ask him/her to sign a release of all rights on the results of the research that he/she obtains in the context of the project. The TTO can provide advice and assistance in this regard.

**Article 25 Execution of contracts**

The head of the unit concerned is responsible for seeing that the tasks involved in the project are accomplished and that all other obligations that stem from contracts concluded on behalf of EPFL, as outlined in Chapter 2, are met.

**Chapter 4 Financial management****Article 26 Funds**

<sup>1</sup> In accordance with the Financial Regulations (LEX 5.1.1), for all contracts outlined in Chapter 2 in which the funding amount is CHF 50,000 or over, a third-party fund is opened for the unit concerned. The TTO, the REO and the GEC respectively request the opening of a fund for the contracts under their respective authority once the contract is signed or, exceptionally, before signature.

<sup>2</sup> For contracts under CHF 50,000 third-party payments are deposited in the designated fund of the unit concerned<sup>11</sup>.

### **Article 27 Overheads**

<sup>1</sup> Overheads are a fixed financial contribution to the indirect costs of the project (in particular, general and infrastructure expenses).

<sup>2</sup> Heads of units must take overheads into account when calculating the budget for a project funded by a third party. The rate of overhead depends on the type of contract and funding source category.

<sup>3</sup> The overhead rates and internal overhead allocation are set out in the Financial Regulations<sup>12</sup>.

### **Article 28 Advances**

As a general rule, contracts outlined in Chapter 2 anticipate advance payments that are adapted to individual circumstances.

### **Article 29 Excess revenue or spending**

Any excess in revenue or in spending generated by contracts outlined in Chapter 2 will be handled in accordance with the Financial Regulations (Arts 24 and 26).

### **Article 30 Other provisions**

For all other issues related to the management of funds into which third-party payments are deposited in the context of contracts outlined in Chapter 2, the Financial Regulations shall apply.

## **Chapter 5 Management of intellectual property**

### **Article 31 Ownership of inventions and other intellectual property assets**

According to the terms of article 36 of the FIT Act<sup>13</sup>, EPFL is the owner of all rights on intellectual property assets that its employees (i.e. anyone in an employment relationship with EPFL) create in the course of their official duties for EPFL.

---

<sup>11</sup> The funds « mandats divers » will gradually be closed and replaced by funds named “fonds désignés” (see art. 25 Règlement financier).

<sup>12</sup> See [https://polylex.epfl.ch/wp-content/uploads/2019/01/5.1.1\\_r\\_financier\\_an.pdf](https://polylex.epfl.ch/wp-content/uploads/2019/01/5.1.1_r_financier_an.pdf)

<sup>13</sup> See <http://www.admin.ch/opc/en/classified-compilation/19910256/index.html>

**Article 32 Invention disclosures – Patent applications – Publications**

<sup>1</sup> Inventions must be announced to the TTO by the inventor(s), who provide all necessary information (description of the invention, name and address of inventors, date of the first idea and the first demonstration, research project that generated the invention, head of the unit(s) concerned, etc.). The TTO provides an invention disclosure form on its website. This must be signed by all the inventors.

<sup>2</sup> In collaboration with inventors and the head of the unit concerned, the TTO will proceed with an evaluation of the invention, notably with regard to its possible areas of application, economic potential and patentability. The TTO and the head of unit then define a technology transfer strategy.

<sup>3</sup> Patent applications are made on behalf of EPFL, subject to third party rights, and will name the inventors. The TTO is responsible for managing patents and patent applications for EPFL. As a general rule, the fees associated with filing the priority patent application are covered by the TTO. The unit is asked to cover 50% of the costs incurred in filing subsequent applications, provided that the TTO and the unit concerned are in agreement as to the procedure pursued.

<sup>4</sup> Researchers will take care not to compromise the protection of an invention by publishing results prematurely, and will also see to it that the invention is announced sufficiently early to the TTO. For its part, the TTO will take care to proceed with the formalities for filing a patent application as quickly as possible once the invention has been announced and evaluated as described above.

**Article 33 Software and other intellectual property assets**

<sup>1</sup> The author(s) of software that shows potential for commercial development can announce their software to the TTO by providing a detailed description of the software's functionality along with a list of authors and other necessary information (research project for which the software was written, areas of application, etc.) The TTO provides an on-line software disclosure form on its website. This form must be signed by the head of the unit concerned.

