

GeC Working instructions concerning general information relating to contracts

Of 18th October 2018, status as at 18th February 2019

Preamble

The present instructions sets out the mandatory principles applicable to all contracts linking EPFL to a third party, with the exception of employment contracts between EPFL and its employees within the meaning of the LPers and the OPers-EPF¹. Any departure from these terms must be fully justified. The present document are internal instructions intended for employees responsible for drafting contracts.

Section 1. Contract Content

Article 1 EPFL address

¹ The address for EPFL, to be indicated on every contract, is as follows:

Bâtiment CE – 3.316

Station 1

CH – 1015 Lausanne

² The identity (name, position) of all signatories shall be provided as precisely as possible. The full address of third parties shall be included.

Article 2 Drafting language

¹ French, German, Italian and English are the only languages permitted. The employee shall decide on the contract's language from amongst the languages permitted.

² If the co-contracting party wishes a translation in a language other than those mentioned in paragraph 1 of the present Article, the contract shall be presented in 'mirror' format: with one column containing the articles in the language of the co-contracting party and a second column showing the same articles in one of the permitted languages. It must be specified in the contract that only the version in the permitted language is deemed authentic. The contract shall be signed in the permitted language column only. Translation fees are at the expense of the co-contracting party.

Article 3 Signatures

¹ In all cases, EPFL shall be represented by two persons by application of the principle of double signature.

² Documents such as the Financial Regulations (LEX 5.1.1), the Directive on Sponsorship and Patronage at EPFL (LEX 1.10.1)² and the EPFL Directive on Grants, Research Contracts and Technology Transfer (DSCRTT – LEX 3.4.1)³ provide further applicable information on signatures in specific circumstances.

Article 4 Initials

In addition to the signatures at the end of the contract, each page of the contract shall be initialled (abbreviated signature/initials/stamp) in all cases by EPFL and by the partner if possible.

¹ These employment contracts comply to the requirements of the [Compliance Guide](#) in its chapter "Human Resources" and are governed by the LPers (RS 172.220.1) and the OPers-EPF (RS 172.220.113).

² www.polylex.epfl.ch/files/content/sites/polylex/files/recueil_pdf/ENG/1.10.1_d_sponsoring_mecanat_an.pdf

³ [Lex 3.4.1 Art 20](#): "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. [...] For confidentiality agreements (NDAs) and agreements for transfer of biological material (MTAs) [...] These are signed by the head of the unit concerned."

Article 5 Original copies

¹ There are the same number of original copies as there are parties to the contract. Each signatory party to the contract shall keep an original copy bearing the signatures of all signatories, preceded by the mandatory statement: "Signed in [location], on the [date] day of [month and year] in [number of copies] original copies" [e.g. *Signed in Lausanne on the 15th day of May 2018 in 5 (five) copies*].

² Electronic signatures remain restricted.

³ Contracts involving the DAR may follow the practices imposed by the co-contracting party.

⁴ In the absence of original copies, the contract will indicate the method of signing selected by the parties.

Article 6 Dates and duration

¹ A set date for the start of the contract and a set date for the end of the contract must imperatively be indicated. The date for the start of the contract must be complete (day, month, year) and may not ensue from the date of signing of the contract.

² Contracts remain valid for a fixed term. However, certain provisions (confidentiality, intellectual property and licensing terms, warranty entitlement, data protection, exclusion of warranties, liability) may remain valid after the end of the contracting period.

³ Contracts for which the contracting period exceeds 10 years, or for which the sum involved exceeds 5% of the budget received from the Confederation, must be submitted to the ETH Board for validation⁴. This provision does not apply to licensing terms or to intellectual property transfer contracts.

Article 7 Termination and renewal

¹ If the contract includes a termination and/or renewal clause, this clause must indicate the notice period for termination and must require that contract termination/renewal be requested in writing.

² If a renewal clause is included in the contract, it shall be evaluated by the person in charge of the contract within a minimum deadline of 6 months prior to the end date of that contract. The parties shall come to an agreement regarding the terms for prolongation or renewal.