<sup>2</sup> The TTO and the head of the unit concerned will evaluate the software and define a strategy for its development and transfer.

<sup>3</sup> The same rules apply to the creation of other intellectual property assets or other research results that have a potential for commercial development (trademarks, designs, semi-conductor circuit design, development of new plant lines, demonstrators, etc.).

**Article 34 Assistance provided by inventors/authors**

Inventors and authors provide TTO with the assistance needed in the development of the invention, software or other intellectual property asset that they have created. This assistance consists primarily in:

1. signing the authorizations and documents required in the patent application process;

2. scientific contributions during the patent application process (researching prior art; assistance in writing the text for the patent application and for responses to objections raised by examiners, etc.);
3. contributing to a search for partners interested in marketing the invention, software or other intellectual property asset (e.g. writing summaries presenting the technology, presentations to potential partners, etc.).

## **Chapter 6 Technology transfer contracts**

### **Article 35 General**

Technology transfer contracts concern the commercial development of research results generated by EPFL. They aim to settle relationships between EPFL and a company interested in developing and marketing products or services that are based on specific research results and that are the subject of a patent application, a patent, a copyright or other intellectual property right belonging to EPFL. These contracts transfer to the company concerned, in exchange for appropriate compensation, the property (assignments) or usage rights (licenses) of patents, patent applications or software, for example. Technology transfer contracts can also be concluded with academic or research institutions in order to regulate the protection and development of joint research results.

### **Article 36 Negotiation, conclusion and management of technology transfer contracts**

<sup>1</sup> The TTO negotiates technology transfer contracts in collaboration with the head of the unit concerned. All technology transfer contracts are subject to the approval of the head of TTO. The contract is then signed by the head of the TTO and the head of unit. The TTO retains the original document that is returned to EPFL and provides the head of unit with a copy.

<sup>2</sup> The above is subject to special signature conditions that apply to contracts with companies in which the head of unit has a financial interest or carries out functions considered in the directives on management of conflicts of interest<sup>14</sup>.

<sup>3</sup> The head of the unit concerned is responsible for carrying out the scientific tasks outlined in technology transfer contracts, in particular the transfer of knowledge and expertise. The TTO is responsible for carrying out management tasks and other obligations that the contract generates, in particular the receipt and distribution of revenue in conformity with this directive. In particular cases and with the approval of the TTO, the head of unit may manage the receipt and distribution of revenue. In these cases the head of unit will provide a management report to the TTO at least once a year.

### **Article 37 Potential surrender of intellectual property**

---

<sup>14</sup> See [https://polylex.epfl.ch/wp-content/uploads/2019/01/4.1.1\\_dir\\_gestion\\_conflits\\_interet\\_an.pdf](https://polylex.epfl.ch/wp-content/uploads/2019/01/4.1.1_dir_gestion_conflits_interet_an.pdf)

If the TTO, in agreement with the head of the unit concerned, decides not to commercially develop an intellectual property asset, its creator(s) or inventor(s) may request that the rights be surrendered to them, or request right of use for the intellectual property asset in accordance with Article 5 of the *Ordonnance sur les biens immatériels dans le domaine des EPF*<sup>15</sup>. The terms of transfer are set by mutual agreement and the transfer must be the subject of a written contract. For software, this transfer concerns the exclusive rights for use and can only be requested by the creators who participated in its development in a decisive way<sup>16</sup>. In all cases EPFL reserves at least the right to use the intellectual property asset in question for teaching and research purposes.

## Chapter 7      Distribution of revenue

### Article 38      Revenue from the marketing of intellectual property assets

<sup>1</sup> Potential revenue from the marketing of EPFL intellectual property assets by a third party is distributed according to the arrangement that follows.

<sup>2</sup> First, this revenue will be used to cover external fees for protection and development already paid by EPFL (TTO and units) or to be paid at a later time for the intellectual property asset concerned. The remaining sum (after deduction of possible taxes) is distributed as follows:

1. a third is paid to the creators of the intellectual property asset. For revenue from marketing software, this third is paid only to creators who participated in its development in a decisive way. A contribution is considered decisive if it accounts for at least 10% of total development;
2. a third is credited to the fund(s) designated by the unit(s) concerned;
3. a third is credited to EPFL. The management team shall decide on the internal distribution of these funds and shall define the amount consecrated to actions to add value or support innovation.