³ The prolongation and renewal of a contract must be express and result in an amendment or a new contract if substantial modifications are made to the terms of the contract. Tacit renewal is not permitted.

⁴ Notice periods must be of a reasonable duration.

Article 8 Contract status

¹ It shall be indicated if the document in question is an amendment to an existing contract or if the contract abrogates and replaces an existing contract or if the document is related in any other way to an existing document.

² For contracts as mentioned in paragraph 1 of the present Article, reference to the identification number of the existing contract within the EPFL contract database (see Article 19) is to be indicated.

Article 9 Amendments

Any amendment to a contract shall bear the same signatures as the initial contract: if the signatories are not the same people, the new signatories shall occupy the same positions/hierarchical ranking as the former signatories.

⁴ See Annex 1

Article 10 Contact fulfilment

¹ The contact details for a referent from EPFL and a referent from the partner for the fulfilment of the contract shall be included in the contract. The referent from EPFL is the EPFL employee responsible for the contract and who ensures its follow-up.

Article 11 Financial clauses

¹ The currency must be indicated. Where a third-party requests payment in a currency other than Swiss francs, the sharing of the foreign exchange risk between the parties must be provided for in the contract. Failing this, the foreign exchange risk shall be assumed by the head of the project at EPFL.

² If the contract requires payment deadlines, these must imperatively be indicated.

³ Prices must obligatorily include overheads⁵. The overhead rate must be known to the EPFL Unit.

Article 12 Contractual penalties

Contractual penalties may not be charged against EPFL. However, contractual penalties may be charged for co-contracting parties.

Article 13 Rights and obligations of parties

The rights and obligations of parties to the contract shall be fully and precisely indicated.

Article 14 Reporting

Where a contract provides for the provision of reporting by one or other of the parties, the type of report required, in particular the report content and a reporting schedule, shall be included in the contract.

Article 15 Exclusion from liability

Contracts relating to research or intellectual property rights shall provide for a general exclusion from liability for EPFL.

Article 16 Application of Swiss law and place of jurisdiction

¹ Contracts are governed by Swiss law, excluding international conflicts of law provisions. The place of jurisdiction is Lausanne or Bern.

² Exceptionally, at the express and justified request of the partner, the place of jurisdiction and applicable law may be those of the place of domicile of the defendant, excluding international conflicts of law provisions

³ Arbitral clauses and mediation are prohibited.

⁴ Paragraphs 1 to 3 of the present Article are not applicable to contracts with the European Union, international organisations, and exceptionally with foreign partners.

Section 2. Data Protection (Federal Act on Data Protection and General Data Protection Regulation)

Article 17 Protection and confidentiality of personal data

The employee who drafts the contract shall analyse whether or not clauses concerning data protection are necessary.

⁵ See EPFL Financial Regulations (LEX 5.1.1), Chapter 8, Article 58:
https://polylex.epfl.ch/files/content/sites/polylex/files/recueil_pdf/ENG/5.1.1_r_financier_an.pdf

Section 3. Consultation, specific directives, support and filing

Article 18 Consultation

When a contract is drafted, consultations must be conducted with the services concerned (e.g. TTO, ReO, VPFI, VPE, HR, VPRHO, Deans).

Article 19 Support

All requests for further information regarding the principles set out above and all issues encountered within the context of their application are to be submitted to the EPFL General Counsel.

Article 20 Communication and filing

¹ All contractual documents linking EPFL to a third party must be stored in the EPFL databases (Polycontrat, GrantsDB, SAP).

² For all financial contracts for which the sum exceeds CHF 50,000.00, the VPFI must be notified when the contract is transmitted for storage in the EPFL databases (GrantsDB, Polycontrat, Hermès), with a request for setting up a fund if necessary. This clause does not apply to licensing terms or to intellectual property transfer contracts.

Section 4. Entry into force

Article 21 Entry into force

The present directive entered into force on 18th October 2018. Version 1.1, status as at 18th February 2019.

General Counsel:
Susan Killias