<sup>3</sup> Exceptions can be made to this distribution scenario in the following cases:

- a. when the creation of intellectual property has incurred particularly high research costs or other expenses for EPFL;
- b. when the creators have not contributed to the valorization;
- c. when the financial return is particularly high.

The EPFL management team is qualified to decide on such exceptions.

<sup>4</sup> When a third party has a right to part of the financial return, this part is deducted prior to the internal distribution.

<sup>5</sup> When, in the context of technology transfer or a research contract, the third party finances follow-up research, the corresponding payments are no longer considered as revenue received from the marketing of an intellectual property asset.

---

<sup>15</sup> See <https://www.admin.ch/opc/fr/classified-compilation/20132099/index.html> (French only).

<sup>16</sup> The notion of decisive participation in software development is explained in Art. 38 below.

## Chapter 8 Shareholding (Start-Ups)

### Article 39 Principles<sup>17</sup>

<sup>1</sup> In the framework of the development of its intellectual property rights, EPFL may hold shares in the capital of companies (start-ups). These shares are subject to the conditions in LEX 5.1.1 “*Directives du Conseil des EPF sur les participations au sein du domaine des EPF du 9 juillet 2014*” [Directive from the EPF Counsel regarding shareholding within the EPF Domain of 9 July 2014].

<sup>2</sup> Share acquisition in the capital of start-ups is funded through the contribution of intellectual property assets by EPFL. In justified or exceptional cases, third party funds may be used; the management team is qualified to decide on this point.

<sup>3</sup> Shares in the capital of start-ups must not exceed 49% of the equity capital, nor 49% of votes.

<sup>4</sup> Shares in the capital of start-ups must be sold (i) when the financial situation of the start-up allows it and when the moment chosen for selling is advantageous for EPFL, or (ii) when required by the situation of the start-up.

### Article 40 Responsibilities in decision making and signature rights

<sup>1</sup> The acquisition of shares according to the above-mentioned Article is decided by the head of TTO in agreement with the Vice President for Research and the Director of Research Affairs.

<sup>2</sup> The head of TTO is responsible for selling shares with the agreement of the Vice President for Research and the Director of Research Affairs and in agreement with Article 39, paragraph 4 above. All decisions concerning the exercise of options are taken by the head of TTO in agreement with the Vice President for Research or the Director of Research Affairs. In these two specific cases, the VPFI shall be consulted.

<sup>3</sup> Contracts and other legal documents concerning participation in start-ups, such as shareholder agreements, shareholder decisions and contracts for the sale of shares are jointly signed by the head of the TTO and the Vice President for Research or the Director of Research Affairs.

### Article 41 Management of Share holding with start-ups

<sup>1</sup> The management of securities as well as contracts relating to options is handled by the TTO. The TTO also keeps a file for each share in the start-ups.

<sup>2</sup> Once the securities are sold, the TTO distributes the proceeds in accordance with Art. 38 above. However, in the event that the revenue exceeds CHF 200,000, the proceeds paid to the unit concerned may be staggered in several annual installments.

---

<sup>17</sup> See Article 3a of the FIT Act (<http://www.admin.ch/opc/en/classified-compilation/19910256/index.html>).



The head of TTO will set up such arrangements and inform the Accounting Service of them.

<sup>3</sup> Inventors or creators cannot claim shares in lieu of revenue from the sale of shares.

<sup>4</sup> The TTO establishes a list of shares at December 31 of each year, indicating their value if it is known. This list is transmitted to the Vice President for Research and the Director for Research Affairs as well as the Accounting Service. The TTO obtains the most recent approved financial statements from the societies concerned.

#### **Article 42 Reporting and transfer of information to the ETH Board**

<sup>1</sup> Regarding the report on shares to be transmitted each year to the ETH Board according to Article 16 of the ETH Board Guidelines on shareholding (5.1.1), the TTO is responsible for preparing the part of this report which concerns shareholding in start-ups.

<sup>2</sup> In the case of a significant event regarding the shares in a start-up according to Article 17, paragraph 1 of the ETH Board Guidelines on shareholding (LEX 5.1.1) of which the TTO is aware in its management context, the TTO shall inform the management team via the Vice President for Research and the Director of Research Affairs; the management team will inform the ETH Board.

#### **Article 43 Functions within a start-up on behalf of EPFL**

Leadership roles in a start-up (e.g. positions on the board of directors or in management) cannot be taken on behalf of EPFL unless, in exceptional cases, the EPFL management team so decides. In the case of leadership roles that are taken on behalf of EPFL, the management team shall define in a written mandate the objectives and reports to be submitted by the representative of EPFL; the management team requires the start-up to take out civil liability insurance to cover risks that are assumed as a consequence of holding the position.

## **Chapter 9 Legislation on export control**

#### **Article 44 Dual-purpose assets and technology – weapons-related assets and technology (Swiss law)**

<sup>1</sup> By virtue of the Federal Act on the Control of Dual-Use Goods (LCB) and its Ordinance (OCB)<sup>18</sup>:

1. export of dual-purpose assets, components, software, technology and information is subject to the authorization of the State Secretariat for Economic Affairs (hereafter SECO);

---

<sup>18</sup> Federal Act on the Control of Dual-Use Goods and of Specific Military Goods ( LCB), <http://www.admin.ch/opc/en/classified-compilation/19960740/index.html> and related Ordinance - Ordonnance sur l'exportation, l'importation et le transit des biens utilisables à des fins civiles et militaires et des biens militaires spécifiques (OCB), [http://www.admin.ch/ch/f/rs/c946\\_202\\_1.html](http://www.admin.ch/ch/f/rs/c946_202_1.html) + further information on the subject: [https://drive.google.com/open?id=1OWmObmNu\\_tJNT9r7dTFcdclCN7z\\_eM0G](https://drive.google.com/open?id=1OWmObmNu_tJNT9r7dTFcdclCN7z_eM0G)

2. export of assets, components, software, technology and information which are known to be destined for or could be used for the development, production or use of nuclear, biological or chemical weapons (ABC weapons) or for vector systems (missiles, rockets, drones, etc.) destined to be used as ABC weapons, must be declared beforehand to SECO.

<sup>2</sup> At EPFL, transfer of knowledge, software, demonstrators or prototypes that may fall under the scope of this legislation may occur in the context of technology transfer contracts or research contracts, but also in informal personal contacts. This legislation includes personal criminal sanctions in the event of intentional infringement or negligence.

<sup>3</sup> EPFL Professors and staff members must comply with these legal and regulatory measures (GCA and OCB) in their contacts and in their contracts with foreign companies. In case of doubt and for any information they should contact the Vice President for Research.

<sup>4</sup> In all submitted contracts, the TTO, respectively the REO, will verify, in collaboration with the head of the unit concerned and based on documents provided to TTO, respectively to the REO, that the LCB and OCB measures are respected. In case of doubt, these services will consult with SECO. In the event that the goals or extent of the project change after the project has been approved, it is the responsibility of the head of unit concerned to revisit and re-verify conformity with the LCB and OCB measures.

#### **Article 45 Foreign legislation on export control**

<sup>1</sup> Foreign legislation may apply, in particular when a unit cooperates with a foreign company which passes on technical information, software, or even materials falling under the scope of such foreign legislation. In such cases the head of the unit concerned should contact the Vice Presidency for Research.

<sup>2</sup> Furthermore, contracts may include specific provisions recalling or imposing obligations on EPFL in the field of compliance with foreign legal or regulatory provisions. Inasmuch as the contract comes under Chapter 2 of this directive and is submitted by the unit to the TTO or REO, the latter coordinates negotiation of export control provisions.

<sup>3</sup> It is hereby recalled that in the field of foreign legislation on export control related to contracts for the purchase of equipment or software, the Strategic Purchasing Office DABS has authority.

## **Chapter 10 Final provisions**

#### **Article 46 Entry into force**

<sup>1</sup> This directive enters into force on 27<sup>th</sup> May 2013, version 2.4, status as at 23<sup>rd</sup> April 2019.

<sup>2</sup> It abrogates the directive of 1<sup>st</sup> March 2007, status as at 1<sup>st</sup> July 2009.

On behalf of the EPFL Direction:

President:  
Martin Vetterli

General Counsel:  
Susan Killias